

DISSERTATION

POLICY CHANGE AND ENVIRONMENTAL GOVERNANCE AT THE U.S.-  
MEXICO BORDER: THE CREATION AND DEVELOPMENT OF THE BORDER  
ENVIRONMENT COOPERATION COMMISSION/NORTH AMERICAN  
DEVELOPMENT BANK

Submitted by

Oscar Fidencio Ibáñez Hernández

Political Science

In partial fulfillment of the requirements

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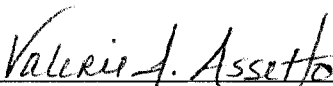
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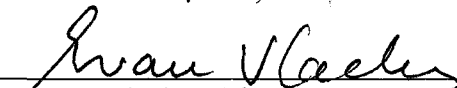
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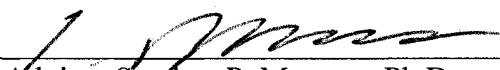
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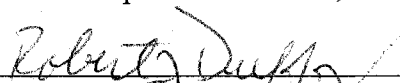
Committee on Graduate work

  
Valerie J. Assetto, Ph.D.

  
Evan Vlachos, Ph.D.

  
Robert Duffy, Ph.D.

  
Advisor Stephen P. Mumme, Ph.D.

  
Chair Robert Duffy, Ph.D.



## **ABSTRACT OF DISSERTATION**

### **POLICY CHANGE AND ENVIRONMENTAL GOVERNANCE AT THE U.S.- MEXICO BORDER: THE CREATION AND DEVELOPMENT OF THE BORDER ENVIRONMENT COOPERATION COMMISSION/NORTH AMERICAN DEVELOPMENT BANK**

The present research performs a detailed analysis of bilateral environmental policy change using Historical Institutionalism, Punctuated Equilibrium and Policy Regime Theory to explain the origins and evolution of the Border Environmental Cooperation Commission (BECC) and the North American Development Bank (NADB). A multi-level governance approach is used to evaluate the complex interactions of BECC/NADB with several other institutional arrangements and their contribution to the United States-Mexico border environmental governance. The outcomes of the research identify opportunities and provide useful lessons to enhance bi-national environmental and non-environmental cooperation and governance particularly along the countries' common border.

Oscar Fidencio Ibáñez Hernández  
Political Science Department  
Colorado State University  
Fort Collins, CO 80523  
Fall 2008

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## **Introduction**

Current debates over border security (illegal immigration, violence, terrorist threats and drug trafficking) point to the failure of Mexico-United States bi-national policy. Unilateral decisions across the range of border security issues now challenge earlier assumptions of U.S.-Mexican interdependency and hinder bi-national cooperation (Payan 2006). As these two contiguous and frequently allied neighbor states complete the first decade of the 21<sup>st</sup> century there is a pressing need to find ways to mend the frayed fabric of bilateral interdependence and seize any opportunity to repair and strengthen their bi-national partnership.

One such opportunity with the potential avenue for strengthening bi-national cooperation is learning from such successful instances of bi-national cooperation as may be found in bilateral affairs. It is in this spirit that this dissertation examines an advanced case of bi-national institutional cooperation along the U.S.-Mexican border that provides useful insight on cooperative bi-national practice that has not only improved and consolidated bi-national relations for environmental cooperation, but suggests useful political and procedural avenues for strengthening bi-national cooperation at this critical time in U.S.-Mexican affairs. This successful instance of bi-national institution building is seen in the development and performance of two paired bi-national institutions

established nearly 15 years ago, the U.S.-Mexico Border Environment Cooperation Commission (BECC) and the North American Development Bank (NADB).

Most analysts agree that the creation of BECC and NADB in September 1993 produced a considerable policy transformation in environmental governance along the US-Mexico border. Most analysts attribute this change to the interesting policy conjuncture brought about by intense U.S. domestic debate over the merits and demerits of the North American Free Trade Agreement. And yet, the politics of the agencies' formation and development are not adequately studied or understood. We need to ask, for instance, what factors explain this rather substantial instance of policy change? When we consider the fact that the evolving bi-national relationship between Mexico and the United States of America has suffered several periods of conflict including wars and disputes over a myriad of issues, as well as cooperation through various treaties and agreements (Astie-Burgos, 1998), how should we account for this particular case of successful policy institutionalization and how may we account for further institutional changes? What are the implications for other bi-national cooperation efforts and for the evolution of environmental governance?

Among the various issues on the bilateral agenda, cooperation and conflict over environmental issues is one of the most recent areas of concern, arriving on the docket in the early 1970's. Even though environmental issues existed long before, such issues were not defined as such. Environmental issues, such as they were, to include matters like the recurrent floods along the border that gave rise to international limits disputes and



security concerns, or the irrigation infrastructure created for agricultural and security purposes were usually defined as natural resources issues, public health issues, or security concerns (Mumme 1995).

Twenty five years ago in 1983, the signing of the La Paz Agreement by presidents Ronald Reagan and Miguel De la Madrid established a formal legal framework for environmental cooperation that added to and incorporated previous institutional mechanisms for dealing with transboundary environmental concerns, either through the Comisión Internacional de Límites y Aguas (CILA)/ International Border and Water Commission (IBWC) or the formal diplomatic channels (Mumme 1988, 1995). The Agreement established a regular diplomatic mechanism for considering border area environmental issues and fostered the creation of border work groups to discuss them. As environmental concerns deepened in Mexico and United States, the early 1990's saw the elaboration of the Integrated Border Environmental Plan (IBEP), followed by the Border XXI Plan in 1995 and the current Border 2012 Plan in 2002 (EPA, 2007). While constituting a significant mechanism in diplomatic terms, the La Paz agreement lacked the budgetary and implementation mechanisms that were demanded by the growing border environmental problems. The IBEP, adopted in 1992, sought to address the weakness of these working groups, dedicating modest funding to address border environment infrastructure deficits.

During the negotiation of the North America Free Trade Agreement (NAFTA) BECC and NADB were established to improve environmental infrastructure along the

US-Mexico Border. These many initiatives since the 1970's highlight the evolving and complex character of environmental governance along the border and significantly depart from the previous institutional arrangements in place.

The unique characteristics of the BECC/NADB institutions depart from the traditional cooperation arrangements among United States and Mexico. As such, they may be considered a substantial example of policy change in bi-national environmental cooperation. The NAFTA negotiations sparked vigorous debate over regional integration, inviting comparison with the European Union (EU) model of integration and institutional development (Blatter, 2001). Analysts of bi-national relations argue that the BECC/NADB's atypical institutional features place them at the vanguard of U.S.-Mexican cooperation efforts. Among the most innovative of BECC/NADB's institutional features often cited by scholars are their elements of administrative decentralization, bi-national personnel and resources, public participation, sustainability evaluation criteria for project certification, local project process control, relatively autonomous grant-making and financial resources, and capacity building.

Despite these innovative characteristics and the agencies' acknowledged institutional success since coming on-line in 1995, the institutions have lately stirred controversy which, in certain respects is evidence of their enduring political significance. In 2006, proposals to eliminate these institutions were considered by federal government officials from both countries (Nauman 2006). The following year, in 2007, an initiative aimed at strengthening their mandate to enable them to tackle different bi-national

policies was proposed to the United States government by the current Mexican federal government (Herrera 2007a). And, currently, as scheduled in the 2008 budget, the agencies are facing a significant reduction of Environmental Protection Agency (EPA) grant funds that will adversely affect their operational capacity.

### **BECC and NADB as an Instance of Bi-national Policy Change**

Abundant literature exists on different aspects of the institutions' origins, legal framework, sustainability practices, public participation, development and internal processes modifications, infrastructure project certification and finance. Nevertheless, a detailed explanation of the reasons for such a pointed policy change has not been presented and is now overdue. Why were these institutions created with this particular mix of institutional characteristics at that particular time? Moreover, why do these institutions keep evolving? How do they supplement and enhance the existing institutional framework for environmental cooperation? These are questions that deserve scholarly clarification. The role that the institutions themselves play in the environmental governance along the US-Mexico border has not yet been thoroughly studied. This in itself is remarkable since, arguably, the creation of BECC and NADB is not only a highly significant policy change for environmental governance at the bi-national level but one whose design and establishment also created new challenges for other state and non-state actors along the border. According to the decentralization literature it is now evident that when such new institutional arrangements are not properly assessed and gradually implemented their chances of failure increase (Rondinelli, 2006). Thus, a detailed assessment of the origins, development, and implications of these institutions for

environmental governance along the US-Mexico border will contribute to a better understanding of the possibilities for better policy and the further development of effective governance arrangements in this policy area.

I propose to carry out the research using at least four different but complementary theoretical frameworks that revolve around and modify the main approach which is predicated on an application of policy regime theory. First, I draw on historical institutionalism to review the context of bi-national environmental cooperation where the aforementioned agencies can be analyzed in a way that highlights the nature and extent of policy change in this issue-arena (Thelen and Steinmo 1992, Hall and Taylor 1996, Pierson and Skocpol 2002). Second, I utilize the policy regime framework to explain policy changes from agenda setting to evaluation, and the possibilities for further policy modification (Hoberg 2001, Wilson 2006). A vital component of policy regime theory as used in this study and one that provides a solid theoretical linkage among these two theoretical perspectives is provided by punctuated equilibrium theory explanation of policy change (Baumgartner and Jones 1993, 2002, Goertz 2003, Repetto 2006). In addition to these theoretical perspectives on policy change, the multi-level governance framework (Hooge and Marks 2003) will be used to study and interpret the BECC/NADB interrelations with the multiple actors that comprise the relevant policy environment for environmental governance at the border.

## **Research Objective**

The main objective of this study is to identify opportunities and provide useful lessons for enhancing bi-national cooperation and governance, particularly in the area of environmental management. As indicated above this objective will be met by analyzing BECC/NADB's formation and development by means of two important theoretical strands: 1) Applying policy change theory (historical institutionalism, the policy regime framework, and punctuated equilibrium) to assess the Border Environmental Cooperation Commission (BECC) and the North American Development Bank (NADB) origins and development, and their contribution to the US-Mexico border environmental governance; and 2) using the multi-level governance framework to identify and understand the complex interactions of BECC/NADB with other institutional arrangements for the Mexico-US transboundary environmental management.

With more than thirteen years of operational experience, the BECC/NADB partners have compiled a significant record of practices, constructive and otherwise, for bi-national environmental cooperation. I argue that a BECC/NADB case study provides useful policy lessons for enhancing environmental cooperation, identifying opportunities for improved policy implementation and even pin-pointing potentially useful changes for the current environmental governance arrangement in the region. Also, I contend that given their unique characteristics and relative success in dealing with bi-national challenges, those characteristics and experiences may be usefully applied to non-environmental cooperation issues along the border (Ibáñez 2006). For instance, the successful coordination of truly bi-national institutions possessing economic resources

and a transboundary mandate may have applications for tackling immigration (Mumme 2006) and security issues (Doughman 2002).

Already, some of the innovative characteristics of the BECC/NABD institutions have been targeted as good governance formats (Villeda 2001; Liverman 1999; Mumme and Moore 1999). These procedures and practices can be identified, proposed, and may be adapted to advance bi-national governance and cooperation throughout the region. As Torres (2004) explains, it is important to consider the role that BECC/NADB plays for the overall environmental governance of the region even if the extent of their institutional impact is indirect or marginal (Ibáñez 2006; GAO 2000), localized in México (Torres 2002), or limited to the northern Mexican border region (Assetto, Hajba and Mumme 2003; Lybecker 2003).

The multiple and complex interactions of BECC and NADB with different state and non-state actors need to be identified and understood so that these paired agencies can improve their efficiency, react to institutional policy and external changes, and be ready to respond to incoming environmental, economic and political challenges (Hooghe and Marks 2003; Ibáñez 2006). This way the incremental institutional approach to change inherent in their institutional design (Torres 1999) can be better directed to enhance their role in border area environmental governance. The analysis should also provide evidence and opportunities for other actors' institutional development along the border.

Three particular avenues for improving environmental governance and cooperation along borders will be examined. Several assessments have been made about the BECC and the NADB by academic scholars (Mumme and Sprouse 1999; Mumme and Moore 1999; Liverman et al. 1999; Carter and Ortolano 2002; Torres 2004; Villeda 2002; Cordoba 2001; Hufbauer and Schott 2005; McKinney 2000; Lehman 2001; Perez 2006), governmental offices (GAO 1994; GAO 1996; GAO 2000; Tiemann 2004), private consultants (Stone and Webster 2004) and the institutions themselves (BECC/NADB 2004a; BECC/NADB 2008). These reports have different emphases. However every one presents proposals for institutional improvement or identifies challenges to overcome. Complementing institutions have been proposed also after consideration of existing institutions and border challenges (Ingram et al. 1995, Pena 2007). Some of the proposals have been implemented through the years in particular with the original charter amendment (BECC/NADB 2004). Still, there are other proposals and opportunities that are waiting to be evaluated and implemented or discarded to advance environmental bi-national governance at the US-Mexico border. The main challenge though is to identify the key factors influencing the implementation of these proposals.

By utilizing the proposed theoretical framework, the first task is to identify the most promising factors likely to produce relevant changes to implement proposals to improve the BECC and the NADB. To this end I advance a set of viable proposals to strengthen environmental bi-national governance at the US-Mexico border. This is done bearing in mind the special circumstances and political bargaining that has taken place since the establishment of these institutions (Torres 1999; Bath and Neighbor 1999). It is

also important to ponder the new security and political context (White House 2005) affecting environmental cooperation and the development of the BECC and NADB in order to identify needed institutional changes. In this regard, it is important to refute arguments for eliminating these institutions (Nauman 2006), or that fundamentally alters their existing mission—as recently suggested by Mexican officials (Herrera 2007a).

Bath and Neighbor (1999) envision using the BECC and NADB as a policy laboratory. Drawing on the theoretical approaches in this case study, my second task is to identify useful experiences to be utilized by other border environmental institutions within and outside the region under study. I will determine whether the goals and expectations existing at the onset of the institutions were fulfilled, and if not, why were they changed or adjusted. Empirical evidence will be used to confirm or challenge the feasibility of existing academic proposals for change.

The third and final research task undertaken in this study is to use the ‘laboratory-type setting’ to craft an analytical framework for understanding policy change in border institutions by combining the four theoretical perspectives mentioned above. In addition to explaining and accounting for the BECC and NADB’s political and policy development (Watts, 2001), the application of these combined theoretical approaches also contributes to a suitable way for studying the complexities of environmental and border issues, and I confront the theories with evidence from this case study looking for the best explanations and highlighting the potential for further research on transnational environmental cooperation.



The rationale supporting this investigation, including the issue definition and its relevance, the research objective and its particular goals, and finally a brief overview of the structure of the dissertation are contained within this introductory chapter. Chapter 1 reviews the history and issues defining the U.S.-Mexico relationship, followed by a general overview of the U.S.-Mexico border and a general description of the environmental efforts among the two countries, including the existing institutions and governance, and the main issues and cooperation efforts addressing them. The chapter provides the institutional context and identifies the particular issues that are most relevant for this scholarly inquiry.

Chapter 2 addresses the theoretical framework and the research design utilized in this study, detailing the particular elements of policy regime theory, historical institutionalism, and punctuated equilibrium theories of policy change that are relevant at each stage of the analysis and showing how the multilevel governance perspective also contributes to an understanding of the BECC and NABD's political environment and behavior. A note justifying the use of a variety of approaches follows from a practical and a theoretical perspective. Finally, this chapter also describes the rationale for using a case study and sets out the qualitative methodological procedures associated with data gathering as well as a description of the particular activities carried out during the acquisition of empirical evidence used for the investigation.

Chapter 3 describes the origins of U.S.-Mexico environmental cooperation and governance, reviewing the issues and the institutions that existed prior to BECC/NADB formation, and introducing the changes occurring during the NAFTA process. The chapter, guided by policy change theory, also tracks the evolution of these various institutions and provides the historical background and context for the important influences on policy change. The review of the history of environmental cooperation with a particular focus along the border provides insights on how and why changes occurred, and also explains why some of the governance arrangements exist the way they exist today, as well as which explanatory factors might well be involved in future adjustments. The main theoretical lens is provided by historical institutionalism and a summary of findings is provided at the end of the chapter.

Chapter 4 reviews a description of the origins of the paired institutions, beginning with the institutional precedents that existed along the border and their influence on the emergence of BECC/NADB. The critical conjuncture presented at the beginning of the 1990's and the stressors that led to and contributed to a fundamental policy change link these developments to the definition of the institutional mandate of the BECC/NADB as part of a complex interaction of different negotiation processes. The main theoretical perspective used in this chapter is the Policy Regime Framework (PRF) and the main findings of this chapter are summarized at the end.

Chapter 5 details the characteristics of the institutions defined after the negotiation, describing the initial stages of BECC/NADB policy development and

implementation as part of this discussion of institutional origins, and framing these changes with the PRF's policy cycle stages of implementation and evaluation. Four distinctive policy processes are identified by this study of early institutional implementation: the definition of the BECC's certification process, the different financial mechanisms and the development of capacity building strategies by BECC and NADB, the role that the institutions played in resolving the U.S.-Mexican Rio Grande River water debt crisis, and finally the mandate adjustments that followed a series of debates and learning processes that adapted the institutions to new political and institutional conditions. This chapter also closes with a summary of results.

Chapter 6 reviews the outcomes and consequences of the policy change, and the role that BECC and NADB play in the environmental governance of the U.S.-Mexico border. Multilevel governance concepts and typologies are used to highlight the relevance of the institutions for the border environmental governance, and how these institutions are dealing with contemporary environmental, political and economic contexts, and with the new challenges posed by security issues that are now prominent in the binational agenda. The part that the different border environmental institutions play in the overall governance landscape is analyzed in relation to BECC/NADB's own role, evaluating the possibilities for enhancing governance efforts along the border. This chapter also provides a summary of findings emphasizing the consequences of the institutions for the border region's environmental governance.

A discussion of the findings in relation to theoretical expectations is presented in Chapter 7. This chapter offers a detailed confrontation of evidence with the different theories, it highlights some of the strengths and weaknesses of the different theoretical approaches for the particular setting of this case study that have binational and transboundary characteristics, this exercise expose the suitability of the combination of theoretical perspectives for a study that encompasses a long period, and contrasting conditions among the countries' economies, culture, and political systems.

The concluding chapter reviews the most important conclusions and recommendations concerning the theoretical applications for this case study that can be used as a framework to study transboundary cooperation. The chapter also benefits with a description of BECC and NABD's lessons for binational environmental cooperation and governance, as well as possible applications to other policy domains. These recommendations are organized as a practical source of proposals to be considered by the BECC/NADB's board of directors.

## Chapter 1

### U.S.-Mexico Relationship, Cooperation and Governance

*They say that we are good neighbors. It's true.  
You are the neighbors and we are the good ones.<sup>1</sup>*

This chapter describes the contextual elements that bear on the development of this research project. These elements, at minimum, include an understanding of the larger U.S.-Mexican bilateral relationship, an understanding of the border as a unique geographic and socio-economic region, an understanding of the elements of binational cooperation and the criteria for gauging effective cooperation, a notion of the concept of governance that is relevant to the study, and an overview of the institutional setting under review.

A panorama of the larger picture of the United States-Mexico relations will, of course, help us understand why and how some things happen and why some others do not. Some of the elements of the relation are defined by contiguity and the problems that exist along the border. On the other hand, some elements of the bilateral relationship exert significant effects on the region. Therefore, a closer look at the U.S.-Mexico border will help to understand the two countries' relationship, as well as the effects that bilateral policies have in the borderland.

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<sup>1</sup> Slightly modified from Jamail (1981) p. 82

As the main purpose of the dissertation is to find ways to enhance bilateral cooperation, particular issues relevant for bilateral cooperation will be discussed as a third contextual element. As intergovernmental relationships have increased along the border, new governance issues have arisen. Thus, the next section of the chapter outlines the concept of governance as it is employed in this study, as a pattern of governance derived from the bilateral cooperation efforts made by both countries, and incorporating the increasing participation of non-state actors. Thus a review of the different types of institutions involved will be presented describing the multilevel character of border governance. The chapter concludes by noting the new security scenario that the bilateral relationship is facing and specifying how it relates to this case study of BECC and NADB.

### **The U.S.-Mexico Relationship**

Any comprehensive understanding of United States-Mexican relations should take into account the respective interactions of these nations over the entire span of what is usually described as the national period. For the U.S. that begins, of course, in 1789 with the signing and adoption of the national constitution. In Mexico, this timeline starts in 1821, with the definitive end of colonial rule by Spain with the triumph of the Plan de Iguala backed by Agustin Iturbide's Army of the Three Guarantees. It should certainly extend to the unique relationship forged between the two countries after the Texas War in 1935-1936, the Mexican-American War of 1946 and the Treaty of Guadalupe Hidalgo in 1848, the relationship that emerges after the Mexican Revolution, and the tensions

associated with the nationalist reforms of President Lazaro Cardenas before World War II.

For practical purposes, however, this historical overview briefly touches on these events but focuses on the period from the 1970's until the present. During the nineteenth century, the dominant pattern was conflict and territorial expansion by the United States to Mexico's detriment, followed at the turn of the century by a brief period of collaboration succeeded by sharpened tensions arising from the Mexican Revolution and U.S. military intervention. World War II is generally taken by historians to be a watershed in the binational relationship. The end of the war ushered in a period of 'special relations' that ended with a redefinition of Mexican and American foreign policy during the 1970's.

Since then, periods of conflict, cooperation, and indifference have constituted the relationship. A significant change in the relationship developed during the later part of the 1980's and the early 1990's, opening a period of cooperation strengthened with the election of Vicente Fox as President of Mexico which signaled the end of the era of the Mexican one party system in 2000. The events of September 11 redirected the priorities of the countries and the bilateral relationship yet again, opening another period of conflict and indifference rather than cooperation, despite ongoing cooperative engagement in several policy areas (Pena 2007; Payan 2006). The impact of the new security environment continues to be debated with some analysts envisioning a continuing and

growing interdependence regardless of saliency of some of the issues defining the relationship (Selee 2005).

The issues that are part of the formal binational agenda vary accordingly with internal and external changes in both countries and their interactions with the rest of the world at different times during the history of the relationship. Several theoretical approaches and perspectives are used to study and understand these elements of the relationship.

The study of U.S.-Mexico relations acquired greater academic importance with renewed attention to Mexico in the United States during the early 1970's. A vigorous debate over the conditions of the relationship emerged during that period and continued through the 1980's. Within that debate, some authors subscribed to an interpretation of the bilateral relationship from the perspective of dependency theory (Rico 1983,; Ojeda 1983; Wyman 1978) while others were drawn to the emerging perspective of interdependency (Reynolds and Tello 1983; Fagen 1983; Ronfeldt and Sereseres 1983). Between these competing views, a more qualified and pragmatic version of bilateral affairs defined the relationship in terms of asymmetric interdependence, stressing both dependent and interdependent conditions in the relationship depending on the issues (Urquidi 1979).

Within the larger structural debate over dependency and interdependency various viewpoints examined the regional nature of interactions between Mexico and the United



States to fully understand the U.S. Mexico relationship (Rosenthal-Urey 1986; Flawn 1979). Still other analytical perspectives on the U.S.-Mexico relationship adopted a presidential perspective arguing how Mexican foreign policy is defined by the president while foreign policy in the United States is shared by the president, congress, or the party. Other scholars emphasized the cultural and historical constraints that hinder binational cooperation and complicate the relationship. Some analysts emphasized the multi-venue characteristics of the American political system as a source of an inconsistent foreign policy, positing notions of 'intermestic' policy relations based on the intermingling of international and domestic politics (Green and Smith 1989).

Dominguez (1997), for example, argues that the relationship can be analyzed in a complementary fashion using different theoretical perspectives. A realist perspective may be useful to explain the relationship most of the time considering the prominent role of the presidents in defining the agenda, while a non-state actor and societal perspective may a new and better explain the complexity of interrelations in different policy arenas, and an institutionalist perspective may better account for the changing nature of the bilateral relationship driven by Mexico during the late 1980's and early 1990's (Dominguez 1997). Clearly a variety of analytical perspectives have been utilized to comprehend the relationship between Mexico and the United States. As Green and Smith (1989) argue, these different and competing approaches help to account for the complexity of the relationship and are rarely mutually exclusive of each other.

The U.S.-Mexico relationship can also be analyzed from a Mexican or a U.S. standpoint. A review of both perspectives is certainly necessary to gain a clearer

understanding of the relationship. As various scholars have noted, the different historical backgrounds of both countries often constrain the analysis (Bilateral 1989; Astie-Burgos 1995). Mistrust and misunderstanding are unequivocal feelings that carry a long history and they are present on the relationship on both sides of the border. On the Mexican side resentment is added to the mix of feelings given the historical asymmetrical conditions of the relationship (Selee 2005).

From the Mexican perspective the U.S.-Mexico relationship is woven mainly with conflict rather than understanding and cooperation (Ojeda 1983; Astie-Burgos 1995). The relationship has gone from active military hostility and the territorial occupation of Mexico by the United States to occasions of incidental alliance at different points in history. The conflicts mainly involved territorial disputes and expansion, political intervention of the United States in Mexican politics, water disputes of various sorts, migration, and energy policies. The advent of World War II changed the foreign policy of the United States towards Mexico from pressure and hegemony to cooperation in search of allies. It opened a period of cooperation and negotiation often described as a period defined by a 'special relationship' (Ross 1979; Bilateral 1989; Navarrete 2002).

This special relationship endured until the 1970's when migration, energy issues and the multilateral activism of Mexico confronting U.S. intervention in other countries changed U.S. foreign policy (Ojeda 1983, Green and Smith 1989). Economic and political crisis in Mexico in the early 1980's altered the relationship. Mexico acquired a modest bargaining capacity at the end of the 1970's decade buoyed by its rising oil

production and higher prices (Ojeda 1983) and lost it again at the beginning of the 1980's owing to the collapse of the OPEC oil embargo and domestic economic and political crisis. Such events led the distinguished scholar Mario Ojeda (1983) to view the U.S.-Mexico relationship as bound by fundamental structural problems including an asymmetry of political power, economic dependence, and geographic contiguity that regularly undermine Mexico's sovereign decisions owing to the security priorities of the United States. Ojeda claims that these factors change only slowly therefore constraining the countries' ability to negotiate and react to specific problems arising from the relationship. Other scholars such as Navarrete (2002) argue that global conditions further complicate this relationship and remain an important factor that mediates the way Mexico defines its relationship with the United States.

Another Mexican scholar, Astie-Burgos (1995), specifies the historical legacy as the foremost source of conflict. He claims that the different political perspectives and the contradicting perceptions and sensibilities of the other, in both countries, remain the critical elements that create problems for cooperation. On the other hand, he considers geography, demography, economy and the border as crucial elements sustaining bilateral cooperation. For Astie-Burgos (1995) the relationship is comprised of cooperation and disagreement with intermittent periods of isolation and indifference. Contrary to other perspectives, he argues that the difference in the relationship during the 1980's was the level of notoriety and the impact that had on public opinion which led to a perception of general disagreement and conflict between the countries.

A slightly different rendition of the ‘peculiar characteristics and inescapable realities’ are presented by the Bilateral Commission Report (1989). According to this perspective—which may be considered somewhat ‘binational’— the features of the relationship are: asymmetry, conflicts of interest, diplomatic limitations and cultural differences. Asymmetry produces unequal bargaining that pervades the relationship. Regarding conflict of interest, it is important to recognize that it will always exist, thus the need to minimize unnecessary conflict and manage the unavoidable disagreement. Diplomatic limitations derive from the complexity of societal interlinkages that overwhelm government capacity and regulation which, together with the multiple interest characteristic of the American system, usually leads to conflicting policies. This circumstance contrasts sharply with Mexico’s executive dominated foreign policy where the president’s will provides policy congruency.<sup>2</sup> Finally, the cultural differences infusing the historical perspective that Mexican diplomats bring to every negotiation often lead them to frame diplomatic initiatives as an orchestrated and potentially abusive exercise of power from the United States, while the American attitude draws on a very minimal historical perspective emphasizing the future rather than the past during negotiations (Bilateral Commission, 1989).

From an American perspective, Fagen (1983) argues that the evident power asymmetry between Mexico and the United States does not drive the bilateral relations. Instead, he considers four hypotheses concerning the forces that shape the relationship. First, global and regional factors will play a significant role on how the United States

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<sup>2</sup> Even today with the diminished power of the Mexican president, the foreign policy is dominated in Mexico by the executive.

policy towards Mexico will change. Second, crisis and semi-crisis due to the many interrelationships existing among the two countries will define moments of attention from U.S. to Mexico that may affect the larger agenda of the relationship. A third hypothesis is that the multi-venue characteristics of the American system provide for conflicting policy positions towards Mexico. And finally, his fourth hypotheses centers on the fact that Mexico can take a more focused approach towards the bilateral relation. Davidow (2005) supports this perspective, arguing that the asymmetry works to the benefit of Mexico during negotiations.

Fagen (1983) also proposes a perspective that incorporates non-state actors, mainly business, as they forge alliances that affect the bilateral relationship—this is an important early scholarly insight that supports the multilevel governance approach utilized in this dissertation to analyze the BECC/NADB, considering that at the time Fagen was writing, non-governmental organizations were not considered very relevant to an understanding of bilateral affairs. Fagen (1983) emphasizes that politics of national interests in the United States are very variable but encompass the need for economic and political stability of Mexico, as well as the circumstantial and strategic interests of the United States, like oil or agricultural import/export policies. The politics of U.S. race and ethnicity are other factors that may weigh on the binational relations.<sup>3</sup> Fagen (1983) also acknowledges the historical perspectives of abuse that Mexicans bring to the table and the perceptions of barbarism and corruption that Americans often have of Mexico. Thus, he argues, ‘we/they’ feelings will continue to constrain the relationship.

For Mexicans the binational U.S. relationship is ever present, in contrast to the perception by U.S. citizens that their interests in Mexico constantly compete with those of other countries where they may have interests (Bosworth et al. 1997). Domestic interests also compete with U.S. attention to Mexico (Wilkie, 1983). The diplomatic approach that encompasses mainly border issues gets complicated by the dilemmas created by conflicting domestic policies and politics. According to Ronfeldt and Sereseres (1983) the U.S. Congress approaches many bilateral issues from a domestic perspective, while Mexico prefers to treat them as foreign policy issues; they argue that the domestic-foreign dichotomy becomes irrelevant in the case of Mexico and the United States because of the strong linkages existing among the countries. Two aspects are described as contributing to poor relationships, the compartmentalized structure of the American government and the 'closet diplomacy' exerted by Mexico. This Mexican approach works outside of the American political system and does not recognize the domestic politics involved on every issue, allowing only crisis related issues to be dealt with and not comprehensive packages. This approach was modified during the late 1980's and early 1990's (De la Garza and Velasco 1997).

A different approach to structural or liberal macro perspectives for U.S.-Mexico relations was proposed by Rosenthal-Urey's (1986) regional analysis. Under this perspective formal international relations differ from the multiple relationships existing at the regional level that involve state and non-state actors creating issues that comprise the bulk of state-state relations. This viewpoint is useful when considering the forces acting

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<sup>3</sup> The current debate over immigration seems to confirm this hypothesis.

during the negotiation of BECC/NADB, when local and national interests converged to create a new policy.

Flawn (1979) also represents a regional perspective, underscoring the importance of the compartmentalized structure of the U.S. government—excepting the Defense and State departments—that focus mainly on domestic concerns and pressures, giving second priority to foreign policy. Therefore, foreign policy never gets a comprehensive articulation, contrasting with the centralized structure of the Mexican government and the consistency of its foreign policy. This Mexican policy consistency has suffered more recently with the active participation of different Mexican agencies in bilateral relations, particularly with the trade department competing with the foreign ministry by the end of the 1980's (Dominguez 1997). Flawn's main conclusions include the need to consider border problems as national issues by both countries, improve the sensibility of American officials to historical and Mexican elements, and to recognize the need for a more coordinated and integrated policy framework (Flawn 1979).

Jamail (1981) adds to this regional perspective by explaining how the local problems of the border communities are exacerbated by the international status of the solutions that are intended to solve them, highlighting the role of informal arrangements and voluntary organizations in solving some of those problems. In general, the federal presence is seen as an impediment for binational cooperation, at the local and regional levels. Jamail argues that federal governments try to keep the border rigid while the voluntary relationships aim for a more flexible border. His view is that border

communities are agents of informal international politics, and that this should be recognized in the formation of formal policies. Lending support to this view, the Organization of United States Border Cities and Counties has suggested a limited power to negotiate treaties between border communities be granted to local governments.

In sum, the nature of the relationship can be described as moving from historical conflict, to diplomatic collaboration and contemporary uneasiness (Bilateral Commission, 1989). The change in the relationship by the end of the 1980's is explained by the changing conditions experienced by both countries: 1) the expansion of the bilateral agenda that makes the relationship more complex; 2) the shifting locus of decision making, particularly in the United States, that involves many non-governmental actors and different agencies with strong domestic perspectives affecting issues of the relationship; 3) changing international conditions with a shift from bipolarity to a multipolar and multilayered system that provide new roles for both actors; 4) the globalization forces that increasingly affect bilateral issues; and finally 5) the increasing interdependency of the relationship (Bilateral Commission, 1989). In this shifting bilateral relationship, the role of public opinion is stressed as a major factor affecting the relationship as never before. (Bilateral Commission 1989, Astie-Burgos 1998) This issue is discussed and confirmed again using recent data (Silva Herzog-Marquez 2005, Reyes Heróles 2005).

At the end of the 1980's, the prospects for the relationship changed significantly after several steps were taken to strengthen bilateral trade. First, the framework signed to



review trade and investment relations in 1987 led to the 1989 trade and investment facilitation talks. This, in turn, influenced the decision to join negotiations for a comprehensive free trade agreement in June of 1990 that signaled a prominent change in bilateral relations (Roett 1991). The talks with Canada began at the same time but were separate from the ones with the United States. At roughly the same time, a change in the way the Mexican embassy operated increased its lobbying capabilities and public opinion engagement, with Gustavo Petriccioli, the Mexican Ambassador, and James Baker, the U.S. Secretary of State, having forged an excellent personal relationship. During this period the role of the presidents was crucial, with the two executives meeting 14 times in four years (Astie-Burgos 1998).

This changing scenario at the end of the 1980's and beginning of the 1990's created opportunities and motivated foreign policy changes in both countries. With the relative decline of the United States, the emergence of Germany and the escalating hostilities between Japan and the United States, the world scenario provided Mexico with multiple options to explore in Europe, Japan, and to a lesser extent with Latin America, in addition to the United States (Roett 1991). A new convergence of interests is described by Shelton-Colby (1991) emphasizing changes in the United States' role in the world that also changed its perspective towards Mexico. Coupled to this, the prospect of greater potential for cooperation had emerged from changes in Mexico's economy and from the strengthening of bilateral economic ties as well as a redefinition of Mexico's attitude towards cooperation on migration, debt and drug trafficking. In summary, by the early 1990's a path to convergence rather than divergence was identified.

In the next section relevant characteristics of the border and the U.S.-Mexico relationship are described. I review the argument that emphasizes the border as the place where most of the relationship happens, as well as the place where the new issues are created, and where the federal governments try to manage their efforts at binational cooperation using new governance formats.

*The border might be the only place  
where truly mutual dependence can be observed*

*Victor Urquidí*

### **The U.S.-Mexico Border**

Most bilateral interactions happen along the border, and despite variations in bilateral issues and the level of cooperation among the countries, bilateral cooperation responds mainly to border issues. Over time the different institutions involved have contributed to the evolution of governance arrangements within the region. A brief description of the border follows that treats border environmental issues and the related institutional arrangements associated with border environmental governance as an important dimension of bilateral cooperation.

The U.S.-Mexican boundary is established under the authority of the 1848 Treaty of Guadalupe Hidalgo as modified by the 1853 Gadsden Treaty, the 1884 Boundary Convention, and the 1970 Boundary Treaty. The climate in the border zone varies significantly from east to west, with over 20 inches of rainfall along the Gulf coast and just over 10 inches in the Imperial-Mexicali valley region. At least six distinctive

economic regions straddle the boundary from coast to coast ranging from “the Valley” of the lower Rio Grande River in the east to the San Diego-Tijuana metropolitan zone in the west. Urban development also varies substantially along the border. Since 1960, rapid growth has amplified the problems associated with urbanization (Lorey, 1999). These varied features of the U.S.-Mexican border compel agencies like BECC and the International Boundary and Water Commission (IBWC) to identify and serve sub-regions along the border that better define problems and seek potential solutions. This level of complexity is usually overlooked by the central governments, which define policies as if the border was a homogenous region.

Oftentimes the border is described by viewpoints from Washington D.C. and Mexico City, rather than regional perspectives. These viewpoints affect both problem definition and policy implementation and, unfortunately, border perspectives and those of central governments do not always coincide. Pena (2007) notes how attitudes and behaviors of national actors constitute the main challenges in defining a policy agenda for cooperative cross-border planning. With respect to problem definitions, for instance, border residents want to have more flexible and fluid borders for trade and economic benefits, while the federal governments wish for a more rigid border to defend their nations from security threats. The uppermost border priority of the United States is security, while the Mexican government’s principal concern is economic development (Pena 2007).

Analytical perspectives focused on the border stress different factors that are important for the relationship; some highlight the importance of various socio-economic interchanges, large binational conurbations, elements of a larger agenda, a singular economic system, political isolation and abandonment from the federal governments, environmental problems, and shared climate and geography. The importance of the border resides, regardless of the particular point of view, in the fact that the majority of the interchanges between Mexico and the United States occur at the border, therefore the chances for conflict are always present (Jamail 1981).

As American journalist and commentator Bill Moyers famously described in his video, *One River, One Country* (1986), border politics and border society is a unique case that can be analyzed as an interconnected economic system, with all the complexities and overflows of such a system, a system that functions because of and despite of the two countries. Contributing to the border's uniqueness are the relative large binational urban conurbations existing along the U.S.-Mexico border (Pena 2007). The political implications of a variety of problems that originate at the border are often neglected by central governments that fuse the local and national agendas complicating bilateral relations. Even so, economist Carlos Rico (1983) stresses the importance of the border on the binational agenda, since many of the problems existing there are subsets of the bilateral agenda.

At different points in time, the border has varied in importance for the U.S.-Mexico relationship. During the 1960's the border represented a pressure valve in solving

the cancellation of the *bracero* program at the same time that *maquiladoras* were promoted along the border (Bilateral Commission, 1989). And throughout the 1970's and into the 1980s interest in binational relations prompted by Mexican oil development and the economic crisis drove the federal governments of both sides to try to understand the border's problems, with the region gaining greater relevance (Jamail 1981). Through the early 1980's both central governments deployed several administrative offices without achieving much control. The issues they sought to deal with ranged from juvenile delinquency, pollution, flood control, and disaster relief to immigration, crime and violence across the border (Ronfeldt and Sereseres 1983). The issues existing at the beginning of the 1990's were: trade, debt, foreign investment, migration, and drug trafficking at the national level, and also, industrialization, commerce, and environmental issues for the border (Mumme 1991).

During the 1980's environmental issues formally rose in prominence along the border owing to the La Paz agreement and its side agreements. In the 1990's NAFTA implementation dominated bilateral relations at the border drawing further attention to environmental concerns. Since the turn of the present century, security issues after 9/11 are defining interactions at the border with implications for environmental cooperation.

The issues that constitute the bilateral relationship vary depending upon external factors that create crises, like the oil prices and energy demands that were very important issues in the binational relationship during the 1970's and 1980's. Other issues associated with international factors such as debt and recession and global economic fluctuations,

are constant elements in the relationship but tend to be managed differently during a crisis context. The U.S.-Mexican trade negotiations that produced NAFTA in 1993 were prompted by global regionalization and restructuring of economic markets, and constitute an example of issues managed differently in contexts of crisis.<sup>4</sup> Other issues that are constants in the relationship are migration and drug trafficking. Each of these is subject to sporadic crisis and pressures generated by U.S. domestic politics that raise its saliency for the bilateral agenda (Ronfeldt and Sereseres 1983, Ayres 1981, Bilateral Commission, 1989).

The prospects for bilateral cooperation at the border are thus substantially contingent on binational trends shaping the larger relationship. At the border, however, informal elements such as the region's political marginalization from both governments, shared geographic conditions, and local cross-national economic and social ties support cooperative relations (Astie-Burgos 1995). Thus the border is, somewhat paradoxically, the region with both the greatest potential for cooperation as well as conflict within the overall bilateral relationship.

### **Issues and Cooperation**

The preceding account of U.S. Mexico relations has interpreted the relationship over the past 30 years in terms of interdependence rather than those of dependence. The preponderance of scholarly analysis suggests that this type of relationship is particularly evident at the border. From a strictly prescriptive point of view, when one considers the

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<sup>4</sup> During the previous decade the Mexican government had rejected the possibility of such negotiation, despite several steps taken since the late 1980's associated with enhancing the trade relationship.

numerous inter-linkages in play along the border, it is certainly reasonable to argue that it is more effective to address binational problems at the border in a more cooperative fashion, instead of a conflictive or from a stance of great power indifference.

Dominguez (1997) contends that the complexity of the Mexican-United States relationship creates possibilities for cooperation at particular levels of the system even if disagreement prevails at other societal levels. And the Bilateral Commission (1989), proposes a bilateral approach to problems at various levels, nation to nation, or border specific (1989).

At the beginning of the 1980's some authors were skeptical about the prospects of bilateral cooperation on most issues except the border issues dealt by the IBWC – including water and sanitation that later were assumed as environmental issues- (Ronfeldt and Sereseres 1983, Ojeda 1983, McGee 1979). Nevertheless, international cooperation was elevated to the Mexican Constitution in 1988 as a foreign policy principle<sup>5</sup> (Astie-Burgos 1995) just before the Mexican government promoted greater cooperation with the U.S on trade.

At different points in time the prospects for binational cooperation between Mexico and the United States have fluctuated, affecting scholarly assessments of the potential for cooperation during particular periods. With the initiative to negotiate NAFTA and after its implementation the prospects for binational cooperation were considered more promising (Dominguez 1995). Later, during the first years of Vicente

Fox's government and before the 9/11 tragedy, the prospects were also very promising (Krauze 2005). More recently, in the aftermath of the 9/11 tragedy, a unilateral attitude by the United States on several fronts towards Mexico has again diminished the prospects for cooperation (Payan 2006). These variations in the binational relationship as described by various scholars seem to confirm the argument of Astie-Burgos (1998) of successive times of cooperation and disagreement through the history of the relationship.

Contrasting with the previous argument for the U.S.-Mexico relationship, the border environmental issues constitute a subset of that bilateral relationship, which has predominantly, being addressed through cooperation, provided that conflicts generated at the border reach the national agenda. Bilateral environmental issues are mainly border issues. Such issues were not explicitly considered in the bilateral agenda until 1983 when the La Paz agreement for cooperation on environmental issues along the border was signed.<sup>6</sup> Since 1983, environmental issues have seldom risen to the forefront of negotiations between the countries, mainly because they are considered a 'low politics' issue compared to the main issues considered in the literature that are of interest of both countries as 'high' politics' issues (Pena 2007).<sup>7</sup> Even so, binational cooperation on border environmental issues has created, adjusted and modified certain institutions that many would place at the forefront of evolving transboundary governance formats.

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<sup>5</sup> Article 89, fraction X

<sup>6</sup> Water sanitation and water quality issues addressed through the IBWC/CILA mechanism were not considered environmental issues when they surfaced.



## **Institutions and Governance**

The increment in international communications, trade, mobility and liberalization of economies has multiplied and altered the various problems associated with binational interdependence. When problems originate on one side of the border with effects felt or suffered on the other side, cooperation among the binational political units is desirable if solutions are to be found. The governance format that best provides for common benefits across political jurisdictions and international boundaries is one of multilevel government comprised of the vertical interaction of public actors in each nation with governmental units at least potentially linked horizontally with cross-border counterparts, and utilizing a governance style that admits private actors, market and non-market, in the process of decision-making (Heritier 2002). The definition of governance used for the dissertation is provided by Stoker (1998) "Governance refers to the development of governing styles in which boundaries between and within public and private sectors have become blurred. The essence of governance is its focus on governing mechanisms which do not rest on recourse to the authority and sanctions of government."

The different perspectives of local and federal authorities on border affairs generate problems of jurisdiction, coordination and effective policies. The broad societal interactions that happen along the border outside the realm of the governments of the countries, and the varying characteristics, problems and approaches along the U.S.-Mexico border call for different formats of authority. And finally, the dynamic character

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<sup>7</sup> The exception was the saliency acquired by border environmental issues during the side agreements' negotiation of NAFTA to create the CEC, BECC, and the NADB.

of the problems and interactions between the two countries, particularly along the border challenges the institutions designed to solve the problems and facilitate those interactions. The argument is that the interactions of actors involved in U.S.-Mexico relations can be analyzed as forms of governance, adding to the perspectives that consider formal foreign policy of both governments.

A number of important institutions provide the institutional infrastructure for policy development and international cooperation for environmental improvement at the border, and include commissions, executive bilateral plans, advisory mechanisms and boards, academic centers, environmental and business non-governmental organizations, intergovernmental organizations and informal local mechanisms.

The first of these institutions is the International Boundary Commission (IBC), transformed into the International Boundary and Water Commission (IBWC) in 1944, with a mandate to manage and interpret boundary and water agreements between the two countries. The significance of the IBWC rests not only in its longevity but in the fact that it was created under a binational Treaty.

Several other binational commissions were instrumented for specific topics at different moments of the relationship (Campos 1981). The most consistent effort is the Binational Commission that brings cabinet members of both federal governments since the mid 1980's to meet once a year to deal with different aspects pertaining to the state-state relationship (Davidow 2005).

The 1983's La Paz Agreement and its annexes constitute the most comprehensive agreement to deal with environmental issues and establish the basis for environmental cooperation. Derived from that framework, the Border 2012 program is the latest expression of several border plans for the environment (Pena 2007). It is an executive agreement that allowed for further cooperation on specific border environmental issues through the annexes and even modifying one of the annexes to constitute the Joint Advisory Committee to address air quality issues in the Juarez-El Paso area. It is worth noting that the BECC/NADB institutions were created through a side agreement of NAFTA but inscribed within the La Paz Agreement framework.

The U.S.-Mexico Border Health Commission (USMBHC) is the last binational government to government institution established to date along the border. It was created in 2000 to address health related problems along the border, but is endowed with fewer resources and a simpler institutional design than the BECC and NADB, and does not have a treaty mandate as it is the case with IBWC/CILA.

At the state level the Border Governors Conference, involving the four U.S. governors and the six Border States' governors on the Mexican side, was established in 1980 covering a wide variety of issues including environmental concerns (Pena 2007). Several networks that involve local governments, cities, municipalities and counties also exist within the region, not all of them associated throughout the border, but involving some cross-border interactions.

Finally, non-governmental groups and networks comprise the remaining actors engaged in environmental governance along the border region. Jamail (1981) lists seven types of organizations at the border: semivoluntary, local voluntary, regionwide voluntary, business associations, national organizations with programs focusing on the border, single-issue groups, and informal relations. These organizations will be analyzed in the context of multilevel governance and the role that each play through the history of binational environmental cooperation.

### **The Contemporary Relationship**

A study conducted simultaneously in Mexico and the United States during February 2006 found that 85% of Americans have a good or very good impression of Mexicans; conversely 53% of Mexicans have a bad or very bad image of Americans. In both countries the relationship is perceived mainly through the lens of distant neighbors rather than as a relationship between partners or friends (CIDAC-Zogby 2006).

At times, it appears as if the countries would like to be as far as possible from each other. That seems to be the case with the border wall under construction by the United States government. Nevertheless, the reality of their common border and economic, territorial, demographic and political interactions force them to engage each other through bilateral policies to accommodate these realities.

It is within this context that the present research looks at the environmental dimension of bilateral relations that has gained relevance as a component of the broader scope of binational affairs since the 1970's. Environmental management is certainly not as influential an element of the binational agenda if we compare it with other issues that have surfaced at times of crisis, or in reference to the permanent issues of the bilateral relationship. Yet it has grown rapidly in general importance such that today it has the potential to influence vital issues in trade, investment, and even security.

Just as with the larger relationship, the politics of U.S.-Mexican environmental management over the past 30 years or more provides ample evidence of both cooperation and disagreement, though the balance of affairs tends to favor cooperation, particularly since the NAFTA debate after 1990. That this is so is substantially attributable to a consistent cooperative effort on environmental management through the BECC and NADB. This study of policy change in the border environmental cooperation regime and a detailed examination of these agencies as part of this process provides insights that may help to further binational cooperation on environmental and non-environmental issues along the border. Before engaging this study, however, the next chapter presents the theoretical framework that is used to analyze policy change and the prospects for cooperation and environmental governance along the Mexico-United States border.

## **Chapter 2**

### **Theoretical Framework, Research Design, and Methodology**

The establishment of BECC and NADB as linked institutions for environmental improvement along the border is precedent setting. Together, the two bodies represent a new institutional approach to environmental management on the border, one borne out of a trilateral process, the NAFTA process, rather than a strictly bilateral negotiation. Institutionally, the BECC-NADB arrangement is one that is not nationally segmented in the manner of earlier institutions like the IBWC, and one that clearly incorporated non-state actors in its negotiations and institutional oversight.

In addition, the innovative characteristics of the institutions themselves represent a considerable policy change. Some of the distinct elements featured as part of the BECC and NADB design are: jurisdiction on two countries 100 kilometers north and 300 kilometers south of the border; administrative decentralization; bi-national personnel and resources; institutional provision for public participation processes; sustainability evaluation criteria for project certification; local project process control; relatively autonomous grant-making and financial resources; and capacity building.

The creation of BECC and NADB in the early 1990's produced a considerable policy change in environmental governance along the US-Mexico border. Why? How

should we explain this case of policy change and how might we account for further institutional changes? What are the implications for other bi-national cooperation efforts and for the evolution of environmental governance? Why were these institutions created with this particular mix of institutional characteristics at that particular time? Moreover, why do these institutions keep evolving? How do they supplement and enhance the existing institutional framework for environmental cooperation? These are the questions that motivated this research. Abundant literature exists on different aspects of the institutions' origins, legal framework, sustainability practices, public participation, development and internal processes modifications, infrastructure project certification and finance. Nevertheless, an explanation for the adoption of such a pointed policy change is well overdue.

The question of enhancing something implies change, either in the conditions or problems that the public policy tries to address, or in the policies themselves as institutional modifications, power adjustments, or new rules. By studying policy change in environmental governance and cooperation between Mexico and the United States, I seek to understand why changes -either significant or incremental- occurred. Also I seek to identify patterns or elements related to those changes that can be singled out as potential catalysts of further change, or which may be relevant for understanding other issue-areas of binational cooperation and governance along the U.S.-Mexico border.

In this way, this study adopts a forward-looking approach. By understanding and identifying the forces or elements that hasten or constrain change, we may consider

opportunities for more effective forms, times, and points of intervention (Repetto, 2006). By contextualizing the experience of institutions we gain clues to their possible futures and how they may be better employed and improved. Therefore, this study will be guided by the following hypothesis: It is possible to enhance environmental and non-environmental governance and cooperation throughout the region using the experiences of the BECC/NADB. Even though this hypothesis can only be partially tested by examining the outcomes of these particular institutions, it provides valuable direction for this study.

To probe the nature of policy change that led to the establishment of BECC and NADB and to consider their impact on binational cooperation for environmental improvement along the border several closely related and complementary theoretical approaches will be utilized. In brief, policy regime theory, punctuated equilibrium theory (PE), and historical institutionalism (HI) are used in combination with a multilevel governance framework in order to explain policy change and to understand the intricate relationships and effects that different state and non-state actors have in the foundation, modification, and role of these institutions in the bi-national environmental regime. Later I will elaborate on the reasons for the use of a mixture of different theoretical instruments.

Policy regime theory will be used as the principal theoretical framework for this analysis, supplemented by historical institutionalism and punctuated equilibrium theory as a means of looking at the background conditions or context influencing the



establishment of BECC/NABD and to explain abrupt changes occurring within the scope of the policy regime framework (PRF). Figure 2.1, below, diagrams these theoretical relationships. Supplementing this explanatory approach, an understanding of multi-level governance enables us to highlight the distinctive governance arrangements of BECC and NADB that set this institutional dyad apart as a singular case that deviates from the traditional federal arrangements in Mexico and the United States.

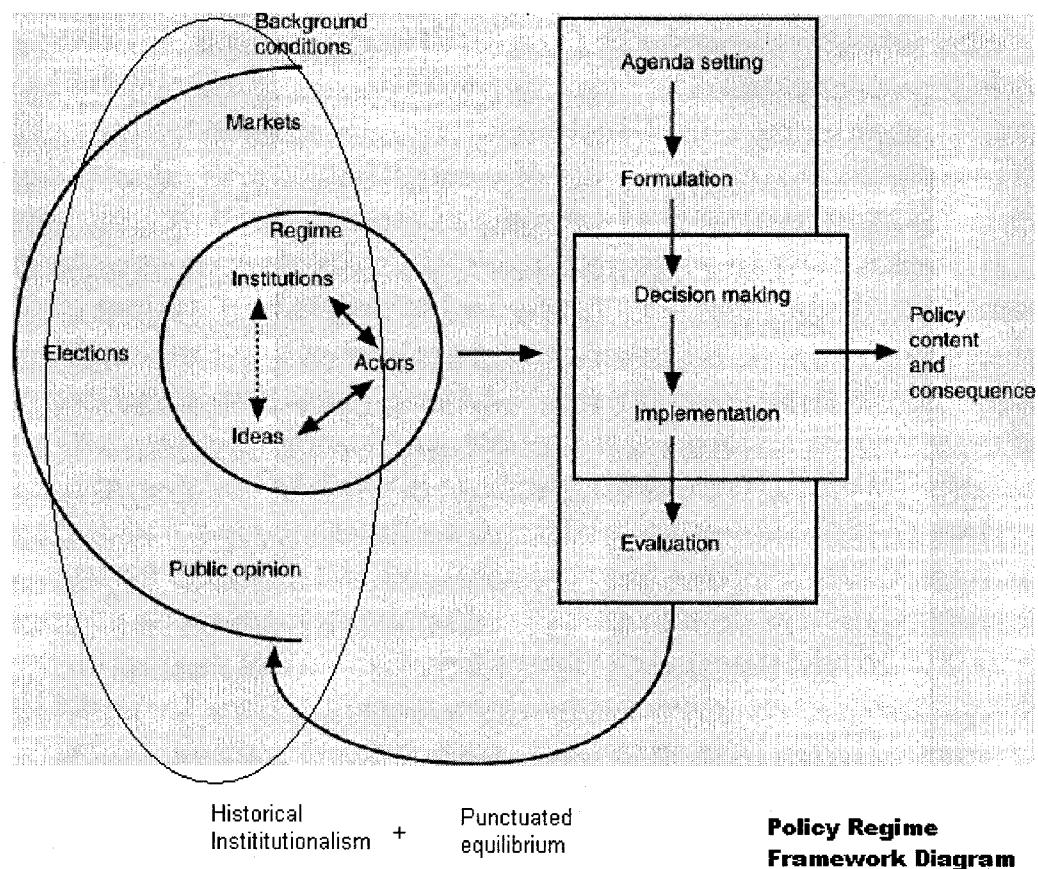


Figure 2.1 Policy regime framework diagram modified (From Hoberg, 2001)

## Policy Regime Theory

The policy regime framework (PRF) draws from several theories of policy change. Because the different existing definitions of regimes on the literature may lead to confusion (Wilson 2000), some clarification of the policy regime concept seems appropriate before describing the framework elements in detail.

According to Howlett and Ramesh (2003), a policy regime is comprised of long term patterns of policy processes (policy styles) and long term patterns of policy contents (policy paradigms). A policy regime is the way that policy institutions, actors, and ideas tend to congeal into long term institutionalized interactions to keep policy process and contents constant. The general model of the process of policy change starts from an assumption of regime stability. An accumulation of anomalies challenging regime expectations opens a window for experimentation, where efforts to stretch the regime to account for anomalies are made. Fragmentation of authority follows when experts and authorities are questioned and new participants challenge the existing regime. A new stage of contestation thus emerges through debate in the public arena, involving the larger political process. Finally a new regime is institutionalized to bring stability.

In Wilson's formulation (2000, 2006), the four<sup>8</sup> dimensions of the framework that operate to maintain stability are: power arrangements, or patterned ways in which individuals and organizations influence development and maintenance of public policy; organizational arrangements, institutions, bodies and individuals involved on

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<sup>8</sup> In his 2006 version the author considers only three dimensions, leaving the policy itself out of the dimensions of change.

implementing the policy; the policy paradigm, which provides the conceptual framework to make sense of the world; and the policy itself that embodies the goals of the policy regime. The policy regime is impacted by stressors (catastrophes, economic crisis, demographic events and others) that create pressures for change. Policy change will occur in stages<sup>9</sup> that can have different sequences or may happen simultaneously: stressors/enablers, paradigm shifts, power shifts, legitimacy crisis, and organizational and policy change. This formulation is similar to the punctuated equilibrium explanation of policy change, with the difference being that change is explained because of paradigm shifts, whereas PE focuses on attention and policy images even if the interests and ideas of policy makers remain the same.

The policy regime framework (PRF) will be used to analyze the policy changes and continuity of border environmental governance using BECC and NADB as the unit of analysis (Hoberg 2001; Howlett and Ramesh 2003; Wilson 2006). This theoretical framework constitutes a more focused perspective of change than the one provided by historical institutionalism, and also benefits from the former in the definition of the background conditions (Hoberg 2001) or stressors (Wilson 2006) that more likely will initiate considerable change. Both approaches are inductive, observing the institutions, groups and actors' interactions. Historical institutionalism places a stronger emphasis on institutions, and policy regime theory, besides including the institutions, also emphasizes the role of groups, individual actors' activities and ideas. According to several authors, (Wilson 2006; Howlett and Ramesh 2003) historical institutionalism should be considered a state centered approach derived from its acknowledgement of the

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<sup>9</sup> Stages are used here as the phases of policy change, different from the stages of the policy cycle.

importance of the role of institutions and government, despite recent modifications by HI proponents to include more insights from group theory.

The PRF establishes causal relationships from the interactions of background conditions and the elements of the policy regime, namely actors, ideas and institutions at every stage of the policy cycle. The consideration of every stage of the policy cycle allows studying the main dependent variable, policy content and consequences. The elements of the policy cycle are: agenda setting, or how problems are presented to government, formulation, which entails the development of policy alternatives, decision making that constitutes a particular mode of action or no-action, implementation of the policy, and policy evaluation. In this manner, the emphasis on internal politics within the institutions and adjustment to external forces that Thelen (1991) criticizes as absent from punctuated equilibrium theory (PET) may be accounted for.<sup>10</sup>

The whole process is analyzed within background conditions comprised of market variations, electoral changes, public opinion, the macropolitical system and other policy sectors (Hoberg 2001), demographic shifts, catastrophic events, social movements, new technology, and international events (Wilson 2006). These background conditions or stressors are defined using the lens of historical institutionalism. The framework allows for feedback and modification once the background conditions or the regime elements change (Hoberg, 2001) (See Figure 2.1). This policy regime framework provides a detailed tool kit that can complement the macro historical perspective of historical

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<sup>10</sup> It is considered in more recent formulations of PET (True et al. 2007)

institutionalism—it is consistent with their main concepts as well as with the use of punctuated equilibrium to explain change (Wilson 2000, 2006; Hoberg 2001).

The PRF can be considered a modification of the Policy Cycle approach and a departure of earlier works that emphasized only the policy cycle to analyze public policy (Hoberg 2001). By including the interaction of the policy regime (institutions, actors and ideas) or focusing on the analysis of the policy subsystem (grouped actors) at every stage of the policy cycle, a better understanding of policy change can be obtained (Howlett and Ramesh 2003). The framework constitutes also an effort to include different perspectives on the study of policy change and stability, and it is considered an eclectic theory by Wilson (2000). As Hoberg (2001) explains, the PRF tends to incorporate elements of convergence from different theoretical streams to study policy change. The convergence pattern from different theories that he finds includes the notions of subsystems acting within larger environments, multi-causal approaches to explain policy change that should include actors, institutions and ideas. A description of the PRF elements provided by Hoberg (2001) follows.

Within the PRF, the actors can be individuals or organizations, state or non-state, and promote or defend their interests through the political process, by using strategies and resources at their disposal to maintain or alter policies. These actors operate in networks referred to as policy communities. Despite the different policy typologies found in the literature, this approach considers proximity to power and influence within a particular policy domain as the main variable to characterize actors' interactions. This definition fits

the perspective of multi-level governance (MLG) (Jones and Clark 2001; Hooghe and Marks 2003), except that the MLG approach considers the different sites where these interactions occur and is more flexible in characterizing actors' networks.

The institutions are defined as the rules and procedures that allocate authority over policy and structure relationships among several actors in the process including access (True et al. 2007). Actors' interests are considered prior and independent of institutions. But these interests shape actors' strategies in institutional interactions. Institutions structure relationships among government actors, and between societal and governmental actors, and define the permissible resources that may be used and constrain the strategies that actors adopt to pursue their interests.

The role of ideas is considered here as described by Goldstein and Keohane (1993). Ideas act as ways to understand the linkage between goals and strategies, to narrow alternatives in complex situations, and finally, they become embedded in policies and institutional rules.

The interaction between the elements of the regime is dynamic. Policy stability and change are explained on the basis of the balance emerging from the interplay of the various factors at work. Usually, in the absence of external factors, the regime will remain stable, sustaining only minor or incremental changes. Institutions shape the resources and strategies of actors; ideas provide political resources and inform the strategies and resources of actors; and finally, actors try to accommodate ideas and institutions to advance their interests.

Most of the current frameworks and theories of policy change consider both endogenous and exogenous sources as potential agents of change (Wilson 2006, Sabatier 2007, Hoberg 2001, Howlett and Ramesh 2003, Baumgartner 2006). The PRF approach, as the other approaches, stresses multi-causality in understanding policy change, and considers exogenous influences a prerequisite for significant policy change.

Both PE and the advocacy coalition framework (ACF) assume that exogenous influences are prerequisites of major policy change. Later modifications to ACF theory borrowing from the focusing events literature account for the possibility of internal shocks, but still analytically separate both types of alterations and their different effects and retain policy subsystems as the more important unit of analysis (Sabatier and Wiele 2007). The PRF considers strategic actors as the core variable, according greater importance to policy makers, elected and appointed government officials on the bases of their authority and access, at least in terms of general objectives and the design of policy. Thus the interaction of private and public actors, all pursuing their interests in a particular institutional and ideational context, determines policy. The context 'frames issues, structures incentives, and allocates advantages and disadvantages'. Ideas are considered important elements of the regime with independent value from actors, who may use them to frame their arguments and strategically use expert authority, adapting new strategies when knowledge is contested. Learning occurs when actors 'adopt new beliefs about their interests or the best strategies to pursue those interests' (Hoberg 2001). The ACF does distinguish differential access and power of actors within a coalition but emphasizes the

role of the coalition and the shared beliefs that define the coalitions (Sabatier and Wible 2007). PRF borrows from PE a focus on actors' strategies to change the institutional and ideational context of decisions in order to promote their interests. Actors try to change the rules of the game in a particular institutional arena, shifting venues to arenas where their perceived advantages are greater even outside the government, and also using idea-based strategies to reframe problems and shape elite and public opinion—basically through 'symbolic manipulation, advertising campaigns, dissemination of research, and focusing events, with media also becoming crucial actors (Hoberg 2001). PRF coincides with the ACF on the importance of exogenous pressures because these pressures 'provide the impetus for change by shifting the resources and strategic opportunities of regime actors' (Hoberg 2001). In conclusion, the forces for powerful changes in policy originate as the interplay of endogenous and exogenous factors. Two main differences are considered between the ACF and the PRF, the first is the emphasis of the latter on the importance of elected officials and public opinion, and the second is the consideration of ideas as powerful resources of actors, and autonomous influences in their own right (Hoberg 2001).<sup>11</sup>

Public opinion is one important source of exogenous change. Public opinion affects some actors' incentives for reelection<sup>12</sup> (Hoberg 2001) and through the media creates the conditions for potential policy paradigm changes as explained by punctuated equilibrium theory (True et al. 2007), policy regime theory (Wilson 2006), and the

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<sup>11</sup> In the recent update of the ACF, his coauthor acknowledges these factors as important coalition resources. See Sabatier and Wible (2007).



advocacy coalition framework (Sabatier and Jenkins-Smith 1999). Elections also provide the possibility for shifting power arrangements (Wilson 2006, True et al. 2007) or governing coalitions (Sabatier and Weible 2007). Market fluctuations may also impact policy regimes and specific sectors (Hoberg 2001), influencing production mechanisms, producing economic dislocations (Wilson 2006), and changing socio-economic conditions (Sabatier and Weible 2007). The macropolitical system with its particular institutional formats can impact policy dynamics through changes in electoral, party or constitutional arrangements. And finally, changes may be derived from spillover from one policy sector to another. Hoberg (2001) and Wilson (2006) discuss the possibility of other stressors or background conditions: demographic shifts that can be relevant in our case because of the border setting; natural or man-made disasters; social movements; new technology; and international events. International events will be assessed as part of the background conditions analyzed in this case, particularly the new trade arrangements, the formation of regional blocks after the collapse of the Soviet Union, and the United Nations Conference on Environment and Development at Rio de Janeiro, that appear to play a significant role for our particular case. Internationalization has been considered also a source of policy change (Howlett and Ramesh 2002) and their effects can be observed in the binational setting of the case study.

The two main elements –previously mentioned- that distinguish the PRF approach from the ACF are: First, the PRF emphasizes the behavior of governmental and non-governmental actors because the authority the former brings various resources to the

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<sup>12</sup> In the American political system this is true because of reelection, in the Mexican political system the incentives are different because reelection is not allowed, but still public opinion create incentives for

processes that are distinct from the power that non-state actors may exercise. In the ACF the actors are not distinguished, but considered indistinctively as members of coalitions that either support or oppose a particular policy (Sabatier and Jenkins-Smith 1999). Second, ideas are given more emphasis in understanding the policy process. For the PRF, ideas are independent of actors and institutions, different from the policy beliefs embedded in actors as considered by the ACF (Hoberg 1996).

The interaction of policy subsystems and the stages of the policy cycle are considered by Howlett and Ramesh (2003); nevertheless, the interactions are not explicit at every stage of the model. In Wilson's (2006) adaptation, the emphasis is on the interactions of the regime and the stressors or background conditions, without explicitly considering the analysis at every stage of the policy cycle and the feedback mechanisms at every stage. The different emphasis among background conditions and stressors considered by Hoberg (2001) and Wilson (2006) provide an opportunity to assess which of those discussed by each author are more relevant for this BECC/NADB case study.

### Historical Institutionalism

I employ historical institutionalism to examine the historical context of binational cooperation on environmental issues between Mexico and the United States. The narrative also will provide the details necessary to understand politics and policy developments before the creation of the BECC and NADB. This perspective also allows highlighting the background conditions that the policy regime framework considers essential to explain change.

According to historical institutionalism, institutions are created by specific contexts at determined junctures. Once they exist they tend to develop in a path dependent manner that may have unintended consequences (Lane 1997; Thelen and Steinmo 1992; Pierson and Skocpol 2002). Historical institutionalism also finds room for other potential causal factors, mainly socioeconomic development and the diffusion of ideas (Hall and Taylor, 1996), and change (Krasner 1984; Thelen 1991). My emphasis is on causal variables in institutional configurations that help explain other institutional outcomes (Pierson and Skocpol, 2002).

The time span that will be analyzed using this approach extends from the early 1970's to the present, 2008, a near forty year period that provides a depiction of different stages of the environmental cooperation efforts carried out by Mexico and the United States and sufficient evidence to consider the nuances of the different changes during the period. Some of the institutional, political and environmental factors to be reviewed in relation to BECC and NADB's development include the early efforts directed at bi-national environmental cooperation by Mexico and United States through IBWC/CILA and the diplomatic negotiations on environmental issues during the 70's that signaled regime changes leading to the La Paz agreement and annexes (Mumme 1995).

I also review the NAFTA negotiation process as influenced by the politically pro-environment coalitions created or existing at the time. This includes an examination of the new trade regimes that were developing during that era; the impact on governmental

and non governmental environmental advocates from the Earth Summit at Rio; the effects of epistemic local communities interacting with federal governmental officials; the bargaining among different governmental federal offices on both sides of the border; the executive federal elections in both countries; the legislative and institutional environmental changes in Mexico at the time of the negotiations; the evolution of the cooperation instances derived from the La Paz agreement including the 1992 Integrated Border Environment Plan (IBEP); the state of the environment along the border particularly on water, wastewater infrastructure and hazardous waste management; and other existing institutional arrangements for bi-national cooperation at the border including the minute mechanisms by the International Water and Boundary Commission (IBWC) and the Comisión Internacional de Límites y Aguas (CILA).

I will analyze these factors to help establish causal mechanisms. The timing of events around the negotiation of NAFTA and the other related mechanisms will be identified to find conjunctures that led to the creation of the BECC/NADB institutions. Path dependent processes will be sought following their establishment to better understand institutional development after the critical NAFTA juncture, and also explored after further changes in the border environmental cooperation regime alter bi-national cooperation priorities. In order to identify path dependent processes as well as drivers for change, an analysis of the reforms and political and environmental events occurring along the border during the history of the institution will be undertaken.

Two models that are compatible within the framework of historical institutionalism are used for this purpose: punctuated equilibrium (Krasner 1984, Baumgartner and Jones 1993, True et al. 2007, Goetz 2003) and dynamic constraints (Thelen 1991). The former emphasizes exogenous sources of change –without emphasizing endogenous factors- and the latter focuses on endogenous causes of institutional change. The complementarity of the approaches is evident when we consider that historical institutionalism provides a larger picture context of the origins of the BECC/NABD institutions while the policy regime approach enables us to examine subsequent institutional change through a more detailed look at politics associated with the institutions.

The historical institutionalist approach is thus useful for identifying and explaining the background conditions that influence the particular policy processes that explain policy change on both sides of the border before, during, and after the BECC and NADB were created.

### Punctuated Equilibrium

In a recent edition (True et al. 2007) the proponents of the punctuated equilibrium theory emphasize its strengths for explaining both stability and change. The theory seeks to explain why political processes are generally characterized by stability and incremental change, occasionally producing large-scale departures from past policies. In fact, this is a widely shared observation of most current policy change theories (Howlett and Ramesh 2003, Sabatier 2007, Wilson 2006). PE's theoretical foundations are predicated on an

understanding of political institutions and the assumption of bounded rational decision-making, with an emphasis on issue definition, agenda setting and decision making processes; in this aspect it differs from PRF's consideration of the full policy cycle. The PE approach posits that the American political system is designed to promote stability; therefore only through increased mobilization and new actors becoming involved in different policy venues it is possible to bring about changes. Even though the authors acknowledge that the theory has been applied to different countries, the question for this project is whether the multiple venues and subsystems existing in United States find similar expressions in Mexico, or if institutional patterns in a different political system with less decentralization will conform to PE observations and findings on the American system.

The distinction the authors make concerning bounded rationality in institutional decision-making processes as a mechanism that provides for parallel and serial processing of issues, helps to describe how the different venues existing in the American political system – namely subsystems- provide for the parallel processing of different issue areas at the same time. This parallel process leads in turn to incremental changes and adjustments derived from the dominance of policy monopolies, the prevalence of a favorable policy image, and negative feedback from the operative subsystems. At the macro political and institutional level, however, the levels of Congress and the Executive, serial processing prevails. This consists of tackling just a few or single issues that will provide for large-scale change once positive feedback is established. From this perspective, then, the prerequisite for change is to shift the attention paid to an issue from

the subsystem level, where parallel processing prevails, to the macro institutional level, where serial processing is the norm.

The key to successfully promoting change is to challenge a widely accepted policy monopoly, a policy arena dominated by few actors or a single interest. Once the policy image is challenged and becomes contested or controversial, it may spark change, but only if other actors outside the policy monopoly intervene and create a new set of rules or institutions. These political changes –rules or institutions- are apt to prevail after public and political involvement withdraws, ensuring another period of stability or incremental change and adjustment.

This explanation appears to accommodate some of the occurrences during the negotiation of NAFTA and its side agreements. Thus the PE approach may be useful in analyzing this particular aspect of policy change.

The policy regime existing during the 1970's between Mexico and the United states was basically the International Boundary and Water Commission (IBWC) and the Comisión Internacional de Límites y Aguas (CILA), later complemented by the La Paz Agreement signed in 1983 and its multiple working groups. The PE approach provides insights that are useful for analyzing this policy subsystem and policy image changes (True et al. 2007) leading to power and paradigm shifts in the 1990's (Wilson 2006). The consideration of environmental issues during the discussion of a trade agreement and the

saliency of border environmental issues indicates that a PE analysis may explain at least part of the process of change resulting in the BECC and NADB.

Following True, et. al.'s analysis (2007) of how endogenous forces can generate policy punctuations, it is useful to analyze influences like fiscal stress on the congress or the executive that may reduce budgetary resources and generate policy change at the subsystem level. That this strand is worth exploring is suggested by evidence that increased U.S. military spending correlates with the decline of resources for environmental infrastructure along the U.S.-Mexico border after 2001.

True et al. (2007) also recognize that a great deal of variability exists in the operation of policy subsystems; therefore there is a need to analyze specific issue-areas to determine the elements that will generate change. At this point the policy regime framework takes over to look in detail at the subsystems involved in the creation of BECC/NADB at every stage of the policy cycle in both countries. The PRF allows us, first, to consider the role of ideas as part of the regime and, second, to consider the stages of decision making, implementation and evaluation that add to the understanding of policy change.

In sum, PET considers interest mobilization, policy image and multiple venues as variables or elements of the policymaking process that are used to explain patterns of decisions (Schlager, 2007). The emphasis on interaction with exogenous forces, the role



of ideas in the process, and the policy outcomes throughout the policy cycle is provided by the PRF.

### Multi-level Governance Theory

A multi-level governance approach is advanced by Hooghe and Marks (2003) to consider the interactions of the different governmental entities that have jurisdiction over environmental issues and their distinct features that affect institutional relationships. This multi-level approach will be used to investigate the importance of public participation and the role of environmental non-governmental organizations that participate in environmental governance along the border. Hooghe and Marks (2003) distinguish between two distinct definitions of governance institutions. What they term Type I governance conceives of a “dispersion of authority to a limited number of non-overlapping jurisdictions at a limited number of levels.” This type resembles and adjusts more to a traditional hierarchical arrangement in federal states. The second type, or Type II approach to governance, envisions a “complex, fluid, patchwork of innumerable, overlapping jurisdictions.” The Type II mode of governance suits our case study better (Ibáñez 2006) and will help us to explain in greater detail the elements and constraints that enhance environmental governance and cooperation. Incidentally, it may also provide elements of analysis that challenge traditional federal perspectives in both countries. The complex nature of environmental issues poses a challenge identifying interactions among different actors that exist and have jurisdiction over different territorial boundaries. This is especially true when these problems overlap with ecosystems that do not adjust to political jurisdictions. The multi-level analysis

framework can help us complete a perspective on the causal mechanisms and interaction of variables that otherwise may be overlooked. This perspective departs from the government or state focused analysis that considered only intergovernmental relationships even when considering issues across boundaries (Hochstetler, 2007).

Contemporary multi-level governance theory is derived from the neo-institutionalism and policy network analysis literature, studying the different levels and governance locales that the European Union system exhibits. The main emphasis in multilevel governance analysis was to move away from explanations that were state-centered, to a more polycentric approach that involved actors at different levels, where the state no longer retains a monopoly on the policy process, enabling different actors to pursue their interests through the process at different levels and places (Jones and Clark 2001). The way these actors engage the policy process is different from the perspective of coalitions that the ACF proposes, since the policy networks' composition and influence may vary in different places depending upon strategies and resources that their members bring to pursue their interests.

This study affords the opportunity to explore characteristics of the BECC/NADB institutions that may have been influenced by integration formats existing in the European Union, formats rarely evident in institutional arrangements in North America. To the extent that the BECC/NADB institutions manifest the features of multilevel governance their example may provide useful lessons for future bilateral institutional arrangements at the border.

### **Summary: The Case for Adopting a Multi-theoretical Approach**

The inductive character of this study constitutes the main reason to use complementary approaches in studying the BECC and NADB. It allows me to examine, support, or challenge assumptions related to these agencies' development and functioning suggested by the different theoretical approaches.

The eclectic approach of the PRF that considers elements from punctuated equilibrium and advocacy coalition theory, with a focus at the subsystem level, provides broad opportunities to test some of their claims. The reasons to use these particular theories over others included methodological and practical considerations. The complexity of environmental policy change over a long period of time along a binational region presents challenges that are better addressed using several theoretical tools, instead of approaching the problem with oversimplifications that will obscure policy change processes. The PRF provides a very staged and detailed approach that not only allows analyzing complexity, but also leaves space for other theoretical perspectives. Also, by mixing the policy cycle with the policy regime and the background conditions interrelations, accounts for one of the main criticisms of the stages heuristic model, which is that it does not provide explanations for policy change (Sabatier 2007).

At the end of the analysis, the combined approaches will provide at least two distinct levels of analysis that can enrich the perspective of the case study (Watts 2001). A broader picture looking at the overall process and evolution of environmental

governance and cooperation at the U.S.-Mexico border will be provided by historical institutionalism. Historical institutionalism provides the contextual and narrative historical detail of the policy issue-area. This detail can then be used to help identify and operationalize the causal variables within the punctuated equilibrium and policy regime theory in explaining change. This first take will lay down the elements for a more detailed analysis of the BECC/NADB institutions within the policy regime framework that may reveal patterns of path dependency, incremental change, and punctuations in the process of institutional change.

The multilevel governance perspective will complement the analysis by focusing “on the multiple, simultaneous locations where politics takes place” (Hochstetler, 2007). The U.S.-Mexico border can be very deceiving owing to its size and variety of problems in play within the region. The regional extension of the territory under BECC/NADB jurisdiction poses extra challenges; various local actors interact with regional, state, federal and international actors, and present different interests, different policy images and different problems to be solved. The multilevel governance framework accommodates and organizes this complexity and it is compatible with the PRF approach to policy change assessment. It is also consistent with the main PRF elements of state, non-state, and state-non-state actors’ networks participation, with the difference on the flexibility and mobility of the networks where the actors participate.

This multi-theoretical approach aims to respond to several considerations of the problem to be studied: time constraints, level of detail, binational complexity and

innovative institutional characteristics. The creation of the BECC and NADB cannot be properly considered a policy change if they are not embedded on the larger context of the binational environmental cooperation that Mexico and the United States experienced from years back. Therefore, the opportunity to use a historical perspective that considers the centrality of institutions appears to be a logical approach for understanding BECC and NADB's development and evolution. The 40 year period under review is sufficient for utilization of a historical institutionalist approach, particularly for explaining the advent of these agencies, but if we wish to consider only the period after their establishment -a little over a decade-, the time lapse is not sufficiently long enough for application of this approach to BECC and NABDs evolution. In view of this potential limitation, it appeared necessary to employ an approach that provides a closer look at the policy changes experienced by the institutions.

The advocacy coalition framework (ACF) is a useful approach that uses periods of a decade or more as the basis for the analysis. The policy regime framework (PRF) was another adequate possibility to choose from. The decision to use the latter was influenced by its structured character following the interactions of the regime with the policy cycle, and the distinct use of ideas as part of its definition of regime. I assume that the parallel but different political processes happening in Mexico and the United States at different moments during the period under study makes the policy regime a better approach than the one offered by the ACF. The merits of this assumption can be confronted after the research is completed. My rationale is based on the assumption that policy regimes rather than coalitions better explain distinct but confluent processes. By

comparison with an ACF approach, the PRF focuses more on the role of the actors in and out of the institutions than on their role in coalitions. It also assumes that ideas have a role in the definition of the regime, but that changes will be analyzed with an emphasis on actors and the roles of institutions at different stages of the policy cycle, departing again from the role that the ACF gives to belief systems as the glue that steers coalitions either to favor or oppose the particular issue at hand (Schlager, 2007). In any case, the confrontation of empirical evidence with the different emphasis and premises of the theories used will enable us to consider which ones better explain the processes of policy change, their outcomes and consequences.

Finally both, historical institutionalism as well as the PRF uses—although not exclusively—punctuated equilibrium theory as a way to explain change, providing a nice linkage for both perspectives. PE theory does not cover every detail of the subsystems' evolution and welcomes different efforts to consider in detail specific issue-areas (True et al., 2007). In this vein the policy regime framework gives a detailed and structured format to analyze the complexity of the binational institutions and can be complemented with the multi-level governance that consider actors at different levels and places participating in the policy process with varying roles at different moments of the policy cycle. Figure 2.2 presents the timeline used for the mix of approaches.

In the following section on methods and research design, the details will be provided for the use of the theoretical framework described herein.

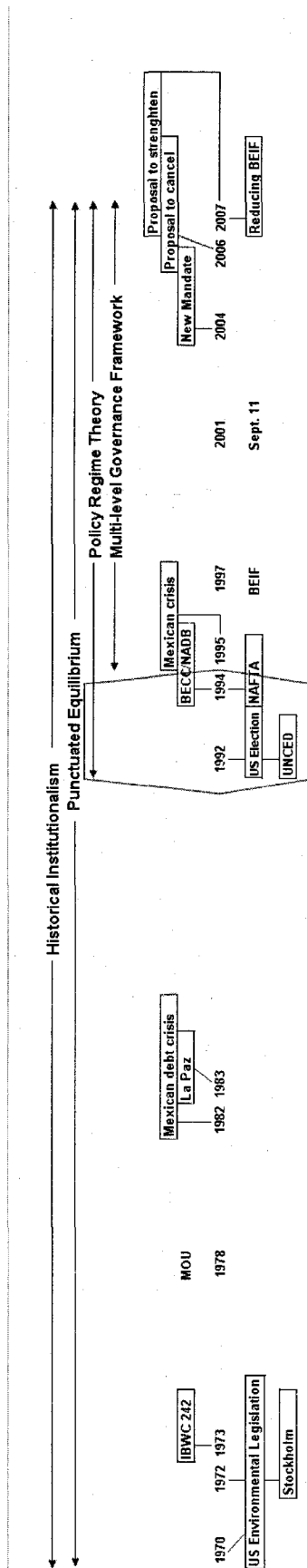


Figure 2.2 Timeline of significant events and theoretical framework description

## **Research Design and Methodology**

The qualitative case study method is a useful technique for studying variations on international environmental politics if designed and performed with sufficient care. This is particularly true when the variables involved are empirically rare, innovative international environmental policy strategies and causal relationships. These variables are difficult to quantify (Mitchell and Bernauer, 1998).

Such is the case with this particular inquiry dealing with policy change in environmental cooperation and governance on the U.S.-Mexico border. I assume at the outset that the relevant causal relationships for this study can be established using the theoretical frameworks described in the previous chapter. However, the policy content and consequences variables involved are often difficult to quantify; so too are the independent variables involved in generating policy outcomes, namely, exogenous factors and elements of the policy regime. For purpose of analysis, since BECC and NADB are the first institutions of their type, they may be considered—as a pair—innovative and empirically rare, particularly considering their unique binational character. Several additional considerations further support an assessment of institutional uniqueness. First, their foundation was prompted by a trade agreement, which is not always or often the case with these processes (Hochstetler 2005; Bath and Neighbor 1999). Second, its jurisdiction encompasses territory of both countries indistinctively, encroaching on and allowing for considerations of territorial sovereignty (Eckersley 2005; Hunold and Dryzek 2005) and raising multi-level governance considerations (Hooghe and Marks 2003). Third, the asymmetries between the United States and Mexico



also create opportunities for comparison using a case study approach, which can look at these asymmetries' effects within the institutions themselves (Villeda, 2002, Torres 1999). These asymmetries include environmental capacity, size of economy, financial capabilities, and institutional arrangements despite cultural differences (Mumme 1991).

### Case Study

Because the BECC/NADB institutional arrangement is such a unique institutional development, the case study method is best suited to carry out this inquiry (Peters 1998; Gerring 2004; Bennett & George 2001). The case study and the unit of analysis will be defined by the linked BECC and NADB institutions and the period of analysis is the duration of their institutional life. For comparative as well as theoretical purposes, the phenomenon will be defined as bounded within the general context of bi-national cooperation and governance so that the institutions in their present form may be compared with their initial characteristics and the conditions existing previous to their inception. Therefore, the case study will consider a hybrid research design including type I, II and III formats so that synchronic, diachronic, and within-unit analysis can be performed (Gerring 2004). The intra-unit analysis of the linked BECC-NADB agencies centers on comparing variation in between their initial or original institutional characteristics and their present, post-2004 formation in which both institutions are headed by a single board of directors.

## Research Design

The research design for this study is intended to capture key elements of change in the policy regime for border environmental management associated with the creation of the BECC and NADB. The policy regime elements in play are actors, institutions and ideas. I wish to understand how policy change associated with the creation of BECC and NADB has affected binational environmental cooperation since 1993-1994. I also expect to explain why these changes occurred the way they did and how these institutions are evolving? Finally, I fancy considering the potential for further policy change on environmental cooperation and governance and identify lessons that may be usefully applied to other policy-areas involving cooperation and governance between Mexico and the United States.

The research design analyzes the distinct policy contents and consequences of institutional management of binational environmental policy at different points in time from 1970 to present. My operating assumption is that the elements associated with those changes can be identified. The theoretical approaches guiding this study will be reviewed at every key instance of policy change and the main causal elements will be isolated for further analysis and conclusions. The dependent variables for this study are policy content and consequences. These dependent variables may be used to assess change or stability in binational environmental cooperation and governance. The independent variables are the different exogenous factors affecting the policy regime, and the policy regime elements at every stage of the policy process. The exogenous factors to be considered are: market variations, electoral changes, public opinion, the macro-political

system and other policy sectors, demographic shifts, and international events (Hoberg 2001; Wilson 2006).

These exogenous variables will be evaluated as existing or non-existing and as having a high or low impact at every point of policy change considered. In the case of the actors, institutions and regimes, their composition will be described for each country at different phases of the policy cycle, identifying consistencies regarding interrelationships that may be causing particular policy outcomes at a given point in time.

#### Data and Methods

As a qualitative study, this investigation draws on various relevant sources to study the different phases of the BECC and NABD's institutional life and history in the general context of U.S.-Mexico environmental management since 1970. Consultation of official documents and academic literature, together with personal conversations will be conducted to identify any changing institutional contexts, critical conjunctures and/or path dependence processes (Pierson and Skocpol, 2002) necessary for the theoretical approaches considered to analyze policy change. The main actors, ideas and institutions constituting the policy regimes on both countries will be identified, as well as the main stressors involving electoral changes, socio-economic changes, public opinion and other exogenous factors that may create background conditions for change (Hoberg 2001, Wilson 2006).

In analyzing these phases of BECC and NABD's institutional development, the first task will be to identify actors that participated in the processes of negotiating and crafting the mandate of the institutions (Hoberg, 2001). This task requires reviewing existing literature germane to the origins of the institutions and data over the state of the border environment. Also, background information on bi-national environmental cooperation between Mexico and the United States will be reviewed beginning in the 1970's. A second set of tasks includes discussions with relevant actors. These will include at least one person from each country associated with the following institutions: Federal and local government officials, environmental activists, and academic participants. The goal of the dialogue is to represent different perspectives on the process and to locate relevant data to support those perspectives. A third set of tasks involves review of official documents of the BECC and the NADB that allow for an assessment of the learning processes, accomplishments, challenges, and institutional changes through the years. This effort also includes consultation with at least one of the co-administrators of the institutions allowing covering the whole existence of the institutions and at least one member of each country on both governing councils for the organizations. Some of the events I examine in detail are the role of the IBWC, the La Paz agreement and the creation of the BECC and NADB. I will also review events after the BECC/NADB were created, to include EPA grants' definition and evolution, the water debt conflict between Mexico and the United States, the certification criteria definition process and the change of the institutions' charter. The reason for examining these particular events is to ponder processes that involve policy change.

Once the empirical evidence is gathered and presented, the analysis of the variables will be conducted utilizing the theoretical frameworks presented in this chapter. Special care will be taken at this stage of the research to consider different theoretical explanations that either complement the perspective of the causal variables or explain it better (Peters. 1998). After reviewing the application of the several theoretical perspectives to the case, I draw on this review to advance practical policy recommendations for the BECC and NADB institutions and consider the lessons to be drawn from this case for border environmental cooperation regime and the bilateral relationship as a whole.

### **Chapter 3**

#### **The Origins of U.S.-Mexico Environmental Cooperation**

As previously indicated, the long-term history of the linked agencies that are the subject of this study really extend from 1970 to present. In chapter 1, an overall picture of the U.S.-Mexico relationship was presented, and in this chapter a detailed narrative of the institutional framework developed by both countries for environmental cooperation since 1970, the framework that shapes the origins of the BECC and NADB, is presented. For analytical purposes this chapter will be divided roughly from 1970 to 1982 before the 1983 La Paz Agreement (LPA), and from then until 1993 just before the BECC and NADB were created.

As previously discussed, during the 1970's the bilateral relationship between Mexico and the United States suffered ups and downs. The end of the 'special relationship' period and the new multilateral activism of Mexico occurred at the beginning of the decade. Later, economic and political crisis in Mexico coupled with the oil crisis affecting the United States adversely impacted the relationship under presidents Echeverria and Nixon. The new approach towards the relationship taken during the Jose Lopez Portillo-Jimmy Carter administrations was heavily influenced by the oil crisis in the United States, Mexico's newly discovered oil resources, and the economic crisis at the end of the Lopez Portillo period. It was during this period that both governments

launched binational commissions that generated -among other initiatives- a memorandum of understanding (MOU) to address environmental issues cooperatively along the common border.<sup>13</sup>

The same period of the 1970's saw the consolidation of the environmental movement in the United States, and the creation of environmental offices in both countries, the Environmental Protection Agency (EPA) and the Subsecretariat for the Improvement of the Environment (Subsecretaría para el Mejoramiento del Ambiente (SMA)) in the United States and Mexico respectively. Worldwide the Stockholm's United Nations Conference generated multilateral environmental organizations and exerted pressure on governments worldwide to deal with environmental issues. Finally, during this time, the borderlands saw a significant increase in population and development, with burgeoning growth and industrialization that increased pollution, ecosystem impact, health, and sanitation problems that slowly came to be viewed as environmental issues. It is within this context that the binational efforts to tackle environmental problems between the two countries are addressed.

From its inception, the EPA reported bilateral programs with Mexico through its Office of International Activities (OIA). OIA monitored air pollution, trained water quality experts, exchanged technical information, staged hemispheric ecology seminars and conducted joint meetings to assess pollution along the border, besides working to

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<sup>13</sup> An early effort is documented in 1963 after a conference in Mexico City. A Memorandum of Understanding between the Mexican and American Health departments and the international office of the Pan-American Health Organization (PAHO) to address solid waster and wastewater treatment along the border, through a binational environmental sanitation program (Garza 1996).

solve the salinity problem of the Colorado River (EPA 1974). Former U.S. president George Bush Sr.<sup>14</sup> acknowledges common natural resources and problems of health and law enforcement along the border during the 1970's and they are detailed further as environmental problems including water resources management and air quality problems (Erb and Ross 1979). Clearly, by the end of the 1970's transboundary environmental resources were not central in the political bilateral agenda, despite governments' awareness of the need for integrated binational policy (Szekely 1986).

By 1980, accumulation of border environmental problems, the strengthening of SMA's and EPA's interest and capacity in international environmental cooperation at the border--complementing and competing with the existing mandate of the IBWC—and the greater activism of pro-environment advocacy groups combined to generate a set of conditions conducive to the 1983 La Paz Agreement. Various annexes to the Agreement on specific issues were subsequently reached during the 1980's but critics agreed that the La Paz framework lacked both the resources and vision to address growing environmental challenges. When the Mexican and United States governments in 1990 decided to initiate talks for a North American Free Trade Agreement (NAFTA), the opportunity to invigorate bilateral attention to environmental problems along the border was evident. It initially took the form of an elaboration of the La Paz framework in an Integrated Environmental Plan for the Mexican-U.S. Border Area (IBEP). One of the IBEP's expressed priorities was to generate funding for wastewater infrastructure throughout the border region. In sum, these were the conditions which, together with the new spirit of cooperation found through the NAFTA negotiation, produced the side

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<sup>14</sup> In 1979, he was director of CIA before becoming vice president and president of the United States.



agreements that created the BECC and NADB. The following sections examine these developments in greater depth.

#### Nascent Environmental Diplomacy: From Salinity to La Paz , 1970-1982

The political context affecting the framing and development of policy initiatives leading to the establishment of the BECC and NADB is complex and protracted, developing over more than two decades of institutional development in this issue-area. The initial stage leading to the La Paz Agreement runs more than a decade of policy development, involving initiatives aimed at binational cooperation, various bilateral conflicts affecting, directly or indirectly, binational cooperation, and important legal and institutional developments at the bilateral level and at the level of domestic governance in Mexico and the United States. To address these issues, this section will be broken on several subsections to discuss binational efforts, conflicts, and different institutional instruments created by Mexico, the United States and the cooperation efforts along the border region. A special subsection on IBWC and the 1978 Memorandum of Understanding leading to the 1983 La Paz Agreement provides further details of these cooperation mechanisms.

#### Binational Cooperation Efforts

The binational efforts during the late 1960's and 1970's -not counting the IBWC's efforts which will be discussed later on-, would at minimum include the following initiatives. During the 1960's most of the efforts were short lived and lacked political and budget support, except for the Border Industrialization Program (BIP) that would change

the face and speed of growth along the border. Some of the efforts were specifically directed to the border and the environment like the memorandum of understanding signed between the U.S. Health department, the Secretaria de Salubridad y Asistencia (SSA) and the Pan-American Health Organization (PAHO) to address environmental sanitation issues along the border (Garza 1996). Few meetings followed afterwards and most of the effort and leadership was carried out by the PAHO leading to the first air monitoring efforts at the beginning of the 1970's. Two other efforts during the period included the Mexico-United States Trade Commission, which lasted from 1965 to 1973 without significant benefits, and the Mexico-U.S. Commission for Border Development and Friendship established in 1966, which only lasted until 1970 and did not have a significant record either. The Border Industrialization Program (BIP), a response to the termination of the *bracero* program, originated the *maquiladoras* and catalyzed the industrialization of the border in 1965 and represents a bilateral effort that not only had a significant impact on the bilateral relationship, but also for the development of the border. At the time, this effort did not consider the environmental and social implications that would become evident in the 1990's.

The tone of the bilateral relationship changed during the 1970's as discussed on chapter 1, and the bilateral efforts were reflected by the Presidential decisions in Mexico and the United States. In January 1977, Presidents Carter and Lopez Portillo created three bilateral consultative groups organized to address economic, social and political issues. These efforts produced three agreements that include a Protocol on Prohibition of Nuclear Weapons in Latin America in 1978, the June 1978 Memorandum of

Understanding between EPA and SMA, and two other agreements—one dealing with cooperation on housing and urban development, and the other focused on cooperation on the use of arid and semi arid lands and control of desertification in February of 1979. On July 18-19 1979, this combined consultative mechanism expanded to eight groups to consider: border cooperation, trade, finance, tourism, migration affairs, energy, and legal matters, while retaining existing consultative groups on science and technology, cultural cooperation, agriculture, forest, and wildlife conservation. These initiatives were accompanied by administrative changes that included the U.S. appointment of a new ambassador for U.S.-Mexican border affairs to oversee the consultative mechanism in U.S. foreign affairs and a North American Bureau in Mexico within the foreign ministry. The outcomes of the mechanism for the border can be considered minimal, but amounted to discussion of specific environmental issues that were the basis for further cooperation. In September 1979, the border cooperation group agreed to identify areas of cooperation and expand health and environmental protection programs implemented in Tijuana-San Diego to other border areas. They signed an agreement on cooperation in the event of a natural disaster in January 15, 1980, (Campos 1981) and an agreement regarding pollution of marine environment by hydrocarbon discharges and other hazardous substances on June 24, 1980 as a response to the Ixtoc I off-shore petroleum accident (Weston 1986), this particular event stressed and threatened to derail the relationship, but finally was resolved through signing the cooperative agreement. A local effort worth mentioning from 1981 is the state of Baja California and the County of San Diego entering on an agreement for joint air pollution monitoring (Nalven 1984).

### Conflicts during the period under study

The decade of the 1970's witnessed a number of contentious disputes in U.S.-Mexican relations. The settlement of what had been the most serious dispute, a decade long crisis over the salinity of the Colorado River, helped reduce bilateral tensions, though implementation of the agreement, particularly the construction of an expensive desalinization plant near Yuma, Arizona, went slowly. With the salinity crisis settled in August 1973, binational attention was quickly directed to other pressing disputes. The development of Mexico's fishery industry during the 1970's led to diplomatic contention (Heffernan 1981, Szekely 1986). Boundary problems also persisted, though a historic agreement on the longstanding Chamizal dispute, the result of a failed arbitration attempt in 1911, paved the way for an agreement on territorial and coastal boundaries in 1970. Solutions to each of these binational conflicts by the mid-1970's allowed the two countries to address emerging environmental issues in a more amicable fashion, despite the worsening of the bilateral relationship between Mexico and the United States on most other issues during the 1980's. Various emerging water quality issues included pollution of the Rio Grande by agricultural and urban waste drained to the river from both countries, the chronic problem of the New River flows in the Mexicali-Imperial Valleys as impacted by agricultural and urban pollution also on both sides of the border, and the San Pedro River discharge of mining wastes across the Arizona-Sonora border. Another problem was the Tijuana River flood control infrastructure carrying wastewater towards the U.S. side of the border. Unregulated exploitation of groundwater in Mexicali-Calexico, and Juarez-El Paso also generated bilateral concern. Finally, the actuality and potential for oil pollution in the Gulf of Mexico due to petroleum exploitation was

brought to binational attention by the explosion of the Ixtoc I oil well in July 3, 1979 (Bath 1981; Pellicer 1981).

#### Legal and institutional environmental development

An adequate review of legal and institutional developments affecting binational environmental cooperation must touch on developments in Mexico, the United States, and bilateral relations. Scholars have noted that Mexican legislation and institutional development in this field follows from international environmental agreements and conferences where the Mexican representatives' participation was considered significant (Gil 2007, Oñate 1990). In the case of the United States, domestic political conditions and politics have, for the most part, driven environmental institutional development (Train 2000, Kraft 2004). The cooperation agreement signed by the governments of the United States and Mexico regarding pollution of the marine environment by discharge of hydrocarbons will not be discussed as it does not refer specifically to the border and is designed for a very specific type of contingencies (Weston 1986).<sup>15</sup>

#### *Mexico*

In Mexico, the first institutions to address public health issues were established in the second half of the nineteenth century. Offices to deal with national parks, reserves and forest were implemented at the turn of the twentieth century. The National Irrigation Commission was created in 1926, and the National Potable Water Directorate was formed in 1939. The Irrigation Commission was restructured as the Secretariat on Water Resources in 1946. Other regulations dealing with national parks and conservation were

enacted during the first half of the XX century. Mexico's first modern environmental law, the Federal Law to Prevent and Control Environmental Pollution (FLPCEP) was approved by the Mexican Congress in 1971. Several coordinating mechanisms for environmental issues were established through the Health and Welfare Secretary (Secretaria de Salubridad y Asistencia SSA), leading to the creation of the first national environmental agency, the Subsecretaria de Mejoramiento del Ambiente (SMA), in January of 1972, just a few months before the Stockholm United Nations Conference on the Human Environment and less than two years after the Environmental Protection Agency (EPA) was created by the United States government. That same year, a new Federal Water Law was approved in substitution of the earlier 1936 Water Law. In 1982 the 1971 environmental law was revised and replaced with a new Federal Law for the Protection of the Environment.

### *The United States of America*

In 1969, the National Environmental Protection Act (NEPA) was established in the midst of environmental crisis and concerns, and other political changes dominating the 1960's in the United States. A few years earlier, in 1964 and 1968 respectively, both the Wilderness Act and the Wild and Scenic Rivers Act were passed by the U.S. Congress. Several authors establish this period as the birth of the modern environmental movement in the United States, despite the fact that its deeper origins may be traced to previous environmental efforts, or movements, which promoted conservation policies during the progressive and the New Deal eras (Bosso 2005).

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<sup>15</sup> T.I.A.S. No. 10021

The Environmental Protection Agency (EPA) was created in 1970 by a reorganization of the United States government involving the transfer of 15 government units together with their functions and legal authority (EPA 1973). As occurred in Mexico, the core of the agency derived from the Public Health Department. The EPA was created while Earth Day was being celebrated for the first time. Many of the influential American non-government environmental organizations were also established between 1962 and 1972. Much of the most influential federal environmental legislation was enacted in the 1970's (Kraft 2004). In 1970 the Clean Air Act was amended. In 1972 the Clean Water Act reformed previous water quality legislation. Several other acts related to marine research, marine mammal protection, pesticides control and coastal zone management were passed in 1972 as well. The following year the Endangered Species Act (ESA) was passed and in 1974 the Safe Drinking Water Act (SDWA) was also approved. Two years later in 1976, the Resource Conservation and Recovery Act (RCRA) along with legislation targeting toxic substances control, national forest management and land policy and management were approved by the legislators. In 1977 amendments to previous legislation on water and air, as well as surface mining control were in place. In 1980 the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund) saw the light in Congress. Finally in 1982, the Nuclear Waste Policy Act was approved by the U.S. Congress (Kraft 2004).

### *The Border*

The evolution of national environmental policy in the United States and Mexico provides the context and formative background for binational policy cooperation for

environmental protection along the border. Both the EPA after 1970 and the SMA after 1972 in their early years focused almost exclusively on domestic issues, leaving only meager space for binational cooperation, mainly through technical cooperation and air monitoring. An important facilitator for binational cooperation was the Pan-American Health Organization (PAHO) through the United States-Mexico Border Health Association (Jamail and Ullery 1979, Nalven 1984). In June 1978, the governments of Mexico and the United States signed a memorandum of understanding for cooperation on environmental problems and issues at the border (Gil 2007). Another technical agreement was reached also in 1980 to further cooperation in environmental and health programs along the border (Nalven 1984). The 1978 Memorandum of Understanding of 1978 (MOU) derived from the bilateral commissions instated by presidents Carter and Lopez Portillo, gave formality to the previous and ongoing efforts carried out by EPA and SMA. From 1978 on, through the signing of the La Paz Agreement, no significant changes occurred in binational environmental cooperation. After the La Paz agreement, not only did federal environmental institutions in both countries use it as a framework for considering binational issues, but the longstanding binational IBWC reluctantly embraced it as a reference for environmental issues under its jurisdiction.

The border does not mirror the national relationship among the countries; it has different problems and emphasis. Environmental problems are partially constrained by territory and proximity; therefore the U.S. and Mexican environmental issues that have drawn binational attention are mostly border problems (Nalven and Kjonggaard, 1984). This geo-structural reality is why the governments have signed agreements on binational



cooperation focused largely on the border. Exceptions here include the agreement for cooperation on pollution control for the metropolitan area of Mexico City in 1991, previous collaborations for air monitoring in Mexico City, the agreement on contingency actions after the Gulf's Ixtoc-1 oil well accident, and protocols that deal with trilateral cooperation in protecting migratory species.

With the dawn of the modern environmental era in U.S.-Mexican relations, problems arising from transboundary pollution were the first to attract the two countries' attention. The Colorado River salinity dispute, the San Pedro River mining discharges, transboundary wastewater discharges, and air quality in the Tijuana-San Diego area were the main problems that drove the governments to cooperate at the border during the 1970's.

An important consideration in understanding the emergence of these issues along the border is their particularity. Since these problems do not typically have either the extension or saliency to be national problems, the search for solutions usually start in situ, through local actors or institutions trying to address the issue. In the 1970's and well into the 1980's this fact underscored a significant U.S. advantage over the autonomy of local political actors and institutions in the Mexican side. The federal and decentralized U.S. system allowed local actors greater leverage to address local problems, whilst on the Mexican side it was necessary for the federal government to become involved, not just for political and constitutional issues, but also for economic reasons, since local governments were financially too weak to address the issues and sometimes lacked the

institutional capacity to address environmental issues in the manner of their local counterparts on the American side (Nalven 1984). Another element was the level of law enforcement on the U.S. side that enabled local authorities to deal with air and water quality standards earlier than their Mexican counterparts.

An example of how international cooperation began with the relatively minor involvement of federal actors is air quality monitoring efforts in the Juarez-El Paso and Tijuana-San Diego areas. The cities on the U.S. side through the Clean Air Act are mandated to monitor and comply with federal air quality standards within their air shed. The presence of large binational communities along the border in Tijuana-San Diego, and Juarez-El Paso, with air emissions flowing freely on both sides of the border made cooperation locally attractive. The first cooperative initiative was promoted by the Pan-American Health Organization which sought to bring together health officials from both sides of the border to address specific health and epidemiology issues towards the end of the 1960's. PAHO's previous efforts at binational cooperation had coordinated federal and local efforts directed at rabies control in 1967 and border wide in 1969. Those efforts led to further cooperation on tuberculosis and epidemiological studies. The main characteristics of these collaborations were: 1) coordination by PAHO's field office at the border; 2) establishment with the approval of the relevant national offices; 3) the establishment of Coordination Committees composed of experts to help in planning and evaluating the programs, leaving the execution of the programs to the respective authorities in each country; 4) the channeling of overall coordination and information exchange through PAHO; and 5) denying the Coordination Committees any real

executive power (Martinez 1974). PAHO later brought together environmental officials from EPA and SMA, after creating border health councils as a way to fight indifference from both federal governments to border problems (Applegate 1979).

In February 1972, the Juarez-El Paso Air Pollution Control Subcommittee was established to coordinate the program under the regional El Paso-Ciudad Juarez-Las Cruces Area Environmental Health Committee. That Committee reports to the PAHO's El Paso-Ciudad Juarez Binational Health Council. This program was used as a model to start the Tijuana-San Diego joint monitoring a year later. The agencies involved were: El Paso's City-County Health Department, the Ciudad Juarez Health Center (the local SSA), the Mexican Department for Environmental Improvement Agency (SSA-SMA), the Region 5 division of the New Mexico State Environmental Improvement Agency, the Texas Air Control Board at El Paso, and PAHO's field office. Some of the benefits besides the technical aspects were listed as engendering close relations between field health workers on both sides of the border, increasing mutual understanding of the binational pollution problem, implementing relevant legislation and control measures, and sharing information, resources and facilities. The health authorities on both sides of the border did not formally sign an agreement, just an MOU entitled 'basis for cooperation'<sup>16</sup> setting out the purpose, objectives, action plan and responsibilities for each party (Davila 1976).

Another joint monitoring effort was carried out in 1977 supported as a research project by Dr. Applegate (Bath 1982). In September 1973 a symposium on air pollution

along the border was held at The University of Texas at El Paso (UTEP) organized by local officials, PAHO and academics, with the aim to prompt binational cooperation (Applegate and Bath 1974). In that event, the Mexican official position as expressed by SMA, recognized the need for binational cooperation with the United States based on similar geographic and ecological conditions and the growing population and industrialization of the region that had led to pollution problems on both sides of the border. According to the SMA, Mexico acknowledged the universal need to protect the environment, but believed that the industrialized nations should contribute more heavily to a solution since they generated a disproportionate share of the problems. Based on local experiences of bilateral cooperation, SMA proposed the creation of a Binational Committee coordinated by PAHO to address environmental and health issues and suggested establishing local committees for particular issues in adjacent communities along the border (Martinez, 1974). At the same symposium the argument for the need for a treaty to address environmental and/or air quality issues was advanced based on the experiences of the IBWC (Ainsa, 1974; Sepulveda, 1974).

Another local initiative was the consortium created by four local universities to study environmental problems along the border in 1976 (Applegate, 1979). In April 1981, an agreement to cooperate on air quality monitoring was signed between the state environmental authorities of Baja California and the San Diego County, excluding federal authorities after a failed effort to reach an agreement in 1977 that would have committed federal agencies. This agreement formalized informal collaborations already existing in the area beginning with air monitoring in Tijuana in 1973, followed with attempts to

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<sup>16</sup> For a complete version of the document see Davila 1974.

formalize cooperation and establish a joint monitoring program in 1977 (Nalven, 1984; Tolivia, 1982). The SMA and EPAs' efforts were summarized by officials of both entities on November 20, 1980 as having produced little by way of meaningful accomplishments in improving the border environment (Applegate, 1982).

In addition to these early cooperative initiatives, a number of other efforts were undertaken in the 1970's and early 1980's that involved at least some degree of binational cooperation. In 1980, the EPA's Office of International Activities (OIA) identified a number of border activities that fall in this category. At the level of formal binational cooperation the document made note of the MOU of 1978, the joint air quality monitoring program in the San Diego-Tijuana area, as well as the intention of SMA to conduct emissions inventories in Nuevo Laredo that may be matched by parallel efforts by border communities on the United States. In the field of water sanitation it mentioned the activities carried by the IBWC as binational efforts (Hunt 1980). The summary also recognized several local efforts carried in California, Arizona and Texas to address binational pollution problems, but was careful to cite as binational efforts only those undertaken under the authority of the EPA-SMA 1978 MOU, and the IBWC.

EPA's list of particular environmental activities is organized mainly around air quality and water quality issues, though a number of other problems are listed including solid and hazardous waste transiting the border in either direction, and oil spill contingency planning derived from the Ixtoc accident. Offshore burning, strategic petroleum storage, and corps of engineers dredging on the gulf coast are listed as U.S.

generated problems. The designation of the Flower Garden Marine Sanctuary on the Gulf shore is listed as a conservation effort.

With respect to water quality, various transboundary wastewater problems were identified in the Tijuana-San Diego, Mexicali-Calexico, Nogales-Nogales, Naco-Naco, and Nuevo Laredo-Laredo areas, plus ongoing water quality concerns on the San Pedro River. The report argued that the ad hoc approach from the IBWC was not sufficient to address the ongoing sanitation problems and criticized the time-consuming process associated with getting things done through that mechanism. At the same time, it recognized the IBWC's value as an excellent mechanism for information exchange and as a forum for bilateral discussion. And finally, the EPA expressed hope that the transboundary pollution authority conferred to the IBWC in 1979's Minute 261 would prove valuable in dealing with water quality problems at the border. The EPA's 1980 list of international activities along the border clearly substantiates that the first actions addressing bilateral cooperation included mainly local actors reacting to existing problems at the border (Hunt, 1980; Applegate and Bath 1974).

#### Water Issues and the IBWC

The oldest and most enduring bilateral institutional arrangement related to environmental cooperation along the border is associated with the IBWC. Established in 1889, it has generally been viewed as an exemplary case of binational cooperation. The Commission, tasked with managing the boundary line and administering the water agreements to which Mexico and the U.S. are party, was instrumental in solving both the

Chamizal dispute and the salinity problem of the Colorado River (Campos 1981).

While the IBWC's authority to regulate water quality was never adequately specified in the 1944 Treaty, it did receive a mandate to solve all transboundary sanitation problems. Under Article 3 of the Water Treaty's authority various border sanitation projects were designed and implemented by the IBWC in the 1950s and 1960s, including projects at Nogales (IBWC 1958 and 1967) and Agua Prieta, Sonora-Douglas, Arizona (IBWC 1964 and 1965a). And an emergency sewage connection from Tijuana into San Diego also was addressed through Minute 222 (IBWC 1965b).

The issue of the saline irrigation drainage water delivered to Mexico as part of its Colorado River treaty entitlement and adversely impacting the Colorado delta was dealt through painful and protracted diplomacy until its eventual solution in Minute 242 in 1973. Implementation was delayed nearly five years before construction contemplated by the agreement actually began on the desalination plant. As a mechanism of binational cooperation, the IBWC may be viewed as an institutional anomaly in a typically conflicting relationship, successful within its sphere, but one that has not been sufficient for addressing the variety of water problems facing the borderlands (Jamail and Ullery 1979).

The first environmental problems the IBWC had to deal with were water quality related, and were addressed through the IBWC mechanism in accordance with provisions of the U.S.-Mexico 1944 Water Treaty. One such problem was the salinization of Colorado River treaty water that impacted the Mexican side of the border. This problem

began with Mexican complaints to the United States government in 1961 and 1962, leading to Minute 218 in 1965 (IBWC 1965). This agreement committed the U.S. government to solve the problem through engineering works at its expense over a five year period. In 1971 an extension was granted in order to comply with the agreement since the problem continued. In 1972 President Echeverria and President Nixon met and discussed the non-compliance of the United States and the persistence of the salinity problem leading to further negotiations and studies documented in Minute 241 (IBWC 1972). Finally on August 30<sup>th</sup>, 1973, Minute 242 established the “definitive solution” to the problem agreed upon by both governments (IBWC 1973). After funding approval by the U.S. Congress in 1974, work began on a bypass drainage channel (IBWC 1975). This project was completed in 1977. The U.S. government nevertheless decided to prevent further problems by building a desalinization plant that was eventually completed in 1987.<sup>17</sup>

The 17 year span from 1961 when the first diplomatic complaint was made to 1977 when the works on the channel were completed suggests the difficulty of binational cooperation through this diplomatic arrangement. The IBWC’s 1973 Minute 242 concluding the salinity crisis also included provisions for paying remediation for damages sustained in the Mexicali Valley and further addressing transboundary groundwater resources, agreements that have not been realized to date.

In the wake of the salinity crisis, the IBWC had become moderately attentive to water based environmental issues. The problem of transboundary water pollution of the

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<sup>17</sup> Currently the plant operates sporadically for different purposes.



San Pedro River is indicative of the IBWC's hesitancy to regulate transboundary water pollution. Other institutions were eventually called to intervene, mainly because the IBWC did not consider the matter to be a sanitation issue and because IBWC was unable to stop and correct the direct impact of Mexican mining operations discharging pollutants to the river before it entered the United States (Jamail and Ullery, 1979). Uncertainty over IBWC's role in regulating transboundary water pollution led to Minute 261 in 1979. Minute 261 was the product of a meeting of presidents Lopez Portillo and Carter that discussed the border sanitation issue raised by local communities in Arizona and California (IBWC 1979, Jamail and Ullery, 1979). This minute documents the procedure to deal with sanitation problems along the border and establishes cooperation mechanisms in case the solution should involve a binational project.

The first sanitation project addressed after that procedure was the wastewater flowing from Mexicali to Calexico via the New River. By this arrangement, Mexico agreed to build and restore oxidation lagoons to treat residential and industrial sewage and make further improvement to the system with participation of the United States (IBWC, 1980, 1987a, and 1992). This particular problem also depicts the slow and sometimes frustrating mechanism of the IBWC for the local residents of the border. The New River was long considered a problem by local residents and officials, even before the 1944 Water treaty was signed, and despite various studies and conversations held through the years by the IBWC. The first official IBWC agreement to address the problem came only after political pressure was exerted to bring a local problem into the national agenda (Jamail and Ullery, 1979). The Nogales international plant was further

improved under the framework defined by Minute 261 and the La Paz agreement in 1988 (IBWC, 1988).

The diplomatic process through the IBWC is largely top down and dependent on the political will of the executives on both countries, particularly in those cases where a technical solution is not easily found. The type of solutions devised by the Commission tend to be ad hoc, engineer based, and limited to questions that can be considered within the legal framework of the 1944 water treaty and its extensions. As a conflict management agency, the Commission has explicitly sought to avoid political conflicts and specializes in mediating among the two governments (Jamail and Mumme, 1982).

The San Pedro River case was a departure from prior institutional practice since other agencies were involved with this transboundary water pollution problem (Jamail and Mumme 1982). Initially, local actors approached the IBWC, but it thought it lacked institutional jurisdiction to solve the problem. The issue was then taken to state and federal authorities in the United States to find alternative means of addressing the issue. The interested parties included state authorities on agriculture, health, and game and fishing. By the end of 1977, ranchers from Arizona detected heavy metals pollution from the tailing operations at a copper mine in Cananea. Later discharges due to seepage overflow and abundant rains generated high heavy metals levels on the stream during 1978 and 1979. Even though the company agreed on corrective public works, mine operations continued polluting more than two years after the initial incident (Jamail and Ullery 1984).

### The 1978 Memorandum of Understanding

In June 6, 1978 a Memorandum of Understanding (MOU) was signed between the EPA and the SMA. This unprecedented agreement included 14 points:

- 1) Initiate cooperation to resolve environmental problems of mutual concern, through exchange of information, personnel and parallel projects;
- 2) Parallel activities might include joint actions;
- 3) Senior officials to meet annually alternately in each country;
- 4) Technical personnel and experts also to meet annually to plan parallel projects including pollution abatement and control, regulations, quality assurance, research, and monitoring;
- 5) They might discuss other environmental issues outside the border problems;
- 6) The governments recognized the jurisdiction of IBWC in the matter of transboundary sanitation problems;
- 7) Each entity was to name a national coordinator;
- 8) The coordinators could invite other authorities and citizens to participate in events;
- 9) Parallel activities could include pollution abatement and control programs, an early warning system of potential problems, review of norms and regulations and exchange of information protocols;
- 10) Coordinators would be in charge of coordinating all activities plus creating subcommittees;
- 11) Each party is responsible for its costs;
- 12) Work is subject to availability of funds;
- 13) Protocol to release public information; and
- 14) The MOU would enter in force after approval by both governments (EPA 1978, Jamail and Ullery 1979).<sup>18</sup>

The MOU was to apply for five years with five year extensions by written agreement (Hunt 1980). The results were minimal, but revealed both governments' concern to bring environmental issues to the political agenda (Bath 1983). The MOU recognized IBWC jurisdiction on water along the border, but at the same time stressed several border environmental issues outside of the IBWC's jurisdiction (Jamail and Mumme 1982). By the end of 1980, three meetings were held with people of EPA and SMA participating to

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<sup>18</sup> It was confirmed through exchange of diplomatic notes on September 1979.

cooperate according to the MOU (Hunt 1980). The principal focus of the meetings convened under the MOU's authority from 1978 through 1982 was on the air quality of binational communities (Tolivia 1982).

#### Institutional Development after La Paz, 1983-1993

In 1982, Mexico experienced several critical events and reacted to shifting global power rearrangements from bipolarity to multipolarity, which led to a redesign of the bilateral relationship with the United States. In September of that year, the banking system was nationalized by the departing president Jose Lopez Portillo, after a huge devaluation and economic crisis affected the country earlier that year. At the beginning of December 1982, the incoming Mexican president Miguel De La Madrid assumed office and faced the economic crisis, considering alternatives discussed with the Ronald Reagan administration during their first meeting two months earlier. Discussion continued through the bilateral commission meeting in April of 1983. The new Mexican government initiated a reorganization of the federal offices removing environmental issues from the Secretary of Health and Welfare's Subsecretariat for Environmental Improvement (SMA) and placing them within the newly created Subsecretariat of Ecology under the Secretary of Urban Development and Ecology (Formerly Secretary of Human Settlements and Public Works- SAHOP). Formerly, ecological affairs were addressed by the General Direction of Urban Ecology, at SAHOP (Sanchez de Carmona 1990, Oñate 1990).

The priorities of the U.S.-Mexico bilateral agenda were the financial crisis that linked both governments through the U.S. banking system loans, and the disagreement over the Central America guerrilla movements. Other issues that strained the relationship during the 1980's were immigration and drug traffic. At the same time, these were among the most productive years in terms of binational environmental affairs (Szekely 1993), even though the environment was not at the top of the agenda in U.S.-Mexico relations. The consideration of topics of high politics, like trade and security, versus low politics issues like the environment appears to explain this paradox.<sup>19</sup> Even on the brink of a new binational interest in strengthening the relationship, the environment was given a low priority. By the end of the 1980's the novel Mexican approach towards regional integration and the willingness of the Americans to enter into a free trade agreement dramatically changed the tone of the relationship from tension towards cooperation.

In the discussion that follows, the La Paz Agreement and its annexes, and the Integrated Border Environmental Plan (IBEP) will be discussed separately in order to develop a detailed assessment of these particular yet related cooperation mechanisms. The remaining discussion of developments in this period follows the structure of the first section.

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<sup>19</sup> In 1986, when the Bilateral Commission on the Future of United States-Mexican Relations was formed to discuss ways to enhance the relations among the countries, the environment was not a topic in their agenda of studies (Green and Smith 1989). Environmental protection for the environment and cross-border pollution control surfaced as a binational issue at the Bilateral Commission only in their 1989 report.

### Binational Cooperation Efforts

In the wake of the earlier set of binational efforts carried out by PAHO, IBWC, local agencies, and SMA-EPA during the 1970's it became clear that new models for enhancing environmental cooperation were needed. Some proposed strengthening the authority and jurisdiction of the IBWC in conjunction with establishing a new political unit at the two foreign ministries to follow up on issues at the Department of State and Foreign Relations (Utton 1982, Sepulveda 1974). Others found the IBWC model less satisfactory, but still complementary to other institutional reform (Jamail and Mumme 1982, Szekely 1986). Still others proposed to build on the model of PAHO and the binational councils along the border cities to enhance binational cooperation on environmental issues (Bath 1982). Additional perspectives thought the EPA and SMAs' MOU offered the best avenue for improving the environment along the border, despite minor accomplishments at the time (Hunt 1980, Bath 1982). In the meantime, environmental problems were multiplying due to population growth and industrialization of the major communities at the borderlands (Utton 1982, Ganster 1990).

### *The La Paz Agreement and its Annexes*

The Agreement between the United States of America and the United Mexican States on Cooperation for the Protection and Improvement of the Environment in the Border Area, better known as the La Paz Agreement (LPA), has been the cornerstone for environmental collaboration efforts between both countries since 1983. Though some consider the agreement largely symbolic in nature in the absence of established rules of conduct or enforcement mechanisms (Sinclair 1986), others praise the advances made to

solve specific problems despite the absence of funds available for solving environmental problems along the border (Szekely, 1986; Metzner, 1992). Other scholars argue the results are uneven at best (Mumme, 1992). The first meeting of President Reagan and President elect De la Madrid was held in Tijuana and San Diego, in October 1982. According to then Secretary of State George Shultz, the U.S. government saw the opportunity to collaborate on trade, investment, legal and illegal immigration, drug traffic, and pollution along the border (Shultz 1993). The main topics on the agenda of Presidents Reagan and De La Madrid were Central American insurgencies and the Mexican debt crisis when they met at La Paz Baja California, Mexico in August of 1983 (Astie Burgos, 1998). Paradoxically, only the environmental agreement that the presidents signed is remembered from that meeting, despite the fact that the environment was not a focal point of the agenda.

Information about the negotiation and background of the Agreement is scant in the literature and the documentary record, notwithstanding its importance for environmental binational cooperation. Apparently, given the contentious nature of the topics on the agenda, the need to have a positive outcome from the first meeting between presidents Reagan and De la Madrid led to the hurried preparation of the La Paz agreement (Torres, B. 2007, Oñate 2008). According to this version, the Mexican Foreign Relations Secretary asked the legal advisor to SRE, Alberto Szekely, to prepare a draft for the agreement to be finalized during the meeting and confirmed a year later (Mumme 2008). Two months before the La Paz Agreement, a report of a meeting held in Washington, D.C. between various officials and the Secretaries of Housing and Urban

Development (HUD) and Urban Development and Ecology (SEDUE), describes a special parallel meeting of SEDUE Secretary Marcelo Javelly with Assistant Secretary James Malone from the U.S. Department of State requested by the latter on June 22, 1983. The meeting was agreed and scheduled at the last minute to deal “with the preparations of the binational agreement on environmental matters proposed for signing by President Reagan and de la Madrid at a meeting sometime this year.” Luis Sanchez Carmona, Special Counsel to Secretary Javelly, and Robert Morley from Mexican Affairs at the Department of State were also present at the meeting (Pozo-Ledezma 1983).

Another account of the Agreement’s development is provided by Onate. According to his version (1990),<sup>20</sup> the agreement was derived from a previous draft generated by the SMA and presented to the U.S. EPA. This draft was considered unacceptable in June at the Intersecretarial Committee coordinated by the Mexican Secretary of Foreign Affairs. A new draft was prepared and presented to the U.S. government in July, which in turn proposed two amendments: one regards natural resources in contradiction with the Mexican Constitution, and another extending the agreement to include the totality of Mexico, not just the border. Both propositions were unacceptable to Mexican negotiators. In early August another meeting was scheduled between the Mexican and the U.S. government representatives in Mexico City, where they drafted a mutually agreeable document that was signed in August 14, by the presidents at La Paz, B.C. (Oñate 1990) and entered into force February 16, 1984.

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<sup>20</sup> This explanation was presented at a binational symposium one month after the Agreement was signed.



A more detailed account is presented by Scott Hajost, legal advisor for this Agreement from the U.S. Department of State. In his recollection of the events, the Mexicans proposed an Agreement that would include inland spills and other issues along the border to replace the 1978's MOU. This proposal to amend the 1980's Agreement on Cooperation Regarding Pollution of the Marine Environment by Discharges of Hydrocarbons and other Hazardous Substances was made during talks held in April 1982 in Mexico City.<sup>21</sup> The negotiations were held in the context of sewage problems affecting the "coast north of the international border, but also as it affects Calexico, Nogales and Laredo." The Mexican government then presented a version to the United States in October 1982, and the Americans responded that the Agreement should be comprehensive, not just on border issues and that it should include natural resources. Negotiations followed in Mexico City on August 8 and 9 of 1983, arriving at an agreement about the document to be signed by the Presidents of Mexico and the United States less than a week later (Hajost 1984).

Yet another version states that U.S. congressmen had urged President Carter in November of 1979 to consider broader environmental cooperation with Mexico after the disaster of the oil spill in the Gulf of Mexico (Weston 1986).

The main aspects of the negotiation process are that the U.S. wanted to include natural resources in the agreement and incorporate fully the territory of both countries. The Mexicans explicitly wanted to exclude natural resources and limit the agreement to the border. The United States approach involved the possibility of access to Mexican oil

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<sup>21</sup> T.I.A.S. 10021

resources which clashed with the Mexican government's nationalist interest in protecting its oil resources. The Mexican government's insistence on limiting the agreement to the border may be related to the asymmetries existing in the countries, and is worth noting considering the new perspective adopted by the Mexican authorities two decades later during the reform of the BECC/NADB's geographical mandate in 2002, and the recent proposals of the Mexican government to expand the role of NADB to other areas outside the border region. According to the different versions, the 1978's MOU was due for review in 1983; therefore, the La Paz Agreement represents an updated or evolved version of the MOU, which is acknowledged in the text of the Agreement as well as in the intention of the negotiators.

With respect to the context of the negotiations, even though the proposal appears to have originated with the Mexican delegation, the border pollution concerns related to binational environmental cooperation were most aggressively advanced by U.S. officials. The two countries' recognition of these problems also signaled the need to create a different institutional mechanism to cope with sanitation problems that were not fully resolved through either the IBWC mechanism or the 1978's MOU. Both governments recognized the IBWC's treaty mandate for dealing with border sanitation problems while accepting that the Commission's role needed to be supplemented by other institutional mechanisms. Qualitatively, the LPA is different from previous efforts at binational environmental cooperation in its emphasis on prevention and control rather than simply reacting to crisis or incidents (Weston 1986). Finally, the success of the negotiation process and the achievement of the agreement, despite the existing pronounced tensions

in the high politics of the bilateral relationship at the time are noteworthy and evidence of the symbolic importance of low politics in tempering bilateral relations.

It is useful at this point to identify the objectives and main elements of the La Paz Agreement. The formal objectives of the LPA are:

“to establish the basis for cooperation between the Parties for the protection, improvement and conservation of the environment and the problems which affect it, as well as to agree on necessary measures to prevent and control pollution in the border area, and to provide the framework for development of a system of notification for emergency situations. Such objectives shall be pursued without prejudice to the cooperation which the Parties may agree to undertake outside the border area.”  
(Department of State, 1983).

Its main elements include:

- 1) A commitment to address pollution issues on each country;
- 2) An agreement to work jointly or in parallel on environmental issues along the border;
- 3) A mechanism to incorporate further annexes to the agreement for specific problems and define the border area as 100 kms. on each side of the borderline;
- 4) Specification of types of cooperation that may include exchange of information, data, training, monitoring, and impact assessments;
- 5) Stipulating EPA as the U.S. national coordinator and the Subsecretariat of Ecology from the Secretary of Urban Development and Ecology (SEDUE) as the Mexican national coordinator. These coordinators will be in charge of annual meetings monitoring the agreement and programming reunions of experts to address technical issues as needed;
- 6) The national coordinators may invite other government authorities from each country, non-governmental and international participants for their events;
- 7) The LPA recognizes the role and authority of the IBWC and the 1944 Water Treaty;
- 8) It provides that each party will be in charge of expenses related to the agreement activities, except if agreed other way for particular reasons;
- 9) It includes a mechanism for availability of information;
- 10) It will have unlimited duration or until agreed by previous notification of cancellation from any party;
- 11) The agreement supersedes the notes of June 19, 1978 that formalized the previous MOU between EPA and SMA (Department of State 1983).

In their first meeting, in March 1984, the national coordinators agreed to establish three working groups on air, water and soil quality (Szekely 1993). The soil quality group

focused on toxic substances, hazardous and solid wastes. In that first meeting both governments agreed to address issues through the working groups and prepare solutions to be formalized as annexes. The issues at that first meeting included sanitation problems in Tijuana-San Diego, Calexico-Mexicali, and the marine water pollution in California and Baja California. Air quality issues included pollution from copper smelters, long range regional air pollution including contamination from Los Angeles, and air pollution in sister cities along the border. And finally, the last issues addressed were dumping and spills of hazardous wastes and toxic substances respectively, mainly from industrial operations (EPA/SEDUE 1984). By 1992, and consistent with this first working meeting of the La Paz Agreement, six working groups were created: air, water, contingency planning and emergency response, cooperative enforcement, hazardous waste and pollution prevention (EPA 1999). After the La Paz Agreement was signed, five annexes were agreed upon by the governments, basically addressing conflicts and problems discussed previously, and providing for specific coordination mechanisms. The second meeting of the national coordinators followed the planning stages agreed upon during the first meeting, concluding with the signature of three annexes. The consistency of the meetings and formal negotiations and actions through the annexes mark a significant departure from the meetings and communications that followed the MOU of 1978, and also created a different approach and dynamic from the long negotiations under the IBWC model.

The first annex was signed on July 18, 1985 and acknowledges several consultations on the problem of Tijuana wastewater in the Tijuana-San Diego area. It also

recognizes and follows provisions agreed on in Minute 270 by IBWC, but included follow up on IBWC actions and extra measures in case the implemented actions were insufficient (Department of State 1985). Annex I is consistent with the priority given since the signature of the Agreement to this issue (Green 1984).

Annex II was signed the same day in San Diego, California, and addresses the organization of a Joint Response Team (JRT), and a Joint Contingency Plan (JCP), to deal with hazardous substances discharges or accidents within the border. It contains two appendices with the JCP and the JRT details respectively, and provides the mechanisms for coordination (Department of State 1985a). This annex is also consistent with the priorities considered at the beginning of the negotiation process (Hajost 1984).

Annex III was signed in Washington, D.C. on November 12<sup>th</sup>, 1986. The annex contains detailed procedures for the import and export of hazardous materials and substances and a two year period to evaluate the procedure contained in the instrument (Department of State 1986). The level of detail on the description of procedures constitutes a novelty considering the previous annexes.

Annex IV was signed January 29<sup>th</sup> of 1987, also in Washington, D.C., and concerned transboundary pollution from copper smelters. It was achieved after lengthy negotiations, its main purpose is to mandate and insure the closure of a copper smelter in Douglas, Arizona, the implementation of emission reductions in a smelter located in Nacozari, Sonora, and the control of emissions at the copper smelter in Cananea, Sonora.

Annex IV also details monitoring, recordkeeping and exchange of information procedures, as well as the constitution of a working group to verify emissions along the border and potential pollution problems associated with other cooper smelting operations (Department of State 1987).

Finally Annex V was signed October 3<sup>rd</sup>, 1989 in Washington, D.C. Annex V addresses transboundary air pollution in the Paso del Norte Area (Juarez, Chihuahua, Sunland Park, N.M. and El Paso, Texas). This last annex, details emission inventory and monitoring procedures, and considers the possibility of harmonizing air quality standards. This document also contains an appendix that establishes a Joint Advisory Committee (JAC) which includes non-government local members of the region to advise the Air Work Group on binational air quality planning and implementation matters<sup>22</sup> (Department of State 1989). Five annexes were signed over a six year period during the 1980's, and no further annexes have been signed since then.

Other instruments of cooperation were signed among different Mexican and U.S. authorities during the 1980's. In 1984, SEDUE signed an agreement with the U.S. Fish and Wildlife service for cooperation on conservation of wildlife. In 1985 the respective forest authorities signed an agreement for cooperation; in 1988 a MOU was agreed between SEDUE and the U.S. National Parks Service for cooperation on natural protected areas and parks; and the same year the wildlife protection authorities of Mexico, Canada and United States signed an MOU to analyze protective measures for migratory birds and their habitats, and conservation of wetlands (EPA/SEDUE 1992).

There are several other multilateral agreements and conventions that affect the border but these are not considered here precisely because of their multilateral character.<sup>23</sup>

### *The Integrated Border Environmental Plan (IBEP)*

On November 27 1990, Presidents Carlos Salinas and George Bush met in Monterrey to discuss several issues including international trade. They instructed EPA and SEDUE to prepare a plan to protect the environment along the border within the framework of the La Paz Agreement. The IBWC collaborated in the effort and the three institutions finalized a document encompassing the specific actions that EPA and SEDUE should take during the period 1992-1994 as a first stage. The context was the beginning of negotiations for NAFTA. EPA administrator William Reilly at the presentation of the plan asserted that EPA and SEDUE would carry out the proposed actions, regardless of the results of the NAFTA negotiations. The IBEP was presented as a new era of U.S.-Mexico cooperation and a different stage in the evolution of international environmental policy. It was recognized that the environmental problems at the border were growing and that a potential trade agreement would not only benefit the two economies but also generate environmental burdens for the region. Commitments for additional wastewater infrastructure were made by both countries signaling a departure from previous environmental cooperation that did not include monetary targets (EPA 1992, EPA/SEDUE 1992). The planning and coordination mechanism envisioned by the IBEP included: the evaluation and actualization of the plan by stages, setting 1994 to evaluate and review the first stage version; the continuing meetings of the work groups formed

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<sup>22</sup> It was signed in Mexico City on May, 1996.

<sup>23</sup> A relation of those can be consulted in Annex A of the IBEP (EPA/SEDUE 1982).

under the 1983 Agreement, plus the national coordinators meetings for the same Agreement, which included among other officials, the IBWC and U.S. State Department and Mexican Foreign Relations personnel. It is recognized also as an important element of coordination and planning the annual meetings of the presidents of Mexico and the United States, and the Binational Commission meetings of cabinet members which included the environmental authorities of each country. Consistent with the La Paz Agreement, the plan provided for the participation of State and local/municipal authorities in implementing the actions outlined in the plan (EPA/SEDUE 1992). The plan incorporated a description of the borders' characteristics and its environmental conditions. It also included environmental priorities and specific actions to be implemented as part of the IBEP with an estimate of funding commitments by both governments (EPA/SEDUE 1992).

#### Conflicts during the period under study

Some of the problems for binational cooperation, besides specific conflicts are: 1) the different economic and technical capacities, perceptions, and priorities that the United States and Mexico have related to environmental issues; 2) the different political and legal arrangements that stress different modes of legal enforcement, intergovernmental arrangements, and collaboration; 3) the institutional international arrangements in place; and 4) the tradition of mistrust in U.S.-Mexico relations and several other bilateral issues that create tensions and take precedence over environmental border issues (Sinclair 1986). Sanitation problems were present at different places along the border, and where these problems impacted the boundary, the IBWC had addressed them in their usual ad



hoc approach, though after 1983 this involved the water working group under the La Paz agreement. It was this process that led to Annex I of the agreement to deal with the Tijuana-San Diego problem. The Office of Management and Budget (OMB) prevented the EPA from offering financial support to Mexico in dealing with border sewage problems so as not to set a precedent on further border wastewater and air pollution problems even after the signing of the La Paz Agreement, and the United States threatened to blockade international credit to Mexico to force binational negotiations to solve the Tijuana-San Diego sewage problem. This attitude departed from previous practice in which the IBWC, acting under the authority of the 1944 Treaty, had apportioned international project costs under the principle of cost allocated in proportion to agreed benefits as seen in the case of the Nogales joint sewage treatment plant. Mexico's position since the 1950's was to incur expenses no larger than those required by legal and labor standards in Mexico in joining binational projects, and as these reflected the different Mexican communities' priorities as compared to priorities on the U.S. side (Nalven, 1986).

In addition to these binational sanitation problems, other issues were on the agenda. One dispute that dates back to the 1940's but was dealt with during the 1980's is that of wastewater flows from the New River that drains from Mexicali into Calexico. The All American Canal lining project authorized in 1988 is another source of conflict. The lining initiative was undertaken without previous consultation with Mexico, arguably in violation of the IBWC's Minute 242, and has proven to be a long controversy (Szekely 1993, Neir and Campana 2007). The most pressing air pollution problem was derived

from the operation of copper smelting plants in Douglas, Arizona, Nacozari and Cananea in Sonora, which after negotiations led to LPA Annex IV in 1987. Other incidents that raised conflicts involved illegal dumping of hazardous wastes and the increase of air pollution along the border in the rapidly growing urban centers.

#### Legal and institutional environmental development

During the 1980's, Mexico was reeling from its severe economic crisis, plus the devastating 1985's earthquakes in Mexico City, leaving environmental issues as low saliency secondary problems. Nevertheless, this decade laid the basis for binational environmental cooperation; the United States and Mexico's national environmental laws were updated to direct a greater priority towards addressing growing environmental problems. In Mexico, these years also saw significant administrative changes with three different cabinet level secretaries in charge of environmental issues. For the United States, it was a decade of several updates to existing legislation, but coupled with diminished environmental support from the U.S. presidency of Ronald Reagan that created some administrative resistance to effectively addressing environmental issues. The end of the cold war and economic crisis, were also factors in the United States that dominated the political agenda most of the decade.

#### *Mexico*

In 1983, Mexico established the Secretary for Urban Development and Ecology (Secretaria de Desarrollo Urbano y Ecologia (SEDUE)), assuming the environmental authority formerly located in SAHOP and SSA. The same year, the La Paz agreement

was signed between Mexico and United States defining the framework for cooperation on environmental issues along the border, subsequently complemented with its five annexes. In 1988, the new General Law for Ecological Equilibrium and Environment Protection was approved. The next year the Water National Commission (Comision Nacional de Agua (CNA)) was created to manage the nation's water resources. During the October 1989 visit of Salinas to Bush an environmental agreement was signed to tackle air pollution in Mexico City and environmental problems along the border (Roett, 1991). In 1991 an international accord on cooperation to address the protection and improvement of the environment in the metropolitan area of Mexico City was signed between Mexico and the United States.

In 1992, another institutional change on environmental management came about when the former SEDUE was transformed into the Secretary for Social Development (Secretaria de Desarrollo Social (SEDESOL)). Also, a new National Waters Law was enacted overriding the 1972 Federal Water Law. In 1993, the offices of the Mexican Federal Attorney General for Environmental Protection (Procuraduria Federal de Proteccion al Ambiente, PROFEPA) and the National Ecology Institute (Instituto Nacional de Ecologia INE) were in place. In 1995, the new Secretary for Environment, Natural Resources and Fishing (Secretaria de Medio Ambiente, Recursos Naturales y Pesca (SEMARNAP)) was created incorporating CNA, PROFEPA, and INE as decentralized environmental agencies (Gil 2007).

### *The United States*

During the 1980's several amendments occurred in air, water, solid waste, pollution prevention and energy legislation associated with the environment in the United States. In 1984, RCRA was amended to update hazardous and solid waste regulations. In 1986, the Safe Drinking Water Act was amended, together with Superfund amendments and reauthorization. A year later in 1987, amendments were made to the Water Quality Act. The Ocean Dumping Act was enacted in 1988. And finally, in 1990, the Pollution Prevention Act created a department in EPA to address source reduction. The Clean Air Act was amended also that same year (Kraft 2004, Vig and Kraft 2003).<sup>24</sup>

### *The Border*

The border is recognized since the late 1970's as a complex system with different characteristics that, at the regional policy level, defies a single approach or set of problems. It is characterized by different sizes of urban and rural communities, different geographic features, and varying modes and levels of economic development. Nevertheless among its commonalities, the economic and environmental interdependence of the border region is well known (Victoria Mascorro, 1982). During the 1980's the border experienced an industrial development boom and rapid population growth that stressed its available infrastructure. Particularly on the Mexican side, the environmental problems were more acute given the lack of infrastructure and response to the growth. These pressing sanitation, air pollution and hazardous waste problems called for the attention of the federal governments on both sides. On the American side the substandard

settlements known as *colonias* constituted the focus of attention since the health and sanitation problems were more acute there. The tensions derived from drug traffic and illegal immigration added to the saliency of the region during this time in the U.S.-Mexico relationship.

At the beginning of the 1990's, a significant level of institutional activity was in place at the U.S.-Mexico border. In 1992, the UNCED Rio Conference took place and the United States and Mexico prepared the Integrated Border Environmental Plan (IBEP). In 1993 and as a side agreement of the NAFTA, the BECC and the NADB were created. Also the Commission for Environmental Cooperation (Comisión de Cooperación Ambiental, CCA) was created, derived from the North American Agreement on Environmental Cooperation (NAAEC). In 1994, the Northern Border Environmental Program (Programa Ambiental de la Frontera Norte (PAFN)) from the Mexican government was launched (Gil 2007). In 1996 the Border XXI Program replaced the former IBEP, and since 2003 the current version of border environmental planning -the U.S.-Mexico Border 2012 Program- has been in place (EPA, 2007).

#### Water Issues and the IBWC

Before the La Paz Agreement, there were several voices that thought the IBWC to be the institution most suitable to address environmental problems, not only for groundwater and water quality aspects but also air quality issues (Utton 1982, Sepulveda 1974). Others argued the IBWC model was too limited to address new issues (Jamail and Mumme, 1982; Hunt, 1980). After the La Paz Agreement, the procedure established in

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<sup>24</sup> For a detailed description of the U.S. environmental legislation see Vig and Kraft (2003).

Minute 261 was used when Mexico proposed the construction of a wastewater treatment plant and conveyance system in Tijuana from 1985 to 1990, except that in this case and in the subsequent cases, the La Paz agreement was mentioned too as a reference for binational cooperation (IBWC 1985). The purpose was to solve the flow of untreated waters from Mexico to the United States, a problem recognized even prior to the signing of the 1944 Water Treaty. The issue was further addressed by the International Wastewater Treatment Plant constructed and operated according to Minute 283 (IBWC 1990). In 1997 extra engineering works were needed to update the wastewater system and connections with the international wastewater treatment facility, in this case with the participation of BECC and NADB under the new institutional arrangements for binational cooperation (IBWC 1997).

In 1987, the same type of wastewater overflow into the United States from Naco, Sonora, prompted engineering measures by the Mexican government, in this case without economic participation from the United States government, but including overseeing and information sharing as well as connection to the Naco, Arizona wastewater system (IBWC, 1987). The problems in Laredo and Nuevo Laredo are discussed in Minute 279 and were also framed as a binational project (IBWC 1989). And finally, in 1992 IBWC/CILA agreed to a comprehensive monitoring of the binational streams involving several agencies from both sides of the border as part of the commitments of both governments included in the IBEP, and following a previous initiative from 1977 involving binational observation of the qualities of the international waters (IBWC

1992a). Several studies regarding the water quality of the transboundary streams derived from the referred Minute 289, engaging various governmental agencies (USIBWC 2003).

### Findings

The United States and Mexico follow distinct trajectories in environmental regulation and institutions. The differences in government, technical capacity, and economic resources add to the complexity of the interactions among the countries when they approach international cooperation. The evolving approaches and institutional arrangements that they have fashioned for binational cooperation have been principally designed for resolution of pollution problems with transboundary effects. The economic development, rapid urbanization, and growing complexity of the border, and the corresponding increment of environmental problems, has driven a steady evolution of bilateral cooperation, a process that moved forward despite the larger controversies and uneven trajectory manifest in the overall bilateral relationship. It seems fair to say that binational environmental policy along the border has its own trajectory, one that is substantially delinked from the institutional developments at the national level.

On the Mexican side of the border, the main Mexican environmental laws were passed in 1972, 1982, and superseded by the 1988 General law of Ecological Equilibrium and Environmental Protection, responding mainly to international events and conferences in Stockholm and Nairobi, and to the Brundtland Commission. During the 1970's the administrative policy was health oriented while SMA was part of SSA. The emphasis shifted to an urban orientation when the Subsecretariat of Ecology was located in

SEDUE. It briefly acquired a rural and regional orientation during its two-year presence at SEDESOL, and was finally integrated within the sustainable development paradigm with the creation of SEMARNAP. These successive institutional frameworks meant the issues would be approached from the different administrative perspectives, giving more credit at the beginning to water and air pollution impacting health, later to urban planning and infrastructure aimed at controlling pollution, succeeded by an interest in regional development, and finally by an emphasis on environmental management (Gil, 2007). During this period Mexico developed the institutional and professional capacity to address the complexity of environmental problems, always competing with more pressing needs than several economic crises posed to the government. Through this period, the Mexican governmental system was centralist and with poor coordination, delegation, and decentralization. These characteristics compromised building capacity at the state and municipal levels, affecting particularly the border as a region.

American environmental legislation has gone through several amendments but the thrust of the regulation occurred at end of the 1960's and through the 1970's, incorporating legislation to protect the environment and adopting specific standards for air, water, hazardous waste and toxic substances, and energy. The EPA is responsible for enforcing the majority of environmental legislation and despite internal changes. Since 1970 the EPA has been able to build capacity in research, management, and law enforcement. The decentralized American system provides for intergovernmental arrangements and coordination, as well as for institutional capacity development that



creates better opportunities to handle environmental problems along the border at all levels, including state and local governments.

The main stressors and conjunctures that can be identified early in this period are: the creation of EPA and SMA in 1970 and 1971 respectively; the enactment of the major environmental law in Mexico in 1971 (FLPCEP), and the US environmental legislation during the same period, 1969 (NEPA), 1970 Clean Air Act (CAA), 1972 Clean Water Act (CWA), and 1974 (SDWA); the Stockholm U.N conference that promoted environmental protection and international cooperation in 1972; and the political will of presidents Nixon and Echeverria to address the old salinity problem in the Colorado River in 1972. The concrete outcomes of these conjunctures were the local cooperation efforts in Juarez-El Paso, and Tijuana-San Diego on air quality monitoring during 1973, including the first document of explicit cooperation on environmental issues called the Basis for Collaboration, agreed upon between local U.S. authorities and local officials of the Mexican federal SMA and promoted by the Pan-American Health Organization, El Paso field office. The IBWC's Minute 242 in 1973 should also be mentioned. It not only resolved a decade-long source of serious binational tension but it helped usher in a greater binational sensitivity to water quality concerns attached to the legal framework of the 1944 Water Treaty.

Both elements of bilateral cooperation also exhibit path dependence elements. In the case of the air monitoring; the cooperation can be considered an offspring of the PAHO's binational councils that generated after several years specific subcommittees

that allowed for the cooperation. In the IBWC case, the negotiation for the salinity issue had a history that can be traced from the 1961 Mexican complaint, and it is legally based on the 1944 Water Treaty.

A second step in binational cooperation is seen in the development of the 1978 MOU between SMA and EPA, in this case the conjuncture was provided by the launching of diplomatic bilateral cooperation activities through the bilateral commissions established by Presidents Carter and Lopez Portillo in 1977. It also derived from local binational activities at the major border cities. On the water sanitation front, a presidential meeting in the context of U.S. interagency rivalry over transboundary water pollution management also prompted agreement on the IBWC's Minute 261 in 1979 to address border sanitation. Evidently, the increasing sanitation problems in California and Baja California, and Sonora and Arizona, complicated by the contamination of the San Pedro River in 1978, generated enough local pressure on the U.S. side, so that President Carter brought the issue to the presidential meeting of 1979. An odd stressor happened with the accident in the Gulf of Mexico that aroused interest in binational cooperation to deal with accidents and other issues along the border. Even though the 1980 agreement only dealt with related contingencies, it provided the forum to discuss larger cooperation matters and eventually led to the negotiation of the third major step in bilateral cooperation, the 1983 La Paz Agreement. The conjuncture again was provided by a high profile presidential meeting between presidents De la Madrid and Reagan, with a high politics agenda filled with tensions over economic crisis, international debt, and the diverse positions over the conflict in Central America.

Other stressors can be considered the persistent sanitation problems along the border despite Minute 261 and ongoing IBWC efforts to address them. And the path dependency processes are provided by the follow up to the 1978 MOU interactions of SMA and EPA, the talks derived from the agreement to deal with marine accidents, and the ongoing interaction of Mexican personnel that created the SEDUE, as well as with American officials through the bilateral committees on housing and urban development. Both Mexican and American governments acknowledge the beginning of formal environmental cooperation through the La Paz agreement, while recognizing previous bilateral cooperation on water issues through the IBWC (EPA/SEDUE, 1992; EPA, 1999). This antecedent formal cooperation can be considered baby steps towards what is now known as the hallmark of environmental bilateral cooperation, the LPA (Metzner, 1992).

Commercial relations also influence the prospects for policy change. Since the late 1970's proposals for a free North American market were advanced by the U.S. government and discussed by academics. The Mexican government rejected the proposal for several years until it agreed to join GATT in 1986. The Mexican government changed its approach in 1990 when formal negotiations began towards NAFTA. This is the major conjuncture that prompted yet another step on binational cooperation by elaborating the IBEP. The accumulation of air and water pollution problems in the twin cities along the border, coupled with mishandling of hazardous wastes and toxic substances provided another source of stress for policy change. The path dependency processes are provided

by the work groups and annexes derived from the La Paz Agreement, and the institutional reform in Mexico that changed the U.S.-Mexico relationship paradigm by attempting a free trade agreement. A thorough discussion of the theoretical and practical implications of these findings is given in chapter 6, where the comparison of the different mechanisms provides evidence of significant policy change on binational environmental cooperation.

## **Chapter 4**

### **BECC and NADB Origins**

In the previous chapter, the origins and evolution of environmental binational cooperation were discussed, providing the institutional setting for the creation of the BECC and NADB. This chapter, in turn, takes up the process leading to the formation of these institutions, locating their emergence in the context of the historical conditions shaping binational relations at the time.

The desirability of forging new binational institutions to deal with various binational issues was well recognized and widely discussed in the 1980's, including the discussion of a potential binational authority on border affairs that might incorporate environment, customs and transborder infrastructure projects (Bilateral 1989). Developments in Europe regarding the consolidation of the European Union were also considered as various parties in both countries envisioned new border binational institutions (Torres 2007), driven, in part, by growing interest in the notion of a North American common market. The concept of a common market between Mexico and the United States was actually formulated in general terms in the late 1970's when the Carter administration proposed the concept; later the same idea was promoted by the Reagan Administration (Hufbauer et al. 1983). Academic debates emerged in favor and against a regional common market. Rico (1983, 1981), for instance, argued against a common

market based on past experiences with the U.S.-Mexico relationship. Stanford economist Clark Reynolds (1981) argued that without a development infrastructure the common market would not be sufficient by itself. Consideration of the idea at the time was fueled by the prospect of gaining greater access to Mexico's energy resources in the aftermath of the recent world oil crisis affecting the United States. Mexico, for its part, resisted the proposal of the common market until 1986, when it timidly joined the General Agreement on Tariffs and Trade (GATT), initiating a process of economy liberalization and transnationalization. But in 1990, Mexican president Carlos Salinas de Gortari changed the Mexican position and decided to enter in formal talks to negotiate a free trade agreement with the United States, still short of a common market. A year later, Canada was incorporated as part of the NAFTA negotiation process.

The environmental debate that emerged with the NAFTA negotiations was prompted by the expectation of economic growth and industrialization that would lead to more environmental degradation. Mexico did not have the experience of serious internal political pressure over the environment or almost any other issue, but suddenly it was subject to both external and internal pressures on environmental policy implementation arising from the NAFTA debate. It has been argued that until the NAFTA negotiation, despite its institutional development, Mexican environmental policy lacked resources and strict implementation, with regulation being scanty and weakly enforced (Hogenboom 1998; Mumme and Lybecker 2000; Salinas 2000). The negotiation process spurred greater environmental enforcement including the creation of PROFEPA, other

environmental institutions, and a host of high profile policy actions (Herrera 2007; Gil 2007; Torres B. 2007).

National differences between the U.S. and Mexico make an understanding of each nation's political process an important dimension of comparative analysis. For instance, while in the United States the NAFTA negotiation generated widespread political debate; in Mexico it hardly mobilized public opinion (Hogenboom 1998). It is within this context that a policy regime framework will be used to explain the different actors, institutions and ideas that were affected by the contextual factors of elections, markets, public opinion, international events and socio-economic changes at every step of the policy process, including agenda setting, policy formulation, and decision making. The implementation and evaluation stages of the policy cycle will be discussed in the next chapter, in order to assess the policy content and consequences embodied in the BECC/NADB institutions.

### **The Critical Conjuncture and Stressors**

The critical historical conjuncture affecting the emergence of the BECC and NADB arises from the Mexican government's decision to enter free trade negotiations with the United States government. The elements that contributed to this decision that can be considered stressors are the reshaping of the international powers that led to the formation of regional economic blocks, and the reconfiguration and reorganization of the international rules of trade and investment (Herrera 2007; Bremer 2006; Hogenboom 1998; Salinas 2000).

The United States government had been pressing the Mexican government to create a common market that would grant it greater access to oil resources. The Mexican government resisted the idea, but after the 1982 economic and international debt crisis, its interactions with the United States eventually led to an opening of certain economic sectors and Mexico's entry into GATT in 1986. The Mexican government continued resisting the idea of a common market despite the U.S. pressure. At the same time the United States entered and signed a free trade agreement with Canada in 1989.

Once elected in 1988, President Carlos Salinas de Gortari continued Mexico's resistance to the common market initiative proposed by President Bush. Instead, the Mexican government entered into a strenuous negotiation to reduce its external debt (Salinas 2000). The situation changed during Salinas' visit to Davos in Europe, which included Mexico's economic cabinet members, Pedro Aspe, Jaime Serra, and Chief of Staff Jose Cordoba. They observed the trend toward Europe's consolidation into an economic block, and the political transitions of the Eastern European countries that would compete with Mexico for international development investments. The same investments would be needed in Mexico to support the economic opening and adjustment that the Mexican government was promoting. At Davos, the decision was made to compete and search for foreign investment through the negotiation of a free trade agreement with the United States (Hogenboom 1998). The United States fully embraced the proposal and President Bush used it to launch its Economic Initiative for the Americas (EIA) later on November 1990. The full support of the U.S. government to the



Mexican government through this process is documented by Mazza (2001), where a coincidence of interests between the countries regarding free trade made the U.S. government willing to support the Mexican government even on delicate political issues. Canada -fearing that its interests might be affected-, decided joining the process at the beginning of 1991.

This conjuncture can be explained as part of the macro-political context of the collapse of the Soviet Union, the German reunification, the democratic and economic opening of the Eastern European countries that was assumed by Europe to accelerate the process of consolidation that led to the European Union by the end of 1993 (Bremer 2007). It is also a function, broadly construed, of the adjustment of the economic and financial international arrangements that led to the last round of GATT, the collapse of the Breton Woods system and, finally, the initiatives leading to the creation of the World Trade Organization (WTO) in 1993 (Hogenboom 1998). These three macro economic processes concluded within weeks of each other at the end of 1993, NAFTA, the EU, and the WTO (Salinas 2000). Nevertheless the conjuncture needs to be analyzed within a detailed context of other conditions that were at play in Mexico and the United States, which also had important effects on the political institutions, actors and ideas, involved in the process that originated NADB and BECC.

This long process beginning in 1990 and concluding in 1993 went through different stages of the policy cycle. The detailed story of that negotiation will provide the elements to assess policy change in environmental binational cooperation. The theoretical

lenses of the Policy Regime Framework (PRF) and Punctuated Equilibrium (PE) will be used to highlight the key elements providing the best explanations.

Why did this trade negotiation prompt an environmental debate and generate a new institutional format for binational environmental cooperation? My hypothesis is that BECC and NADB are institutional byproducts of an originally non-environmental policy process. Can the BECC and NADB be considered unintended consequences? Possibly, particularly when considered in light of another international development at the time. This macro-event was the emerging discourse of sustainable development. While the concept was utilized before—the Brundtland report published in 1987 gave the concept an international projection and initiated a wide debate and use of the term—merging environmental protection and sustainability with economic development sparked concerns and debates about the implications of trade for the environment. The new free trade propositions associated with the Washington consensus, the Uruguay round of GATT, plus the reorganization of the world economy into regional blocks, made free trade a dominating discourse and practice at the time, but this occurred amidst growing international concerns over devastation of natural resources and allegations by developing countries concerning rich countries' imposition of environmental constraints on development. These disputes entangled and acerbated the trade/environment debates.

This debate and the nexus of trade and environmental concerns was a new political issue that did not have a history. The actors engaged were learning and organizing about the implications of new policies that were being generated. The

organization of the UNCED in 1992 provided international NGOs, and governments with previous forums and meetings to elaborate about sustainable development, as well as enticing the potential implications of free trade and the environment (Audley 1997; Mumme 2003). Environmental government officials and environmental NGOs in Mexico and the United States were part of this international context.

Moving from the international context to the domestic conditions existing in Mexico and the United States at the time, the critical stressors that must be considered are the 1988 elections and the configuration of non-governmental environmental actors in each country. After a heated and highly contested presidential election in Mexico, Carlos Salinas tried to gain legitimacy through several political actions. Among them was a discourse to strengthen environmental policy and enforcement (Hogenboom 1978). A new environmental law had been enacted in 1988. An increase in SEDUE's budget, the closure of the largest PEMEX refinery in Mexico City, and other environmental actions were aimed at gaining legitimacy and deflecting international criticisms of Mexico's environmental record. Several assessments support the argument that environmental legislation and enforcement were strengthened during this period, motivated by the need for legitimacy and the international saliency of the environment prior to the UNCED meeting, by new international protocols to protect the environment, and finally by pressures generated by the NAFTA negotiations (Torres B. 2007; Gil 2007).

In the United States, President Bush entered the presidency in 1989, after promoting a political discourse that included strengthening U.S. environmental policy.

Also, the Economic Initiative for the Americas (EIA) represented a clear positioning of the U.S. government in response to the European Union development and the Asian economic block. The U.S. environmental movement began to be interested in the trade/environment debate influenced by the Uruguay round of GATT discussions, the tuna/dolphin controversy between Mexico and the United States, and in general with the new discourse of sustainable development that drew attention to the potential implications of trade for the environment.

The border between Mexico and the United States had experienced in situ the implications of industrialization without regard for the environment since the 1970's, accumulating a series of problems associated with the rapid growth, industrialization and lack of adequate infrastructure. Problems of water, sewage, and wastewater treatment infrastructure, air pollution, and hazardous wastes were a growing concern in different communities along the border (Medina 1996). This situation was fertile soil for the emergence of different environmental groups that populated the border and were active before the talks were announced. The reaction was immediate once the announcement of trade negotiations became public. The activism of those groups found a natural vehicle as the trade environment debate gained relevance, building on alliances with a labor sector that was interested on the border due to the *maquiladora* program's impact on U.S. jobs. Border area environmental groups connected with environmental groups and political actors at the national level in both countries, attempting to place border demands on the national environmental agenda (Barry and Sims 1994; Mumme 1992).

## **The Policy Regimes**

The actors, institutions and ideas that define the binational environmental regime can be considered one policy regime with elements of both countries, but the analysis can also be carried out through the specification of the environmental regimes in Mexico and the United States relevant for binational environmental cooperation. The latter approach allows capturing the subtleties of both countries, as opposed to considering the first approach, which may obscure some of the elements involved in the regimes that were important part of the policy cycle, particularly with the different institutions existing in the countries. In any case, at the end of the analysis the interaction of policy regimes in both countries will have to be contemplated given the binational character of the institutions under consideration. For this particular case it is important to consider the interaction with different policy regimes in both countries, since the nature of the debate involved environmental and trade policy regimes (Audley 1997).

It can be argued that the policy regimes existing at the time of the La Paz Agreement differed considerably from the ones that defined the new institutions of binational environmental cooperation. For the La Paz Agreement the key actors included the Presidents of Mexico and the United States. At the U.S federal government, the U.S. Secretary of State, legal advisors from the State Department, the IBWC Commissioner, the American ambassador in Mexico, the EPA director and the head of the EPA's International affairs office were the core actors involved. At the Mexican federal government the main actors were the Foreign Affairs Ministry and its legal advisors, the CILA commissioner, the Secretary of Urban Development and Ecology, and the

undersecretary for ecology affairs. The role of non-governmental actors, other branches of the governments, or subnational authorities was marginal or inexistent, with the exception of U.S. border actors that were denouncing the environmental problems of the region, mainly state governments, U.S. representatives, and a few local environmental groups. The institutions involved were the presidency, the environmental and foreign affairs departments in both countries, and the IBWC/CILA, the centralist features of the federal regime in Mexico, and the attributes of the U.S. federal Executive Office. The ideas associated with the La Paz policy regimes included the need to reach an amicable binational accord at a time of contentious bilateral agendas, the need to respond to border demands accruing from sanitation and pollution problems in the context of rapid urban and industrial growth, and the need to cooperate on environmental issues along the border, using parallel but coordinated efforts, and in the absence of any explicit commitment of financial resources while incorporating the authority of 1944 Water Treaty and the water resource jurisdiction of IBWC/CILA.

In the case of the NAFTA based side agreement that created the BECC and the NADB, the policy regimes just described were challenged and modified to include new actors, institutions and ideas. The U.S. Congress was a major institution added to the regime and with it several key actors in the subcommittees germane for the NAFTA negotiation process. The fact that it was a trilateral agreement also modified the institutional setting, including Canada, and non-governmental organizations that were working as international coalitions, alliances or simply coordinating actions, constituting a significant departure from the previous process that was mostly closed to non-

governmental actors, at least transnational actors. The non-governmental actors consisted of environmental groups, labor unions, mainly on the U.S. side, business sector representatives associations, and actors from both countries that were part of the negotiation process.

The main actors in the United States were: the President of the United States, the EPA director, and in particular the head of the EPA's Office of International Affairs, the IBWC Commissioner and the Secretary of State. Added to these were the chief NAFTA negotiator, the U.S. Trade Representative (USTR), and the U.S. Secretary of the Treasury. From the Legislative branch, the actors involved were: the Chairman of the Senate's Finance Committee and the Chairman of the House Ways and Means Committee. Also important were the majority leader of the House and several legislators at different stages of the process, either favoring or opposing NAFTA. Of particular importance for the definition of the border institutions during the final process was Congressman Esteban Torres D-CA. In this case a much greater number of non-governmental actors were instrumental to the debate and negotiation process; in some cases actors from academia joined forces with NGOs, congressmen or senators. The NGOs and activists involved came from both sides of the border, mainly representing environmental groups but also human rights, consumer rights, and labor organizations.<sup>25</sup> U.S. presidential candidates also became involved when the process reached the time of the presidential campaign, and even after the election in the case of Ross Perot. On the Mexican side, the actors added were the Presidency's Chief of Staff, the Ministry of Trade and Industrial Development, the NAFTA negotiating team, the Mexican

Ambassador in Washington, the office of the Mexican trade representative in Washington, Mexico's environmental authorities, including the Ministry of Social Development once the environmental functions of SEDUE were transferred to that office, the CILA Commissioner, the Foreign Ministry and the Finance Ministry with members of their staff. As mentioned above, environmental, human rights, labor and agriculture NGOs participated, mainly connecting their activism with border organizations and U.S. national NGOs, trying to impact the political process in the United States. Various Mexican business associations also participated, supporting NAFTA and the environmental provisions incorporated therein in the negotiating process.

Audley (1997) explains in great detail the interaction of the trade regime with the environmental regime leading to the environmental provisions included in NAFTA and the supplemental side agreements. In this case, I consider the interactions in just one policy regime, the binational environmental cooperation regime (BECR). These interactions will be assessed focusing on the environmental cooperation policy outcomes of the NAFTA process, and taking the NAFTA negotiation as one of the background conditions that impacted the previous environmental policy regime.

I claim that the existing environmental policy regime supported some proposals directed to deepening binational collaboration through EPA/SEDUE/CILA/IBWC, proposing the IBEP as a means of directing funding to the border and bolstering the La Paz Agreement cooperation efforts. Nevertheless, the new non-governmental actors, plus the conjuncture of the NAFTA negotiation established a new, or much modified,

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<sup>25</sup> A comprehensive description of the organizations can be found on Hogenboom 1998.



environmental policy regime for binational cooperation with the creation of BECC and NADB, plus some minor discursive environmental modifications in the NAFTA document, and the approval of the NAAEC and the CEC as side agreements.

The ideas that were at play as framing elements of both the existing and emerging policy regimes were the following: 1) the free market was good for the environment but free trade could also damage the environment; 2) the environmental disaster along the border was connected to economic liberalization, but also that economic liberalization would enhance the economies thereby supporting the implementation of environmental protection in the North American region; 3) that free trade would affect the sovereignty of Mexico and Canada, and that no supranational authorities should be generated; 4) that free trade would only benefit a minority, and as a corollary the majority of poor people and the natural environment would suffer the cost; 5) that the free trading countries of North America should be equal partners regardless of the economic differences; and 6) that the border needed resources to remedy the existing situation. The conflict among these positions is evident, imparting a sense of the heated debate and the contending positions held during the negotiating process and highlighting the novelty of the environmental/trade debate considering that little evidence could be marshaled to support the conflicting arguments at the time. The sustainable development discourse was utilized indistinctively by proponents and opponents of the NAFTA, again proving it to be a new paradigmatic discourse for the environment.

## **Process and the Policy Cycle<sup>26</sup>**

The interactions of the policy regime elements, actors, institutions, and ideas through the different stages of the policy cycle are presented here in chronological order. As has been argued of other policy initiatives by several authors (Kraft 2004, Hoberg 2001), in this case the policy cycle does not behave as a full sequence cycle, it advances through some of the stages, and then devolves to be reinitiated at an earlier stage until the institutions were finally established in 1994. The negotiation process and the definition of the BECC and NADB goes from problem recognition or agenda setting, to solution proposals, or policy formulation, then into the choice of solution, or decision making. At this point, it returns to policy formulation, moves back to decision making again, and finally reaches the stage of putting the solution into effect, or policy implementation. The process is not homogenous since decisions were made in Mexico regarding the agenda setting process, while United States institutions determined the times for agenda setting, policy formulation, and also provided for reformulation of the problems. The implementation and evaluation stages of the cycle will be addressed in the following chapter including feedback processes for subsequent institutional adjustments (Hessing et al. 2005).

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<sup>26</sup> The chronology of events is constructed using different sources that document the NAFTA negotiations with different emphasis and perspectives. Hogenboom (1998) explains transnational environmental politics with an emphasis on the Mexican perspective. Audley (1997) documents the American perspective and the role of environmental organizations to alter the trade policy regime with an environmental organizations insider's perspective. Salinas (2000) provides a privileged Mexican perspective since he followed the process weekly with first hand information and as a prominent actor; his emphasis is on the trade negotiations. Mayer (1998) provides an insider perspective from the U.S. legislative body, analyzing domestic U.S. politics and its interaction with international and symbolic political frameworks. Grayson (1995) analyzes the international and regional impact of the trade negotiations, providing detailed information on the U.S. domestic politics and the U.S.-Mexico relationship. Finally, a comprehensive

Three different policy processes interacted during a period of at least four years. These involved the economic changes in the world and in Mexico that led the Mexican government to negotiate a trade agreement with the United States and Canada, the U.S.-Mexico border environmental crisis that demanded government responses, and the inauguration and saliency of the trade/environment debate. All three processes joined and impacted each other as part of the NAFTA negotiation process. The processes were inscribed within the domestic politics of the countries plus the transnational interactions that grew at the time involving several NGOs, the U.S. Congress, and the federal governments of Mexico, United States and Canada. The choice to describe three processes will help to disentangle an otherwise very complex process that led to the creation of BECC and NADB.

From 1990 until 1993 these processes advanced within the larger NAFTA negotiation, generating policy byproducts. One unintended outcome represents a change in binational environmental policy, modifying the arrangement that had evolved from the 1944 Water Treaty through the La Paz Agreement by means of the side agreement that created BECC and NADB. Another trilateral agreement, the North American Agreement for Environmental Cooperation (NAAEC), was reached between Mexico, Canada, and the United States for environmental cooperation at the same time, but it is not analyzed here since the focus of the research is on the binational cooperation of Mexico and the United States, despite NAAEC's binational implications for environmental governance in the border region (Mumme 1992).

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compilation of official and non-governmental documents related to the process can be found in Magraw (1995).

## **Agenda Setting**

The decision to negotiate a free trade agreement with the United States was taken by President Salinas at the World Economic Forum meeting of January 1990 in Davos Switzerland, after meeting with several European leaders. The decision, which implied a significant Mexican foreign policy and economic policy change, was prompted by the reconfiguration of the economic scenario in Europe. The main objective would be to attract foreign investment to Mexico, strengthen the economic changes in Mexico and include Mexico as a global player within the new structure of economic regional blocks (Salinas 2000; Hogenboom 1998).

In the meantime, adverse environmental impacts along the U.S.-Mexico border were mounting due to the rapid growth, and industrialization associated with the *Maquiladora* program. These environmental problems were aggravated by the infrastructure deficit, the lack of environmental enforcement, particularly on the Mexican side, and in general by a political neglect of the region by the Mexican and United States federal governments (Barry and Sims 1994). State governments had begun to address some of the infrastructure problems, as was the case of water and wastewater infrastructure for *colonias* in Texas (Texas 2006; EPA 2003). The existing environmental cooperation arrangements were challenged by local activists. The La Paz Agreement mechanism was criticized by its lack of funding and its limited approach to border problems, addressing issues piecemeal through its annexes. The IBWC was challenged

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and criticized for its ad hoc approach, slow process, and lack of inclusiveness (Mumme 1992; Land 1993).

In the United States, environmental groups began to take notice of the new trade/environment debate. The Tuna/dolphin case sparked interest in the issue, since it involved trade/environment issues between Mexico and United States at the time of the Uruguay round and the NAFTA negotiation. Finally the UNCED preparations gave these groups an opportunity to get involved on the trade/environment debate. The topic was still very recent and it had not yet caught the attention of the greater environmental movement (Mayer 1998, Torres 1999a).

Along the border, the U.S.-Mexico binational cooperation arrangement was being challenged by NGOs and academics in light of growing problems and increasingly by the unexpected coalition that began to form between labor and environmental interests (Barry and Sims 1994). The American labor movement was trying to justify a campaign against the *maquiladoras* based on environmental degradation along the border since it had learned that this theme would draw more attention to their claim of *maquila* driven job losses (Mayer 1998). The governments' response to mounting problems was given through the La Paz agreement's annex mechanism. The governments tried to address hazardous waste management and air pollution problems associated through new annexes. The water sanitation problems were tackled both through the IBWC and the La Paz annexes procedure. In early 1990's, as criticism of the old border environmental regime mounted, the advent of serious trade negotiations represented a rare concurrence of interests between Mexico and United States which required decisive attention from

both federal governments. This unlikely conjuncture created the opportunity for the border activists to raise their problem to the national level on both sides of the borderline to provoke a policy change that would address the border environmental situation through binational cooperation.

The U.S. Congress' institutional procedure for NAFTA approval, including the details of the fast track component, provided an opportunity for the participation of non-governmental and governmental national and international actors' as part of the process. An intervening factor that helped to bring the border environmental situation to the national fore, and eventually to a binational side agreement creating BECC and NADB, was the trade/environment debate. Some US national environmental organizations identified the NAFTA negotiation as an opportunity to join the debate and protect the environment from new trade policies, focusing some of their demands on the border situation. Their emphasis was placed on inserting environmental provisions in the NAFTA document as a precedent for subsequent free trade agreements, avoiding the creation of pollution havens, and gaining warranties protecting U.S. domestic environmental legislation despite trade agreements. They also sought to secure the side agreement on North American environmental protection to complement and implement the NAFTA provisions, and the creation of BECC and NADB in the final negotiation.

The problem was defined and redefined during 1990 and 1991 until the conclusion of the fast track process. Later, the NGOs kept pressing along with some U.S. legislators during the policy formulation and decision making process of 1991-1993,

leading to a reformulation of the problem, consideration of new policy options, and a final outcome that included BECC and NADB.

While the main negotiation was about trade, a subset of that negotiation entailed environmental concessions to the leading pro-NAFTA environmental groups and political coverage on environmental issues for some U.S. legislators who supported the process at different stages. One such topic within the environment provisions was related to the border problem. The BECC and NADB initiatives responded to this particular topic, but their agreement came only a month before the final ratification vote, as a means of securing critical votes for the approval. NAFTA and the side agreements were approved, (Salinas 2000) and the final agreement were signed by the United States and Mexico federal governments just a day prior to the U.S. Congress vote over NAFTA (BECC/NADB Agreement 1993).

From the governments' perspective, the issue was to strengthen the economy through a Free Trade Agreement (FTA). For border activists, the new FTA would not only worsen the environmental situation along the border, but would generate similar problems in the rest of Mexico. Border activists held two views: some were willing to support the FTA given that its environmental provisions were likely to strengthen environmental enforcement; others, mainly linked to U.S. labor interests opposed to the FTA, believed it would aggravate domestic job losses in addition to worsening the environmental situation. The national environmental groups also were divided, some supported the FTA as a way to enhance the border environment and strengthen regulatory

enforcement, while others thought the FTA would only deepen the existing environmental problems. These groups used the border situation as a case to argue against, or in favor of their particular option, but their environmental proposals included not just the border but the effects of trade in the three countries that were negotiating the FTA, including respect for existing legislation, and attention to the potential effects derived from the lax enforcement of environmental legislation in Mexico. These groups were also interested in creating precedents to be used in other free trade agreements. The majority of democrats in the House and the Senate were opposed to the FTA on protectionist grounds, since their constituencies were aligned with the labor sector, and the environment represented another way to justify opposition without using protectionism as a discourse, saving face with the business sector that was in favor of the FTA (Audley 1997).

The first adjustment in problem definition by the government came after the negotiating teams discovered that they might face opposition from labor and environmental activists and their allies in the U.S. Congress. The problem was then redefined considering that FTA would benefit the environment through development. The events in 1990 can be considered part of the agenda setting process. In February, the Mexican Government decided to begin talks with the United States on Free Trade. A month later, in March Presidents Bush and Salinas discussed the idea and agreed to make consultations and preparations prior to publicly announce the process. Later in that month the Wall Street Journal published an article on secret talks about an FTA between Mexico and the United States. This media leakage prompted a reaction in some opposition



sectors, mainly labor, human rights, and environmental activists, particularly along the U.S.-Mexico border, and also included business organizations, and members of the U.S. and Mexican Congresses. The Canadian government also reacted since only a year before they had completed negotiations and entered into a FTA with the United States. Clearly public opinion and mass media played a decisive role in activating the agenda setting process.

The Mexican and U.S. governments reacted by approaching their legislatures, business and labor sectors to assess and minimize potential opposition. Non-governmental groups on the border seized the opportunity to attract national attention to an ongoing regional situation that would normally scarcely make national news. The business community reactivated and organized binational linkages to carry an agenda proposed by their sector, unsuccessful for more than a decade at this point, mainly through the Business Round Table and the leading business national organizations in Mexico.<sup>27</sup> In May, the AFL-CIO president Lane Kirkland and treasurer John Donahue expressed opposition to the FTA to the U.S. government via the U.S. chief negotiator Julius Katz. In the United States the legislative process is slow and fragmented and often cumbersome, with checks and balances among the House and the Senate, with divided partisan controls and subcommittees. These institutional features would prove to be momentous in the whole negotiation process, first with the fast track approval and later with the ratification vote. In Mexico, the legislative process was streamlined by President Salinas and the PRI official party president Donaldo Colosio. The legislature convened

forums on the potential NAFTA negotiations and in May, about a month after the consultations began, the Mexican Senate through presiding Senator Humberto Lugo Gil, recommended that the Mexican President proceed with negotiations. In June 1990, the U.S. based Friends of the Earth (FoE) voiced its opposition to the process through a public letter, while another environmental group, the Earth Island Institute, filed a case against Mexico for dolphin destructive tuna fishing methods, leading to a U.S. embargo on Mexican tuna. At the time this appeared to be a minor disagreement on a business as usual protectionism measure by the U.S., with the U.S. government applying extraterritorial domestic legislation. A year later, the case turned to be a major source of controversy on the trade/environment debate.

In June 12<sup>th</sup> 1990, Presidents Bush and Salinas announced in Washington that they would begin talks aimed at a Free Trade Agreement (FTA) (Audley 1997; Salinas 2000; Hogenboom 1998; Mayer 1998). By August of the same year, Dan Esty a staffer at EPA, takes note of the trade/environment debate and approaches director Bill Reilly to address the issue; this, in turn, led to the creation of a working group of personnel at the USTR and EPA to track the issue by the end of the year (Mayer 1998). In September 1990, President Bush announced that his government had agreed to enter negotiations with Mexico and declared his intention to ask Congress for an extension of the fast track process it had granted to negotiate the Uruguay round of GATT and NAFTA.<sup>28</sup> By

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<sup>27</sup> A comprehensive list of business sector actors and organizations in Mexico is provided by Salinas (2000) and Hogenboom (1998), including the role of Coordinadora de Organismos Empresariales de Comercio Exterior (COECE) and Consejo Coordinador Empresarial (CCE).

<sup>28</sup> The fast track process is designed to allow the U.S. government to negotiate trade agreements without the intervention of the U.S. Congress, but leaving final approval or rejection of any agreement to the U.S. Legislative power in the form of an up or down ratification vote. The administration had a fast track

October of the same year, the Mexican government decided to appeal the embargo of the Tuna/dolphin case through GATT; this move alerted the environmental community to the explicit linkage of trade and environment issues between Mexico and United States, prefiguring potential scenarios of a FTA affecting environmental legislation. Mexico also decided to establish a pro-FTA office at the Mexican embassy in Washington to launch a public relations campaign to counterbalance the negative image of Mexico that was portrayed by the NAFTA opposition, placing Herman Von Bertrab in charge of that office. This decision contributed to the enlargement of the policy regime with the inclusion of international actors, at least partially linking the Mexican and American political processes.

At the same time a convention of non-governmental groups and academics from Canada and Mexico met in Mexico City to discuss the implications of trade for the environment, providing the opportunity for networking and voicing environmental and social concerns associated with the potential FTA. Less than two months after president Bush announced his intention to ask the U.S. Congress for fast track approval, prominent members of the House and the Senate expressed their opposition to the fast track process with a letter in November of 1990; the following month, the same legislators would ask for the inclusion of a social charter as part of the trade agreement negotiations, adding to the agenda setting process. The National Wildlife Federation (NWF) through Stewart Hudson also circulated a letter in November expressing environmental concerns associated with free trade. The trade/environment linkage regarding the Uruguay round

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permission to negotiate the Uruguay Round of GATT expiring in early 1991, but had the opportunity to ask for a 2 year extension (Grayson 1995).

and the FTA created an opportunity to highlight the proven risks associated with the *maquiladora* industry: environment degradation, pollution havens and lack of environmental enforcement. The letter, however, had little success in catching the attention of other environmental groups. Also in November, Hudson together with Pharis Harvey from The International Labor Rights Education and Research Fund (ILRERF), and Cam Duncan from Greenpeace, planned a January 15<sup>th</sup> 1991 forum at the U.S. Congress to discuss all kind of concerns related to FTA; this event signaled the heated debate over the fast track process and later the NAFTA negotiation process, and also provided a first general forum for the various elements that would be used in the coming political debate: human rights, democracy, sovereignty, labor, free trade, and environmental issues.

On November 26<sup>th</sup> 1990, Presidents Salinas and Bush met again, this time in Monterrey, Mexico. During that meeting, they agreed to exclude oil resources and immigration reforms from the negotiations recognizing that both topics would complicate the issue domestically. At the same time both presidents announced an Integrated Border Environmental Plan (IBEP) to address the growing problems of the border region, but they explicitly separated the border's environmental problems from the FTA negotiation process. These actions in response to NAFTA's critics constituted the first signs of adjustment of the original trade only agenda assumed by the governments as they sought to refurbish their agenda in response to environmental or labor considerations.

The end of the year was immersed in Gulf war preparations after Iraq's invasion of Kuwait, given its potential effects on oil prices and the economy. Canada was reconsidering their position in joining the trade negotiations afraid that their earlier trade agreement would be threatened by the new Mexico-U.S. negotiation. The fast track process announced by George Bush galvanized opposition trying to defeat the approval. The labor movement explicitly opposed NAFTA and actively promoted the vote against fast track. Senators and representatives opposing an FTA with Mexico also organized to prevent the fast track authorization. Timid preparations from the environmental movement engaging the new field of trade and the environment began. Along the border with previous joint efforts between labor organizations and local environmental groups on *maquiladoras* and environmental degradation, the actors actively followed the process but lacked the national exposure and lobbying capacity required. Initial transnational contacts were established mainly with members of the U.S. Congress opposing free trade, and some Mexican national organizations opposed to the agreement,<sup>29</sup> most of these organized through the Red Mexicana de Accion Frente al Libre Comercio (RMALC). The U.S. government prepared for the fast track process with few serious concerns, the EPA and USTR working group began examining trade/environment issues, and the Mexican government initiated a public relations campaign in United States and in Mexico.

The air pollution problems of Mexico City represented a political opportunity for the new government of Carlos Salinas de Gortari (CSG) trying to acquire legitimacy to demonstrate environmental commitment. A cooperation agreement to address the air

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<sup>29</sup> For details on the composition of Mexican opposition see Hogenboom (1998) and Salinas (2000).

pollution problem in the Metropolitan area of Mexico City was launched between Mexico and the United States in January 25 of 1991,<sup>30</sup> three days later a Cooperation agreement on environmental issues was signed with Canada (Gil 2007). Several measures aimed to strengthen the environmental sector were also taken by CSG. These decisions were not only attributable to the NAFTA negotiations but also to the need for domestic legitimating, and also shaped by an international context that made protecting the environment a politically correct policy orientation (Hogenboom 1998, Torres B.2007, Oñate 2008). Therefore, even the decision to enhance environmental policy in Mexico can be considered a response from the Mexican government and part of the agenda setting debate, a debate in which the NAFTA opposition had denounced the lack of environmental legislation and policy enforcement in Mexico.

Thus early 1991 saw an acceleration of the debate mainly attributable to the fast track authorization deadline at the U.S. Congress for negotiating the FTA. Officially, the Mexican office sought to promote the FTA after January 1, 1991 through public relations, information and image building activities, as well as lobbying by Mexican government officials and professional lobbyists (Salinas 2000). The decision of the Mexican government to push the FTA as well as its growing understanding of U.S. institutions contributed to the creation of this office. This decision would make the office a key actor during the whole process. The idea to actively participate in the U.S. political process is presented by Salinas as an invitation from the U.S. government, nevertheless the

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<sup>30</sup> The Agreement was signed at Washington October 3, 1989, entering into effect in August 22, 1990 (TIAS #11688).

decisions to set up the office were made almost a year before during August.<sup>31</sup> (Salinas 2000)

The Persian Gulf War began January 16; the eventual victory of the allied forces gave President Bush a political strength that later he was able to deploy in the fast track approval process. The day before the war began, the forum addressing FTA issues was held. Environmental, human rights, labor, and consumer organizations and activists, plus some academics participated in this meeting at Capitol Hill. The considerable turnout surprised the organizers, and the discussions shaped the opposition to NAFTA, with varying considerations. The reactions to the meeting led to the formation of Mobilization on Development, Trade, Labor, and the Environment (MODTLE) on February 12th, on the opposition front, and a meeting with the main environmental organizations likely to support FT with USTR and EPA officials on February 19<sup>th</sup> as a reaction from the Bush administration.

The legislators supporting FTA envisioned the need to address the growing opposition to the fast track process mainly on environmental and labor grounds. On March 7th, the Chairmen of the Senate Finance Committee, Lloyd Bentsen, and Chairmen of the House Ways and Means Committee, Dan Rostenkowski, wrote a letter to President Bush requesting that environmental and labor concerns be addressed before authorization of the fast track process. These committees were the most important regarding the fast track authorization procedure in both chambers. Two days later

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<sup>31</sup> Mexican academics Roberto Sanchez (1989, 1990) and Victor Urquidi (Salinas 2000) had expressed the convenience of the Mexican government to participate actively in U.S. domestic politics as a way to

president Bush met with the six environmental organizations -previously approached by EPA and USTR-, requesting their support for the fast track and FTA negotiations. During April, the business community organized and lobbied in favor of fast track, at the same time the NGOs opposition leadership changed and anticipated the division among environmentalists that will be made public after the fast track process. On May 1<sup>st</sup>, President Bush reframed the issue, declaring that in order to address legislators' concerns, trade and environmental issues would be addressed in talks parallel to the FTA negotiations. The new approach explicitly recognized the opposition, yet sought to keep the environmental issues separate from trade negotiations. The letter also offered to address environmental problems along the border, and announced the preparation of the USTR report on environmental issues and the IBEP.

The fast track process was subsequently approved May 22 and 23 in both U.S. legislative bodies, gaining some guarded endorsement by NAFTA opposition and House majority leader Gephardt, as well as some environmental groups that were now willing to work with the administration to incorporate environmental provisions in the NAFTA (Salinas 2000; Audley 1997; Hogenboom 1998; Mayer 1998). The environmental opposition divides between those that see possible environmental benefits through free trade (FT) and those that see more detrimental consequences. This division would provide the environmental community with an unexpected capacity to pressure and negotiate at the same time, with different groups playing the roles of opposition and collaboration (Audley 1997). Despite the efforts of all the environmental organizations to define the environment problem as interrelated with trade, and thus necessary to include

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enhance environmental binational cooperation.



it as part of the negotiations, the administration managed to define it as separate issues with parallel efforts to address the ongoing problems, particularly along the border. The fact that some of the groups were working with the government in policy formulation after the administration decided to give them access redefined the traditional trade policy regime, incorporating new actors. The pressure and opposition sustained by the environmental groups at different stages of the process sustained some of the original demands of the agenda setting period, to be reconsidered throughout the process, despite of decisions made by the administration. This reality allowed for the border problems to be continuously considered throughout the different stages of the policy process, until the last minute agreement that created BECC and NADB.

### **Policy Formulation**

The Commitment letter to the U.S. Congress by President Bush of May 1<sup>st</sup> 'Response of the Administration to Issues Raised in Connection with the Negotiation of the NAFTA' can be considered a turning point that inaugurated a policy formulation period. The letter also prompted the division of environmental groups into 'critical' and 'moderate' camps. The commitments included the interagency review on environmental issues by the US Trade Representative (USTR) and the elaboration in coordination with the Mexican government of the Integrated Border Environmental Plan (IBEP). The letter proposed side agreements with Mexico, *parallel but independent* to the NAFTA process. Another commitment was the inclusion of environmental advocates in the process (Hogenboom 1998). The National Audubon Society (NAS), Natural Resources Defense Council (NRDC), National Wildlife Federation (NWF), World Wildlife Fund (WWF),

and Natural Conservancy (NC) were invited to participate as members of the Advisory Committee on Trade Policy and Negotiation (ACTPN); even though the representation was minimal, this decision at least formally opened the forum to environmental concerns for the first time in trade negotiations (Audley 1997). At the same time they kept working with staff members of the pro-NAFTA legislators and officials at EPA and USTR, entertaining some ideas that would later be considered in the definition of policies.

The agenda setting process had defined the limits of the policy formulation alternatives. Since the three governments agreed to address the trade and the environment issues as separate, the impact of the pro-environmental coalition was minimal with respect to the NAFTA text. The USTR environmental report, prepared to address the potential impacts of FT in Mexico, mainly supported the idea that FT would benefit the environment, and that it would also help to alleviate the growth pressure along the border by increasing investment and development through the rest of Mexico. The IBEP that was prepared by EPA, SEDESOL and CILA/IBWC to specifically address the border problems was also clear about separating the NAFTA negotiation from the environmental actions that needed to be taken to solve the border problems (USTR 1992, EPA/SEDESOL 1992). In a way the NAFTA negotiation process, the USTR report, and the IBEP tried to address the concerns of the three processes that were happening at the same time and that were affecting each other: the free trade negotiation, the trade/environment debate, and the border problems.

The negotiations officially were launched at Toronto in June 12 1991. The governments' expectations were to finish by the end of the year to avoid the electoral year in the United States; yet what actually happened was that it took the negotiators the remainder of 1991 to get a single text articulating the different positions of the three countries and the identification of the things that they needed to negotiate in order to reach an agreement. On a regular policy cycle, the policy formulation follows the agenda setting process and ends when the policy is finally defined. After the policy is defined, the implementation phase follows, succeeded by policy evaluation that may redefine or adjust the problem and policy, and eventually restart the cycle. In this particular case, the policy formulation process extended through the negotiations to reach the electoral competition in 1992. Therefore, despite concluding policy formulation and reaching a decision on the NAFTA process, two important institutional constraints: elections, and U.S. Congress ratification, forced the process to return to agenda setting, policy formulation, and decision making yet again.

Several factors affected the negotiation strategy defined by the governments. The first was the GATT decision on the tuna/dolphin case, a decision in favor of Mexico. The environmental community had a first hand example of how Mexico, using a trade ruling, had successfully overcome U.S. environmental legislation. Mexico reacted to minimize the opposition to NAFTA by exercising self restraint on tuna fishing despite the GATT ruling. Also, on August 1st 1991, the first draft of the IBEP was presented for comments (Mayer 1998). The presentation of the document and the public meetings held afterwards to receive commentaries were part of the policy formulation process. The USTR also held

public hearings during August and September. Several criticisms and proposals came out during that period, including the first ideas to improve the existing binational institutions for environmental cooperation, IBWC/CILA and the La Paz Agreement with its annexes. The ideas that would later define the BECC and NADB were presented by academics during this time. At the same time that the IBEP was presented, Friends of the Earth (FoE), the Sierra Club (SC) and Public Citizen (PC) filed suit against USTR alleging that NAFTA and the Uruguay Round needed to have environmental impact assessments according to the National Environmental Policy Act (NEPA).<sup>32</sup>

Finally, the day before the IBEP presentation, the official Partido Revolucionario Institucional (PRI) recovered majority control of the Mexican Congress providing President Salinas with political legitimacy, and capacity to face domestic opposition to NAFTA mainly coming from the Partido de la Revolucion Democratica (PRD) and its leader Cuauhtémoc Cárdenas. This opposition was also linked to the transnational actors opposing NAFTA from different perspectives within the three countries (Hogenboom 1998, Salinas 2000). The political strength gained by the PRI victory allowed the Mexican team to continue to appease domestic opposition and concentrate on the public relations and lobbying campaign on the U.S. side. It also provided CSG with a justification of his modernization strategy for the country, which later would be used to frame the debate in favor of NAFTA in the United States, 'a vote for NAFTA will strengthen Mexico's modernization, a vote against will weaken the prospects of enduring liberalization and democracy'. In September of 1991, the World Bank (WB) initiated a study to reform the Sub-secretariat of Ecology under SEDUE, the environmental

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<sup>32</sup> The resolution would come two years later at a critical moment on the side agreements negotiations.

structure of the Mexican government, also as part of the campaign responding to criticism over Mexican regulatory commitment and environmental law enforcement.

October represents another high point in the policy formulation process. On October 15<sup>th</sup> during the Zacatecas meeting of the negotiating team, an alternate meeting of NGOs, academics and activists met to discuss, labor, environmental, human rights and democracy concerns associated with the negotiation process. At that meeting the negotiators agreed to incorporate labor and environmental provisions within the NAFTA text. Also during October the USTR offered the environmental report draft for comments and the Mexican government announced important environmental investments for the border through SEDUE. Having both the USTR report and IBEP drafts open for comments provided space for debate and an opportunity to sharpen the focus of demands to address border problems with a different institutional arrangement. Free trade's advantages for the environment were also challenged. Both documents alienated even the moderate environmental groups that were negotiating with government, resulting in their push for a stronger environmental commitment from the governments and negotiators (Mayer 1998).

By the end of 1991, President Salinas launched his modernizing reforms dealing with rural property, state-church relations, and education, backed by strong political support. The American president's popularity waned after the Gulf War effect subsided and the economic recession worsened, the elections were approaching and the prospect of protectionism in the Congress threatened the conclusion of the NAFTA negotiation.

Finally, at the end of the year, the negotiators agreed on a single bracketed text that signaled the tremendous amount of disagreement. It was clear then that the document would not be ready before the election.

During 1992, the positions of environmentalists and government negotiators were deeply affected by the onset of the electoral year. On the one hand, the proponents of stronger environmental language and provisions in the FTA, and institutions to protect the environment were vocal throughout the negotiation process. The government reacted by addressing some environmental concerns but held to negotiation's commitment to draft *separate and parallel* agreements for trade and environment.

The IBEP and USTR documents provided room for discussion about the things that were not included in the negotiation constituting part of the policy formation process. At the very beginning of this phase the first proposal for the NADB was presented by a group of academics from California leaded by Raul Hinojosa, back in May 1991 during a Forum organized by the Dallas Federal Reserve Bank (Fishlow et al. 1991, Hinojosa-Ojeda 1994). Also by the end of 1991, a close description of what would become the BECC was presented as part of a symposium organized by the Center for U.S.-Mexico Studies at the University of California at San Diego (UCSD) (Ganster and Valenciano 1991).

The decision of the governments was evident once they presented the final versions of the IBEP and the USTR environmental reports in February 1992. Both fell

short from the environmentalists' perspective, but were consistent with the policy definition of the governments; namely, that NAFTA would benefit the environment and that without it there would be no serious chance to improve the environment, and that the border clean up would be accomplished in stages with both governments addressing their particular infrastructure problems, relying on the existing institutional framework for binational cooperation (EPA/SEDESOL 1992, USTR 1992). The language of NAFTA's environmental provisions did not differ significantly from the GATT wording where trade was accorded a priority over environmental considerations. With the negotiations barely beginning in February 1992, -after the bracketed text showed the areas where they needed to negotiate and agree upon if NAFTA was ever to be realized- Ross Perot announced his intentions to contend for the U.S. Presidency. The announcement was made with a clear position against NAFTA and a derogatory campaign against the Mexican government, economy and environment.

In March of 1992, a draft of the negotiating text leaked via the press, strengthening environmental opposition due to its dearth of environmental provisions. The environmental sector organized and pressed U.S. legislators and the Bush administration for stronger environmental considerations during April and May of 1992. On June 3<sup>rd</sup> of that year, Senator Max Baucus sent letters to the EPA and USTR urging the negotiators to insert environmental provisions in the NAFTA text. In Mexico by April 1992, the World Bank finished its study for environmental institutional reform in Mexico. The same month the Guadalajara sewer system blew out because an oil leakage created explosive conditions generating a catastrophe in the second largest city in Mexico.

Within a week of these events, new environmental institutional reforms to create SEDESOL, INE, and PROFEPA were sent to the Mexican Congress (Salinas 2000). This decision was not only directed at the political negotiation process with the United States and Canada but meant to bolster Mexican policy support as well. The Mexican president named Luis Donaldo Colosio as the head of SEDESOL. Colosio was the former PRI party president, and would later be its presidential candidate. The structure proposed by the World Bank study for institutional reform was not followed. Instead social development concerns were mixed with environmental issues and the Procuraduria Federal para la Proteccion del Ambiente (PROFEPA) was created—this latter initiative was explicitly meant to address the criticisms directed at Mexican environmental law enforcement (Herrera 2007). Colosio, as the official party president, had been instrumental during the NAFTA negotiation in aligning political actors in Mexico in support of the process. Once he was named the head of SEDESOL, he continued his participation in the economic cabinet meetings with President Salinas to follow up the process, with a salient role addressing environmental concerns through the remainder of the negotiations (Salinas 2000).

The impact of Perot's candidacy was felt when the Mexican stock market dropped after he announced that if elected,<sup>33</sup> he would not sign NAFTA. A month later on July 15<sup>th</sup>, Clinton was nominated by the Democratic convention and was leading the polls. Perot's precipitous slump in electorate preferences caused him to withdraw from the race until two months later when he returned to the contest, just one month before the election. His position was critical in defining the public debate. Perot's steadfast opposition to



NAFTA polarized President Bush's position of supporting NAFTA as a tool to strengthen the U.S. economy. The president's urgency to use NAFTA as a political tool against the democrats pushed the negotiating team on the U.S. side to conclude the agreement in August 12, 1992, only 5 days before the republican national convention where USTR chief Carla Hills would be a speaker. Finally, besides the need to maintain a balance between different and conflicting supporters, this polarization led Clinton to choose a middle path in October. Clinton's position would redefine the problem again and return the process to another period of agenda setting after he won the November 3<sup>rd</sup>, election (Salinas 2000, Audley 1997, Grayson 1995, Mayer 1998). In sum, the U.S. elections and preparations for presidential elections in Mexico constitute important external factors that influenced the policy cycle.

After a long and strenuous session, the negotiators finalized the NAFTA text. Labor and environmental opposition grew in reaction to the final version presented a month later. On September 16<sup>th</sup>, Bush made a last ditch effort to gain environmental support for NAFTA and agreed to create a North American Commission for the Environment (NACE) as proposed by the moderate environmental groups. At the same time that the labor opposition tried to persuade Clinton to oppose NAFTA, the environmental opposition also tried to oppose NAFTA, but did so hampered by the fact that a significant number of groups preferred to strengthen its environmental provisions rather than oppose it outright. The environmental organizations were critical at this point in providing elements to be considered in improving the agreement. Finally, on October 4<sup>th</sup>, candidate Clinton reopened the debate by agreeing to support NAFTA on the

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<sup>33</sup> At the time Perot was leading the presidential election polls.

condition that side agreements would be completed for labor and environment. Three days later, President Bush, in a deliberate campaign event, initialized the NAFTA treaty together with Canada's First Ministry Mulroney and President Salinas from Mexico at San Antonio, Texas.

### **Back to Agenda Setting and Policy Formulation**

By winning the election, President-elect Clinton reopened the debate on labor and environmental issues, agreeing not to renegotiate the NAFTA, but requiring new side agreements on labor and environment as a precondition to sending the document for Congress ratification. This decision reopened the negotiations, if only for labor and environmental issues, making them *integral* to the FTA package.

On December 17, Clinton designated Mickey Kantor, his former campaign manager, as the new USTR head. The same day, Bush signed the document in agreement with Clinton's transition staff, allowing enough time to submit the agreement to the U.S. Congress for ratification. Signing the document at that time would give the incoming Clinton administration almost a year to present the NAFTA for ratification. Even with the decision to keep the negotiations on free trade as agreed on August 12<sup>th</sup>, 1992, the new side agreements represented a reframing of the entire issue, cancelling the decisions assumed by the three governments, and the U.S. government in particular, regarding the *separation* of trade and environmental issues.

In January 8<sup>th</sup> 1993, Carlos Salinas and Bill Clinton met in Austin. They decided to go ahead with the side negotiations without renegotiating the NAFTA. By December 12<sup>th</sup>, 1992, Colosio, the head of SEDESOL, had presented the strategy that Mexico would follow for the environmental negotiations to the Mexican president and cabinet. During January, Colosio visited Carol Browner, the new EPA director, as well as various U.S. environmental organizations to prepare for the side agreements (Salinas 2000).

At the beginning of the Clinton administration, several problems slowed the negotiation process, among others the fact that the negotiator was not approved until February 1993, and the rest of the team could not be assembled until then, including Rufus Yerxa as the new head negotiator, replacing Julius Katz. This impasse provided precious time for the opponents of NAFTA to mobilize against the accord, mainly the unions, some radical environmental groups, Ross Perot, a few radicals on the right, and particularly democrats in the House and the Senate that considered NAFTA a Bush project that would hurt their constituencies. On January 29 1993, Senator Max Baucus set the bar –and helped define the agenda- for the side negotiators on a speech asking for trade sanctions and a border fee to pay for NACE—he was the new Chairman of the Committee on Environmental and Public Works and Chairman of the Trade subcommittee of the Finance Committee. Baucus was considered instrumental for gaining environmental support by the new negotiator Mickey Kantor (Mayer 1998).

February 1993 was a key month for the agenda setting process. By this time there were three different positions outlining demands for the side negotiations coming from

non-governmental organizations. These extended from a moderate approach presented in a report issued by NWF, to a list of demands presented by an alliance of border and national moderate environmental groups comprised of NRDC, EDF, BEP, TCPS, and ATI, to a more radical position of a report issued by the Sierra Club that asked for renegotiation of NAFTA (Mayer 1998; Magraw 1995). Even though officially the negotiations for the side agreements began on February 17<sup>th</sup>, at that time it was only an introductory meeting for the new U.S. team, since they had not decided what to make out of the side agreements, with the Mexican and Canadian teams having a clear position. At the same time the Ross Perot team gave Gephardt the material that implicated the Mexican government in trying to move U.S. plants south to Mexico. This helped to define NAFTA as an agreement that would threaten American jobs (Mayer 1998).

The original processes in play during the fast track and NAFTA negotiation periods were once again interacting through this new period of agenda setting and policy formulation: Trade negotiations, trade/environment debate, and border environmental crisis. On the trade negotiation, NAFTA opponents saw the opportunity to block NAFTA or at least force a renegotiation. Perot and other politicians, U.S. unions, and democrats linked to union constituencies were working on this political logic. The participants in the trade/environment debate, mostly national environmental organizations, saw an opportunity to set new precedents for further trade negotiations, and the trade community and business sectors were faced with new actors coming to traditionally closed trade negotiations. Finally, the border environmental groups and activists recognized the opportunity to keep pushing for specific border benefits, given the interests of national

actors on the other policy regimes and processes that were using them as an excuse to further their political goals.

Once the negotiations were reinitiated the agenda setting process mixed with the policy formulation for the following reasons. The opposition to NAFTA was an agenda setting issue, a battle between the contending perspectives of losing jobs or benefiting the economy. At the same time the side negotiations opened a period of policy formulation nested within the NAFTA debate with new actors involved. The policy formulation phase overlapped with the new decision making period which included the conclusion of the side agreements in August, plus the border institutions and final legislative bill drafting at the end of October, these last two needed for gaining a favorable ratification vote in November.

The idea of the trinational NACE was put forward by WWF, NWF, EDF, NRDC, back in September 1992 and agreed to by the USTR, against the opposition of the State Department, as a last effort to gain environmental support. Mexico and Canada accepted the idea with several limitations, and with an understanding that it was a necessity of domestic U.S. politics rather than a policy interest on their part. So the issue at the beginning of the negotiation was to define the type of Commission, at this early stage the border binational institutions were not being discussed. The labor advocates did not have a proposal in hand so the environmental proposal was used as a basis to negotiate a labor commission; later in the process the negotiations on environmental and labor issues were

separated with different teams to accommodate the existing differences on demands and political realities of both sectors (Mayer 1998).

With democrats now controlling both houses of congress the new U.S. administration did not know what would secure enough democrat and republican votes to pass NAFTA and, on top of that, which domestic calculations built into the side agreement negotiations should be accepted by Canada and Mexico. At the same time, they needed to protect the trade negotiations from protectionism to maintain republican support, a key to passing the agreement on the Hill. The USTR intended to gain Gephardt's endorsement as a means of gaining labor's support, so they had intense negotiations through the whole process with him, until the very end when it became clear that the majority leader would remain opposed to ratification. The discussions involved the level of power and accountability of the trilateral commissions, and the enforcement of national legislation. During this new negotiation process, the consultative body used for the trade negotiation was not suited for the side environmental and labor concerns, so Kantor had to consult outside the orbit of institutional trade advisory groups for environmental and labor concerns. The whole process of consultation continued aimed at gaining U. S. congressional support. This new process included new actors as part of the policy process, even in this new policy formulation stage. The environmental groups were demanding more after the 1992 election, based on the leverage given by Clinton's promise to include side negotiations to NAFTA, so the issues discussed during this period were: more Mexican law enforcement, the sanctity of domestic environmental legislation, more binational cooperation between Mexico and the U.S., and financing to clean up the

border. It should be noted that while these issues were also raised during the fast track process, and were somewhat addressed during the initial policy formulation process, and while they reached a certain level at the end of the NAFTA negotiation, the new opening for agenda setting nevertheless provided for the possibility of new gains on the original demands (Mayer 1998, Audley 1997).

After a brief effort to forge consensus among environmental groups failed, the fast track divide reemerged with some of the groups asking for stronger provisions and the group of seven tailoring the proposals in agreement with key players on the U.S. Congress and the Clinton administration. The different positions were defined on March 4, 1993 by 19 NGO's that included Defenders of Wildlife (DW), Center for International Environmental Law (CIEL), Friends of the Earth (FoE), Sierra Club (SC), and Public Citizen (PC). Two months later, on May 4, another proposal was submitted by WWF, Environmental Defense Fund (EDF), NWF, NC, AS, NRDC, and DW advocating the moderate perspective. This last position was immediately supported by Senator Baucus, opening the way for environmental cover for NAFTA leaning legislators (Audley 1997, Mayer 1998). Negotiating sessions were held during March and April with little agreement, mainly with U.S. negotiators trying to define their own position given the political constraints that they were facing: new actors actively participating with proposals, the increasing opposition of NAFTA supporters to using the side agreement negotiations as a tool to organize and block NAFTA in its entirety, and the challenge of reconciling environmental, business and labor advocates' positions.

By May 1993, the business sector was not fully organized, since it was awaiting the proposals derived from the side negotiations—at the same time its real interest was NAFTA approval, therefore the side negotiations were of interest only as far as they did not interfere with the already negotiated agreement. Internal differences within the Clinton administration regarding the political convenience of maintaining support for NAFTA were unresolved at this stage, and a decision was made to slow the pace of the negotiations in order to conclude the ongoing budget process on the Hill (Grayson 1995). The institutional impact of the Congress and the U.S. legislative process makes evident this aspect of the policy regime interactions with the policy cycle. By the end of May the opposition to NAFTA led by Perot was gaining steam. During their May meeting, the negotiators expressed their differences concerning trade sanctions and extent of labor oversight and decided to make them public. Once the discrepancies were made public, the business sector protested alleging that the side agreements were in fact altering the previous NAFTA negotiations. This struggle highlights the overlapping of the NAFTA debate and the policy formulation processes, in this particular case policy formulation with non-governmental actors playing a fundamental role.

Deployed on the U.S. side was the group of seven moderate environmental organizations proposing the institutional features of the trilateral environmental commission and the provisions of the proposed environmental agreement; in Mexico, organized labor, opposing the labor constraints and requirements that the U.S. negotiators had fashioned, was pushing for the labor side agreement. It is worth noting that the labor and business sectors on the U.S. side did not have the same level of participation that the



Mexican labor and the business sectors had during this round of side negotiations.<sup>34</sup> On June 30<sup>th</sup> a judge ruled against USTR on the question of the need for a NEPA mandated environmental impact statement for NAFTA,<sup>35</sup> while the battle of the radical environmental organizations continued, aimed at derailing NAFTA rather than participating in the side negotiations, evidence of another overlap of the agenda setting and policy formulation stages of the policy cycle.

During July 1993, three different sets of negotiation meetings took place, leading to the marathon meeting at the beginning of August that finally concluded the side agreements on August 13. The budget battle on the U.S. Congress had ended with its approval on August 5<sup>th</sup>, concluding the institutional constraint that was imposed on the negotiations earlier. On July 14<sup>th</sup> a meeting on border infrastructure was held in San Antonio, Texas, with officials of Mexico and the United States. At this point the format for addressing the border demands was discussed. These concerns were still considered a parallel and binational effort outside of the side agreements but linked somehow because of the environmental demand for border infrastructure resources carried during the NAFTA process. Moreover, the environmental organizations insisted on a financial mechanism for border projects, (Salinas 2000, Grayson 1995, Land 1993) and also a proposal from academics for an International Boundary Environmental Commission was available at the time (Ingram et al. 1995).

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<sup>34</sup> The business and labor sector in Mexico had a corporate alliance sustained through the official party and the presidency. The Mexican government gave ample opportunity to business and labor leaders to participate on the negotiations (Salinas 2000).

<sup>35</sup> The demand was initiated two years earlier by Friends of Earth, the Sierra Club and Public Citizen.

## **Policy Formulation and Decision Making Overlap**

August represented a critical month in the process. The conclusion of the formal negotiations, the U.S. administration's internal discussions on legislative agenda with health care<sup>36</sup> and related NAFTA issues all competed for priority attention. Legislators visited their districts due to Congress' recess, confronting grassroots opposition in their districts, and Perot launched a full blown attack on NAFTA with his book and policy campaign. Once the negotiations were concluded the stage was cleared for the final showdown and conclusion of a process initiated back in February of 1990. The U.S. Congress was in recess, which meant that the legislators would visit their districts, and since the negotiators could not brief them with the negotiations draft, the grassroots opposition used the political vacuum to set the agenda outside Washington, pressing the congressmen on the deleterious effects of NAFTA for U.S. jobs and the economy. With a business sector lacking organization, and Perot launching his campaign against NAFTA mounted on television infomercials, local rallies and his book 'Save your Job, Save our Country: Why NAFTA Must be Stopped', the opposition gained momentum and turned public opinion against NAFTA. The polls showed a significant drop in public opinion supporting NAFTA from July to September. NBC-WSJ found that those in favor declined from 31 to 25 percent, and those opposed rose from 29 to 36 percent. Time was running out and the administration needed to retaliate, gain control of the political debate, and secure sufficient votes for ratification of the NAFTA and side agreements. In August 20<sup>th</sup> 1993, the vote count in the House showed 229 no, and only 87 yes for NAFTA ratification (Mayer 1998, Audley 1997, Salinas 2000).

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<sup>36</sup> The political importance of this proposal was two-fold; it was a campaign issue and was championed by first lady Hillary Clinton.

September was the turning point for the administration. Just after the presentation of Perot's book, USTR wrote a rebuttal of his arguments that would be widely distributed and serve in the campaign for NAFTA. The business sector also began to organize; David Rockefeller called a meeting of business leaders and administration officials to organize strategy in August. The administration and business strategists recognized in early September that this was not trade politics as usual, but a new policy regime. Launching the political campaign made NAFTA the most intensely covered issue in the U.S., raising public attention. Bill Clinton named Richard Daley to head the administration's NAFTA effort. The three elements of Daley's campaign to overturn opposition on the Hill were: urging legislators to avoid anti-NAFTA commitments until they heard the administration's version; highlighting NAFTA's employment advantages, and finally, in the last stage of the campaign; stressing NAFTA's importance for strengthening U.S. international leadership. Their team detected the political and economic needs of the legislators to be addressed by the administration. The lobbying effort was equivalent to a political campaign. James R. Jones, U.S. Ambassador in Mexico, helped arrange legislators' visits to Mexico in an effort to counteract the AFL-CIO's campaign to get congressmen to visit the border (Mayer 1998, Salinas 2000).

The details of the campaign involved president Clinton's personal engagement in promoting the issue, cabinet members, the vice-president's debate with Perot, and finally deals and concessions related or unrelated to NAFTA for some undecided congressmen and NAFTA opponents (Grayson 1995; Salinas 2000). The business sector was

reinvigorated through new leadership, the Business Round Table had John Ong as chairmen,<sup>37</sup> and Larry Bossidy, was the chair of USA\*NAFTA. In September the other business associations also joined the campaign. They worked on three objectives: make NAFTA a priority of the corporations; get messages on airwaves; and mount a grassroots campaign in targeted critical districts. This approach directly confronted the opposition strategy to win over public opinion and also helped to lend legislators political cover.

The republicans asked for 100 democratic congressional votes in the House in September so that they could provide the remaining votes needed for ratification—the count was only 60 democrats in the House supporting at the time. The vote on the Senate was considered favorable, except that by procedure, Senator Daniel Patrick Moynihan, Chairman of the Finance Committee -himself undecided-, and Fritz Hollings, Chair of the Commerce Committee -and opposed to NAFTA-, could stay legislative action until after the House passage, delaying the Senate vote until after 1993.

These details highlight the role of actors and institutions constraining the policy process. Senate majority leader George Mitchell, however, succeeded in extracting an agreement from Moynihan and Hollings not to delay action on the vote (Mayer 1998). The defining issue in the polls for supporting or opposing NAFTA at this point was jobs, thus most of the discourse was based on losing or gaining jobs through NAFTA. The environmental support and political cover gained through the environmental side agreement enhanced the importance of the environmental issue in the final debate (Audley 1997). Another decisive institutional element was the timing of the ratification

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<sup>37</sup> Ken Cole, was the director

vote. November 17 was chosen to accommodate President Clinton's presence in Washington and the Senate's adjournment for Thanksgiving holiday. The kick off for the pro-NAFTA administration campaign was September 14, with former presidents Carter, Ford, and Bush standing with Clinton and supporting the deal. The event showed bipartisan support, with respected leaders backing the agreement, and was further embellished by Jimmy Carter's denouncement of Ross Perot as a demagogue (Mayer 1998, Salinas 2000).

On September 15th 1993, six major environmental organizations (EDF, NWF, WWF, AS, NRDC, and Conservation International (CI)) pledged their NAFTA support and began lobbying Congress.

Bill Clinton was personally involved in lobbying, with meetings, events and invitations at the White House and through personal calls to legislators. Most of the representatives asked for political cover for their districts, the cabinet members joined the effort, updating the profiles of the undecided. Former president Bush and his cabinet members were also part of the lobbying effort. The business sector mobilized a concerted campaign of lobbying, grassroots mobilization, and TV ads (Mayer 1998; Salinas 2000; Audley 1997).

The legislative effort was carefully coordinated too. The support for NAFTA in the House was lead by democrats Matsui and Richardson, and republicans Bob Michel and Newt Gingrich, on the Senate Bill Bradley and John Chafee were the main leaders.

The opposition had more problems to coordinate given the different constituencies and conflicting agendas of the different groups involved, nevertheless, they were already in full campaign against NAFTA. The Citizens Trade Campaign (CTC)<sup>38</sup> announced its campaign on September 13th, with less money but claiming to represent 300 organizations. Ross Perot launched his campaign on September 18th, including some legislators accompanying him in his rallies organized by the United We Stand America committees throughout the country. The AFL-CIO launched a campaign after their convention in October 4th, which included visits to the border, ads, and grassroots pressure to representative on their districts (Mayer 1998).

Canada had elections on October 25<sup>th</sup>, and the governing party was defeated, increasing political tension. At first there were doubts about the renegotiation given that a different government was coming but these were rapidly dismissed (Salinas 2000; Mayer 1998).

The final negotiations that included the binational BECC/NADB package concluded on October 27<sup>th</sup>.<sup>39</sup> After last minute adjustments for financing the package, the implementation bill reached the Hill on November 3rd, officially introduced on November 4<sup>th</sup>, at the very last moment permissible under congressional rules (Mayer 1998; Grayson 1995). One last defining event in the long process was personified by

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<sup>38</sup> The Citizens Trade Campaign (CTC) substituted the Citizens Trade Watch (CTW) operating during the fast track debate. The Alliance for Responsible Trade (ART) substituted MODTLE, also organized by Pharis Harvey; they launched their campaign in March, and were supported by David Bonior House democratic whip, they organized several events through April and May preparing the opposition during the August recess (Mayer 1998).

<sup>39</sup> Salinas (2000) note that the agreement was reached October 16<sup>th</sup>.

Vice-president Gore, when he challenged Perot and debated him on November 8th. The televised debate represented a big boost for the pro-NAFTA coalition and also impacted public opinion. The November NBC-WSJ poll published a day before the vote, showed 36 percent support for NAFTA versus 31 percent opposed, the campaign had won back positive public opinion since the September poll (Mayer 1998; Audley 1997; Salinas 2000). At the very end of the process, U.S. representatives began to trade their votes for unrelated deals; some in the U.S., others in Mexico. Other related votes were negotiated at a last minute between Mexico and the United States—for instance, the citrus and sugar deals that changed the previously negotiated agreement brought many votes from Florida. Some claim that NAFTA was won by peanuts—even on the day of the vote, some Georgia legislators were convinced through concessions for peanut growers. Forty-nine representatives are listed as beneficiaries of such deals.<sup>40</sup> (Grayson 1995)

The final vote on the H.R.3450 North American Free Trade Agreement Implementation Act was 234 yes and 200 no, with 102 democrats in favor. Three days later in November 20<sup>th</sup> 1993, 61 senators voted yes and 38 voted no.

### **BECC, NABD and the Environmental Agreements**

Through the long NAFTA negotiating process the BECC and NADB concepts were broached in several meetings, proposals, and discussions but, curiously, never

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<sup>40</sup> A personal experience confirmed the situation and suggests that several requests and deals were not documented. Senator Pete Domenici (D-NM) visited Ciudad Juarez Mayor Francisco Villarreal in 1993 asking for political support for the NM border crossing of Santa Teresa. According to Senator Domenici he conditioned his vote and others for NAFTA ratification to the construction of a connecting highway on the Mexican side to the NM Santa Teresa crossing. The highway stretch was built by the State of Chihuahua government at the request of the Salinas administration.

publicly promoted by the negotiators as part of the NAFTA negotiations or even as part of the environmental side agreement, even though demands for some sort of institutional response for border cleanup, and additional border infrastructure, were ever present during the talks. The first approach defined by the governments was publicly made in October 1989, before the NAFTA talks were even decided, when Bush and Salinas met in Washington and instructed their environmental officials to prepare a master plan to address the environmental problems of the border (Fernandez de Castro 1996). A year later at their November 1990 meeting in Monterrey, Mexico, presidents Bush and Salinas announced the Integrated Border Environmental Plan (IBEP). Six months later, as part of the May 1, 1991 commitment to obtain fast track authorization to negotiate NAFTA, the governments offered to address the issue through parallel efforts reaffirming U.S. and Mexican will to strengthen cooperation through the IBEP. The same month, the first proposal for a NADB was presented as an alternative by academics from California (Fishlow et al. 1991).

The process of elaboration of the IBEP involved close cooperation between EPA, SEDUE, and CILA/IBWC, and the participation of an American consulting firm (Mumme 2008). Several meetings along the border also provided critiques and refinement of proposals. Among these proposals, various pointed at the deficiencies of the existing institutional regime for binational environmental cooperation and suggested alternatives (Land 1993; Mumme 1992). One such idea was discussed during a symposium held in California at the end of November 1991 (Ganster and Valenciano 1991). The presentation of the final version of the IBEP in February 1992 did not



consider institutional modifications to the existing regime, except for the implementation of the Plan with economic resources committed for border infrastructure by both governments.

The final NAFTA negotiation failed to offer alternatives to address the border issues differently in August 1992. Under pressure to generate political support for the election campaign and the NAFTA negotiation, the Bush administration accepted the proposal to have a trilateral commission to address some of the issues that were not considered until then, but it did not consider the border demands as separate from the Commission. During the side agreement negotiations with the Clinton administration, the border's infrastructural needs and environmental cleanup were kept as specific demands, but the trilateral agreement and the commission as negotiated did not provided specifics for dealing with the environmental situation along the U.S.-Mexico border.<sup>41</sup> The funding mechanism apparently was being discussed within the inter-agency process (NRDC 1993). Within this context, environmental officials of Mexico and the United States discussed alternatives in July of 1993 in San Antonio, Texas, (Salinas 2000) including proposals from non-governmental organizations (Land 1993) and academics (Ingram et al. 1995).

The details of the negotiations to create BECC and NADB, and how these institutions ended up as part of the NAFTA package are scarce in the literature, but recollections of some of the actors involved allow for tracking the most important facts.

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<sup>41</sup> See report from the NWF of February 4 1993, letter from seven NGOs to Michael Kantor on May 4 1993, and letter from NRDC to Michael Kantor on June 9 1993 (Magraw, 1995).

During the San Antonio meeting, pressure from state governors, NGOs and congressmen led to the negotiation of the border institutions (Dominguez 2007). The decision to create an institution for border environmental infrastructure might have been decided in private talks between Luis Donaldo Colosio and Carol Browner at the meeting (Hurtado 2008).

On the issue of border cleanup, Gephardt wanted 30 billion obtained from a border tax; this proposal was dumped at the end of the side agreement negotiations during August 1993 once it was understood that Gephardt's support could not be won and in the face of financial constraints in the U.S. and Mexico. The Group of Seven estimated that 7.6 billion in revenue was needed for environmental infrastructure along the U.S.-Mexico border in a report presented a month earlier, and they recommended a North American Regional Development Bank with a cross-border transaction fee as a revenue source, (Kelly 1993) other groups also recommended the Bank, (Land 1993) and the Udall Center presented a refined proposal for an International Boundary Environmental Commission, (Ingram et al. 1995) which eventually would contribute to the final format of BECC.

The Treasury department was in charge of negotiating with Mexico a Border Environmental Finance Facility (BEFF), which might lend 2 billion for cleanup projects. This proposal gained the support of leading environmental organizations for the September 15<sup>th</sup> 1993 public announcement,<sup>42</sup> but it did not satisfy a coalition of environmental and Mexican-American groups<sup>43</sup> championed by Esteban Torres (D-CA).

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<sup>42</sup> See NWF statement supporting NAFTA on September 14<sup>th</sup> 1993 (Magraw 1995).

<sup>43</sup> See letter from six NGOs regarding BECC on September 30<sup>th</sup> 1993 (Magraw 1995).

Torres' undecided status gave him leverage. He had introduced a bill to create NADB, (Land 1993) based on the Hinojosa proposal (Torres 2007). The U.S. administration decided to fight for this votes and went back to Mexico to negotiate, and finally they reached an agreement on October 27th, less than a week before the introduction of the implementing legislation. The U.S. and Mexican governments expected seven votes but only Torres's vote was publicly announced out of the bank deal. Regardless of the votes obtained, the bank proposal undoubtedly helped strengthening the environmental political ammunition of the NAFTA proponents (Mayer 1998, Dominguez 2007).

Research by Silverstein and Anderson indicates that the NADB deal was intended to get 6 Border States representatives' votes. Besides Esteban Torres, those of Xavier Becerra, Nancy Pelosi and Lucille Roybal-Allard democrats from California, Ed Pastor and John Bryant also democrats from Arizona and Texas respectively. All of these legislators voted yes for NAFTA ratification. Grayson (1995) reports that the Bank was already planned and only refurbished in the way proposed by Congressman Torres to secure his vote. The final vote included 9 of 15 members of the Hispanic caucus and 64 out of 91 from the Border States. Torres was a member of both groups. Lloyd Bentsen acknowledged 11 votes out of the NADB-BECC negotiation (Roberts 2007). The story according to Mr. Esteban Torres (2007) includes the consideration of the idea out of his experience as a legislator learning about the development financial institutions existing in Europe. Later approached by California academics that drafted a proposal to create a bank for NAFTA also based on the European experience.<sup>44</sup> He then proposed the idea

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<sup>44</sup> The development bank was not a new idea, Henry B. Gonzalez U.S. Congressman from San Antonio, proposed a development bank for the border back in the early 80's (Garces 2007).

with his legislative peers and to Treasurer Lloyd Bentsen who embraced the idea and directed his staff to put it together. The main difference from the European bank version is that the money for NADB should be appropriated by both governments equally, instead of recognizing the differences existing between the countries and having a differential financial burden. According to Congressmen Torres, it was the only way the proposal would gain domestic political support in the U.S.<sup>45</sup> After the side agreements were concluded,<sup>46</sup> the Mexican government agreed to work on BECC to help convince some congressmen to vote in favor of NAFTA. After the initial talks, the Americans included the issue of the bank because they did not have a development bank that could make loans in the U.S.<sup>47</sup> Colosio, in turn, asked Carlos Hurtado<sup>48</sup> his social and economic advisor, to negotiate the institutions to address the issue of border infrastructure. A Mexican negotiators team was created led by Enrique Vilatela Credit Director from Hacienda, his assistant Sergio Hidalgo, from SECOFI Fernando Salas Vargas, the legal adviser from SRE,<sup>49</sup> and Hurtado from SEDESOL. They spent about two weeks<sup>50</sup> working in Washington, DC, in the office of the Under Secretary of the Treasury. The charter of the institutions was negotiated point by point there until the final version; the

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<sup>45</sup> This element would be reconsidered later as part of the institutional development of the Bank with the existence of grant funds. This element also constitutes a source of academic criticism of the Bank (Villeda 2002, Carlsen and Salazar 2002).

<sup>46</sup> Originally the side agreements were those that created the trilateral commissions for labor and for the environment, once the BECC and NADB were bilaterally negotiated, this latter agreement was also known as a side agreement to NAFTA.

<sup>47</sup> The World Bank and the Inter-American Development Bank could not lend money in the United States (Hurtado 2008).

<sup>48</sup> Carlos Hurtado assisted by Jorge Arriola assembled the study that Colosio used at the San Antonio meeting on border infrastructure needs, including information from 14 Mexican border cities (Hurtado 2008).

<sup>49</sup> Allegedly he lost his job after the negotiation because he did not include enough safeguards (Hurtado 2008).

<sup>50</sup> The time could be after September 30<sup>th</sup> when the letter from six NGOs supporting the initiative of the Bank put forward by Latino organizations was sent to Lloyd Bentsen (Ward, 1993), Michael Kantor

leader of the U.S. negotiating team was Jeffrey R. Schaffer.<sup>51</sup> There were no particular ideas involved in the negotiation, except the aim to have it ready to get some votes for the NAFTA approval (Hurtado 2008). The only issues were water and the environment, not sovereignty, which was an issue during the CEC negotiations (Roberts 2007). Evidently the Mexican government would not have created the institutions without the political pressure of the U.S. Congress vote (Hurtado 2008). The political demand was to have a development bank for the border, but since the environmentalists were the ones making the larger noise, what they got was an environmental bank for the border. At first, the negotiation began as a financing mechanism for the border, but later Congressmen Torres asked specifically for a bank. The bank was designed by the Treasury Department using the existing models of development banks and it was decided to finance it out of NAFTA offsets<sup>52</sup> instead of from a budget item (Roberts 2007).

As the last component of the NAFTA approval procedure in congress, a bill needed to be drafted to include the implementing legislation with financial components. The task of putting the bill together was coordinated by Marsha Miller, chief trade counsel for the Finance Committee, and Bruce Wilson, with Ways and Means. The package needed to include a labor adjustment package, a mechanism to fund border environmental cleanup and some means to pay for all this. The retraining program was

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declared that work on the NADB was only beginning on his testimony before the House and Ways Committee of the House (Gantz 1996).

<sup>51</sup> Jeffrey R. Shafer became Under Secretary in December 1995 after serving as Assistant Secretary of Treasury for International Affairs since May 1993. From 1984 to 1993, he held several high-level positions in the Organization for Economic Cooperation and Development.

<sup>52</sup> The predicted revenue or savings as a result of NAFTA (Roberts 2007).

considered a NAFTA specific expansion of Trade Adjustment Assistance (TAA), to avoid a committee headed by a NAFTA opponent.

According to this recollection the negotiation began with an emphasis on the financing-certification institution to deal with the border cleanup, and complemented during the negotiation with the bank and a separate certification counterpart. Both proposals came from academic discussions with an emphasis on sustainable development, and local participation, as a way to address the limitations that were criticized from the CILA/IBWC and La Paz Agreement institutional formats (Mumme 1992; Land 1993; Ingram et al 1995). The decision to have separate institutions came as a need to isolate the political pressure from the financial decisions on the bank (Dominguez 2007).

## **Findings**

The protracted NAFTA negotiating process created a set of labor and environmental institutions that were not considered by any of the participating governments at the beginning of the process. The institutional formats of BECC and NADB were crafted responding to U.S.-Mexico border environmental conditions and criticism over the existing bilateral institutions for environmental cooperation. The final institutional design was made using academic proposals for border environmental institutional development that originated during the political debate. The political debate was forced by non-governmental actors as well as the institutional constraints imposed on

the executives of the governments by the U.S. legislative fast-track process, and the ratification vote.

The agreement to create BECC and NADB was reached only as a last minute political concession to gain necessary votes to ratify the NAFTA and side agreement negotiations. Alternative versions were negotiated by the U.S. and Mexican governments but it is not clear that they were committed to this type of institutions. So the final versions were certainly hurriedly cobbled together.

This institutional innovation is the product of three distinct processes that affected each other, generating different outcomes: the bilateral trade negotiation, the trade/environment debate, and the border environmental demands. The first process generated the conditions for the other two processes, enabling them to gain saliency and provide access to new actors that advanced their agendas as constraints for the trade negotiation process.

Using the Policy Regime Framework, the main elements can be identified for further analysis. The principal background conditions affecting the policy regime and the policy cycle were elections, market conditions, public opinion, and international events that may be summarized thusly:

- Elections: 1992 U.S. presidential elections, and 1991 Mexican legislative elections.

- Market conditions: Recession in the U.S. economy in 1992 and 1993, volatility of stock and financial market in Mexico during 1993.
- Public opinion: Leakage of news of trade talks in April 1990 prompted environmental concerns and opposition to trade negotiations before the governments could define the agenda. Leakage of information concerning the side agreement negotiations in April 1993 fueled opposition to the negotiations.
  - Ross Perot's media campaign, together with the grassroots campaign of different NAFTA opponents to change a favorable public opinion of NAFTA in June 1993 to a majority in opposition in September. After a political campaign mounted by the Clinton administration, business associations, and some environmental groups, a majority of people in November tilted back in favor of NAFTA.
- International events: The end of the cold war and the restructuring of the global economy in regional blocks forced Mexico to reconsider its position and join the North American economic region. Other influences included:
  - The UNCED forum and preparatory meetings provided for the emergence of the trade/environment debate, the use of sustainable development language and ideas, and saliency of environmental issues in the political agenda of governments; it impacted officials, academics and activists in Mexico and the United States.
  - The tuna/dolphin case highlighted the interrelation of trade and environmental issues constituting a powerful symbolic synthesis that engaged authorities, non-governmental organizations and trade institutions.



Even though this case was a bilateral issue, the GATT ruling made it an international event with huge consequences regarding the understanding of the new trade/environment debate.

The policy regime in Mexico and the United States for binational environmental cooperation was also significantly altered by changes in the ideas, institutions and actors involved as summarized below:

- Ideas: The new trade/environment debate linked previously unrelated policy regime actors, and offered arguments to address environmental issues as part of the new trade regulations. For the first time environmental issues were considered within a trade negotiation and had to be addressed by trade officials, economic cabinet members and business sector representatives that usually were absent of environmental concerns.
- Institutions: The sustainable development concepts were incorporated in the language and rationale of the new institutions, justifying public participation, local involvement, and future economic development implications for the environment. It changed the interactions of federal institutions at the border.
- Actors: New actors were involved on the binational environmental cooperation policy regime (BECR) on both sides of the border; first the emergence, activism and participation of the non-governmental environmental organizations, border related, transnational, and nation-wide, with alliances with other non-environmental groups that found border environmental issues to be a powerful vehicle in advancing different issue agendas.

The interaction of labor, business, and environmental non-governmental actors with differentiated access and interests is evident in the three phases of the policy cycle described in this chapter: agenda setting, policy formulation and decision making. All of them participated in agenda setting with active opposition or support for the governments during the whole process, but particularly previous to the fast track authorization, and the side agreement negotiation. The policy formulation stage involved mainly the business sector and the U. S. authorities during the NAFTA negotiation, and the business and labor sector with the Mexican authorities during this phase. The second period of policy formulation during the side agreements involved also environmental and labor organizations on the American side, and labor, environmental, and business organizations on the Mexican side. During the decision making phase of the NAFTA negotiation the business sectors of both countries participated and, during the last decision making process of ratification, labor, environmental and business organizations played an important supporting role influencing and conditioning the decision of the U.S. legislators together with the legislators and the administrations of Mexico and the United States.

Legislators from both countries were also new actors in this process, some of them more important because of their roles as members or chairmen of committees that were fundamental during the different processes of the negotiation, others were influential due to their close relations with non-governmental organizations and activists that allowed them to influence the negotiations and the debate, and yet others with

partisan leadership roles had an opportunity to impact negotiations. New actors also sprang from the economic domains of the government cabinets.

The leading institutions involved defined the timing and contents of the debate in ways that constrained and affected the political agenda of the governments and also those of the non-governmental actors. These institutions were the U.S. Congress and its rules for trade negotiations, including the fast-track approval process, committee review, and the need to vote on implementing legislation and ratification, and the centralist political system in Mexico. The U.S. Congress played a dominant role during the process, since the contents and timing of the debates were constrained by congressional practice and procedure. The genesis of the BECC-NADB agreement may very well be found during the fast-track process, allowing access for non-governmental actors and requesting certain conditions for the authorization of fast-track. Throughout the negotiations, legislative actors engaged both supporters and opponents of the process and voiced opinions that affected the negotiations. The same process repeated during the side agreement negotiations, and became even more acute during the final ratification and passage of the implementing legislation. The Mexican political system allowed for a relative unified position on most topics, and this was particularly evident in its ability to align labor interests with state and corporate concerns. The constitutional constraints for oil related negotiations helped the Mexicans to keep this issue out of the negotiations, despite multiple pressures to do otherwise from the U.S. team.

Other important institutional features shaping the negotiating arena were the U.S. lobbying system that allowed a Mexican team to campaign and lobby in the United States and the U.S. court system and environmental legislation in the U.S. The latter institutions came into play in two significant situations, first with the tuna/dolphin embargo case, and later with the NEPA ruling on EIA for NAFTA. The outcomes in both cases required adjustments on the negotiation process.

The policy cycle stages for this case were not linear, some overlapped, and others were affected by feedback of the external conditions that reinitiated the cycle, but clearly the PRF constitutes a very useful mechanism to follow the multiple political processes at play during the negotiations. The analysis of these findings will be presented on a later chapter where the different theoretical perspectives can be compared and used to find the more plausible explanations

## **Chapter 5**

### **Institutional Change and Continuity: The BECC and the NADB**

As shown in the previous chapter, the BECC and NADB emerged from a last minute negotiating round of the North America Free Trade Agreement (NAFTA) aimed at improving environmental infrastructure along the US-Mexico border. The manner of their creation raises interesting theoretical issues that are explored in chapter 7. As we have seen, the policy regime framework considers the interaction of actors, ideas and institutions through the various stages of the policy cycle. It differs from punctuated equilibrium theory which considers mainly the agenda setting, policy formulation and decision making stages of the policy process. Chapter 4, presented the first three stages of the policy cycle associated with the establishment of the BECC/NADB institutions. In this chapter, however, the implementation and evaluation stages are the focus of the narrative. These two later stages of the policy process are vital for assessing the outcomes and consequences of the newly accorded border institutions.

The initial implementation phase of the BECC and NADB institutions as studied here begins with their legal establishment on January 1<sup>st</sup> 1994 and carries through the period in which their directors and general managers were in place, also extending to the development of institutional operating rules and policies by the new board of directors. This implementation period began in 1994 and extended through the first months of

1995. A period of evaluation follows the initial implementation phase, lasting until the institutions experienced their first significant operating changes. Publication of the BECC's improved certification criteria by mid 1996 will be considered as the first major post-implementation change for the Commission. An agreement to manage Border Environmental Infrastructure Fund (BEIF) and the creation of the NADB's coordination committee during 1997 are the first two major post-implementation changes for the Bank resulting from the initial evaluation of its performance. It can be argued that this entire period should be considered as part of the implementation process. Nevertheless, since it followed from criticisms and recommendations after the institutions certified and approved their first operations, the 1995 to 1997 period is more properly defined as part of an evaluation stage.

Following these institutional changes, in 2000, a debate emerged setting the agenda for further changes for the institutions; a brief period of policy formulation followed and concluded with the decision to change the original mandate by the end of 2002. The decision making process was tortuous and was finally concluded two years later in June 2004. The implementation of the new mandate took almost another two years when the first meeting of the newly defined and unified board of directors met. A few other changes were introduced either by the Bank or the Commission to improve their efficiency or respond to border demands. One of those changes was approving the use of NADB funds in 2002 to finance a water conservation effort by irrigation districts in Mexico and the United States. This change was part of a diplomatic solution for the water debt problem arising from a persistent drought in the region. This adjustment of

policies is worth reviewing given its potential consequences for the border environment and the future development of these institutions.

A description of these changes and their relationship with the policy regime in the implementation and evaluation stages of the policy cycle is presented in this chapter. Significant exogenous factors will be considered trying to find potential effects on the policy regime. The more salient were the elections in 1994, the political and economic crises in Mexico during that year, the change of administrations in Mexico and the United States in 2000, and the events of September 11 2001, in the United States. The description of events using this format will provide data for the theoretical analysis presented in chapter 7.

### **Mandate, structure and expectations**

The United States and Mexico entered into the “Agreement between the Government of the United States of America and the Government of the United Mexican States Concerning the Establishment of a Border Environment Cooperation Commission and a North American Development Bank” in November 1993.<sup>53</sup> The new bilateral organizations were designed to complement each other. BECC was created to assist border states in both countries to design and finance environmental infrastructure projects in the border region. NADBank was created to provide financing for environmental

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<sup>53</sup> TIAS 12516. 1993.

projects certified by BECC and also to provide support for community adjustment and investment projects.<sup>54</sup> (GAO, 1994)

These initiatives highlight the evolving and complex character of environmental governance along the border and significantly depart from the previous institutional arrangements in place. These institutions created the new regime for environmental cooperation, described by Mumme (1996) as a nested approach that requires significant intergovernmental coordination. For example, the IBWC/CILA retains their treaty mandate for allocation and appropriation of water, while the new institutions provide larger flexibility for the binational needs and inclusiveness for the new participating actors' demands.

The BECC and NADB, invested with atypical institutional features that appear to be at the vanguard of the bi-national cooperation efforts, may be considered a substantial instance of policy change in bi-national environmental cooperation. Among the most innovative of BECC/NADB's institutional characteristics are the elements of administrative decentralization, bi-national personnel and resources, public participation, sustainability evaluation criteria for project certification, local project process control, relatively autonomous grant-making and financial resources, and capacity building. Environmental agreements can be tailored to specific needs and regions, and, in this case, the territorial jurisdiction defined was not following other sub-national political

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<sup>54</sup> 10% of the U.S. funding for the NADB would be used for the community adjustment program, and it will be used only for U.S. programs. The 10% corresponding to the Mexican part was transferred to be managed by the Banco Nacional de Obras y Servicios (BANOBRAS). The remaining 90% of NADB



boundaries, nor was it defined along watersheds or ecosystem boundaries but according to an equal distance of 100 km into the territory of both countries from the common border as it was delimited by both countries when they signed the La Paz Agreement in 1983.

In terms of organization, the original BECC/NADB charter established a board of directors, a general manager and a deputy general manager, and an advisory council for BECC. The Board included 10 directors appointed by the United States and Mexico for BECC, and 6 for NADB. Sitting on BECC's board were: the EPA Administrator, Mexico's Secretary of Social Development (SEDESOL), and each country's commissioners from the bilateral International Boundary and Water Commission (IBWC). Each country selected three of the remaining six directors representing (1) Border States, (2) localities in the border region, and (3) members of the public. On an alternating basis, each of the parties chooses one of the directors as Chairperson of the board for a 1-year term.<sup>55</sup> The General Manager and Deputy General Manager of BECC are selected by the Board and each are appointed for a term of 3 years, and may be reappointed.

The BECC Advisory Council is expected to advise the Board of Directors and the General Manager on issues related to BECC activities. The BECC Advisory Council as originally structured consisted of 18 representatives, 9 from each country. These were to

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funding would be used to finance border environmental projects previously certified by BECC (Gantz 1996, Torres 2004, Garces 2007).

<sup>55</sup> The important factor was decided to be that the nationality of the chairperson would be different from the general manager's to aid balance on binationality.

be drawn from Border States, local communities, nongovernmental interest groups, and private citizens<sup>56</sup> (GAO 1994, McKinney 2000). In the case of NADB, the structure of its Board included representatives from the EPA, the Treasury and the Department of State on the U.S. side. The representatives for Mexico were from Secretaria de Hacienda y Credito Publico (SHCP), Secretaria de Comercio y Fomento Industrial (SECOFI),<sup>57</sup> and SEMARNAP, with no local or non-governmental representation (McKinney 2000).

On November 25 and 26, 2002, a protocol for the amendment of the agreement was signed by the countries' representatives modifying the original charter, and was enacted August 6, 2004. The changes included creating one common Board of Directors for both institutions with an altered composition. The new Board of Directors has ten appointed directors or his/her delegates as follows: 1) the Secretary of the United States Department of the Treasury; 2) the Secretary of Finance and Public Credit of Mexico; 3) the Administrator of the Environmental Protection Agency of the United States; 4) the Secretary of the Environment and Natural Resources of Mexico; 5) the Secretary of the United States Department of State; 6) the Secretary of the Ministry of Foreign Affairs of Mexico;<sup>58</sup> 7) a representative of one of the U.S. border states, appointed by the United States; 8) a representative of one of the Mexican border states, appointed by Mexico; 9) a member of the United States public who is a resident of the border region; and 10) a member of the Mexican public who is a resident of the border region. Also, the term of the general and deputy general managers changed from 3 to 5 years without reelection.

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<sup>56</sup> Included some members outside the border because it is expected to advise also on the community adjustment programs, this particular feature was suggested by U.S. Congress members (Roberts 2007).

<sup>57</sup> Later Secretaria de Economia (SE)

The former Advisory Council, constituted by local officials and non-governmental representatives, was abolished and explicit priorities were defined for the certification process as: water pollution, wastewater treatment, and water conservation, municipal solid waste and related matters (BECC/NADB, 2004).

This change represents a significant decline in formal non-governmental participation, and adds to the diminished weight of the local participants on decisions within the joint Board of Directors. In this way the institutions are less representative of localities and potentially less locally oriented in BECC/NADB decision making. The removal of the CILA/IBWC representatives also signals a retreat from the original idea of strong coordination with CILA/IBWC as well as their experience and local perspective along the border. The process of certification, however, still allows for local participation and initiation of projects, retaining the multi-level governance elements as part of the process, but not as a part of the decision-making structure.

The joint Board of Directors was intended to eliminate the inter-agency history of disagreements and lack of coordination that characterized the first years of these paired institutions. As federal and bi-national organizations, BECC and NADB interact with other federal agencies, state and municipal governments, as well as academics, NGOs and citizens on both sides of the border, thus constituting a case of multi-level governance (Cordoba 2001; Liverman et al 1999; Tovilla 2001; McKinney 2000; BECC/NADB 2004a, Hooghe and Marks 2003).

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<sup>58</sup> It is worth noting that -even though it is not the case right now- the Foreign Affairs and Department of State representatives could be the IBWC/CILA directors, as used to be on the previous charter of BECC.

However, these joint institutions were created with several expectations. The NADB was intended as a mechanism to address environmental infrastructure problems derived from NAFTA adjustments, essentially creating a new governance model that would include NGOs, private investors, and national and local authorities on both sides of the border (Hinojosa-Ojeda 1994). It would provide otherwise unavailable development funds to deal with the environmental effects of increased trade (Mumme 1997). In the case of the BECC, according to the Udall proposal of an International Border Environmental Commission (IBEC), (Ingram et al 1995) the institution was expected to address all types of environmental problems. Local government participation would be warranted by the Border States representation in the governing board. BECC would also be invested with border planning capacities; it would have treaty status and work cooperatively nested with other institutions, particularly the IBWC. The IBEC proposal also included a Fund that would provide for the border's infrastructure needs, plus the other responsibilities of the new proposed binational institution.<sup>59</sup> The original idea was to have 450 million dollars of capital provided equally by Mexico and the United States, but with provisions for a fund of 3 million callable capital, and the opportunity to double or triple the amount available for environmental infrastructure through partial warranties, private and other public funding that could participate on the projects (Spalding and Audley 1997). There was a guarded expectation that if these institutions were well implemented, they would help to protect and conserve the environment, influence future trade agreements, and provide better governance formats that were more adequate for the environment (Charnovitz and Magraw 1994).

## **First Steps: Implementation of the New Institutions**

The BECC/NADB agreement entered in effect January 1<sup>st</sup> 2004, as NAFTA and the other side agreements on labor and the environment. The same day, the Zapatista rebellion broke up in Chiapas, Mexico. Several unexpected political events punctuated 2004 slowing the implementation process. The assassination of Donaldo Colosio, the official presidential candidate in March, added to the turmoil initiated back in January by the guerrilla uprising. Colosio, as head of SEDESOL, was the lead Mexican environmental negotiator for the side agreements, including the creation of BECC and NADB. His nomination as the PRI presidential candidate spurred a streak of changes in actors close to him during the negotiations.<sup>60</sup> (Hurtado 2008, Onate 2008) Later during 1994, when presidential elections were held in Mexico, the official replacement candidate Ernesto Zedillo won a landslide election. By the end of the year, Mexico suffered an acute devaluation and massive amounts of capital fled the country creating a huge economic crisis that was maneuvered with the help of the U.S. Treasury Department. These events constitute the important background conditions under which the agreements were implemented. On the U.S. side two major political setbacks for the Clinton administration also happened during 1994. The defeat of the president's health care plan and the Republican congressional victory that followed inaugurated a period of divided government and ended decades of Democratic Party domination of the House.

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<sup>59</sup> Some of the elements of this proposal were incorporated on the final BECC charter.

<sup>60</sup> Santiago Onate head negotiator of the environmental side agreements went to support Colosio's campaign and was replaced as head of PROFEPA by Miguel Limon, who would take over the implementation stage of the new environmental institutions, CEC, BECC and NADB. Carlos Hurtado SEDESOL representative for the NADB/BECC negotiation and close economic advisor to Colosio became the head of Fondo Nacional para Empresas en Solidaridad (FONAES), leaving the implementation of the institutions to new actors.

Once policy decisions are made, the next stage in the policy cycle is implementation, where the administrative resources of the governments are deployed to make sure the defined policy works. Interactions within the policy regime during this stage may significantly affect policy outcomes, altering agency behavior from what was originally intended. During this stage the main actors are the bureaucracies of the governments involved. Nevertheless, during the implementation of BECC the role of NGOs was important since the design called for public participation and openness—the best example of this interaction was public participation during the certification criteria definition process and subsequent implementation of these procedures,<sup>61</sup> and lobbying to defend the NADB's capital.<sup>62</sup> The different designs of BECC and NADB affected their institutional impact within the policy regime, with BECC providing access to NGOs, thus allowing for their involvement, while NADB maintained a more closed process. Another institutional difference that played an important role was the Bank's endowment with a budget that insulated it from any need to renegotiate or ask for funding on a yearly basis. The Commission, on the contrary, had to lobby for their budget every year with EPA, the U.S. State Department, and the U.S. Congress on the American side, and with SEMARNAT on the Mexican side (Hobbs 2007, Bravo 2007).

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<sup>61</sup> NGOs pressured BECC to establish the certification criteria before approving projects, later convincing the BD to certify only projects that met all criteria, and finally inducing special rules for private projects (Varady et al. 1996).

<sup>62</sup> In late 1995, Mark Spalding organized a reaction through Beccnet to restore 54 million of paid-in and callable capital that was erased from a Senate subcommittee (Kiy and Wirth 1998). For a detailed account of this event see Spalding and Audley (1997).

The governments were not enthusiastic about implementing the new institutions. On the Mexican side, the agreement was always perceived as a U.S. imposition, thus implementation was not urgent (Torres 1999a). On the U.S. side, the State Department was also charged with foot dragging, slowing implementation (Kiy and Wirth, 1998). On both sides there were actors that tried to change their implementation so as to make them impractical (Hobbs 2007). Despite the funding commitment to the bank, implementation of the institutions has been plagued with delays and suspicion of bureaucratic in-fighting, much of this arising from the fact that some in the Clinton administration thought it important to address environmental concerns along the border but were not convinced a Bank was needed to do it (Gantz 1996).

For these reasons and others, the BECC and NADB fared very low on government saliency after the negotiation concluded. The trade regime actors were absent from the implementation process, with the exception of the finance and treasury ministries that were involved as members of the NADB board of directors. But most of the other actors, including the USTR, national environmental groups, and the labor and business sectors that were very active during the negotiation of NAFTA and the side agreements, moved on to different issues, including the Mexican environmental negotiators. The exceptions were the local NGOs and academics that made a point in participating on the implementation phase of the institutions. From the U.S. environmental national organizations, only EDF had a border presence, and only NWF continued along Texas Center for Policy Studies (TCPS), Arizona Toxics Information

(ATI), Border Ecology Project (BEP) and other local organizations<sup>63</sup> to influence the final design mainly of BECC, since the NADB had fewer possibilities for public participation (Reed 2007).

A very important tool during this period was the creation of *beccnet* as an information warehouse for BECC hosted by the Udall Center in Arizona. It served to communicate and keep updated on the decisions made by the institutions and the demands and proposals from different actors (Varady et al. 1996). The institutional components of the policy regime also suffered a significant modification. Once the U.S. Congress pulled out after the approval vote, it only maintained a minor involvement through the General Accounting Office (GAO) that prepared some reports about the institutions, and incidentally through the authorization of the BECC budget as a line item of the State Department.<sup>64</sup> An additional actor from the Mexican side was the Comision Nacional del Agua (CNA) which was involved because of the water infrastructure component of the institutional mandate.<sup>65</sup> Regarding ideas, the trade/environment debate was not completely dismissed, but sustainable development issues, modernization, decentralization, asymmetry, binationality and sovereignty, and financial resource availability dominated the policy discourse and consolidation of the institutions through the implementation and evaluation stages and further development of the policy process. The sovereignty issue was particularly evident in the implementation stages of the BECC,

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<sup>63</sup> Several key actors participated either as leaders of environmental organizations or as academics, a list of individuals involved can be found in note 2 from Varady et al. (1996).

<sup>64</sup> The actual US budget of BECC is provided together with the budget for the International Joint Commission (IJC) and the International Boundary Commission (IBC) with Canada, under "American sections, international commissions".

<sup>65</sup> Dominguez (2007) suggested that it would have been reasonable to have CNA as a Board member.



and absent on the negotiations and discussions of the bank.<sup>66</sup> (Herrera 2007, Roberts 2007)

Various explanations for the slow implementation process may be given. The complexity of the border problems, the institutional differences existing between the Mexican and U.S. government systems, the Mexican economic crisis at the end of 1994, and the different political cultures, (Spalding and Audley 1997) also the presidential elections in Mexico and congressional elections in the U.S. all contributed to the delay (Gantz 1996). Added to these problems were the governments' expectations for the institutions, the critical events in Mexico during early 1994 that drew the attention of the political elite, the very novelty of the two institutions, and the hurried process of negotiations that defined them.

Applying the policy regime framework terminology, the Mexican crises and the elections correspond to background conditions; the other factors are institutions and ideas that were in play as part of the policy regime. These elements will be discussed as they apply to the implementation particulars for the NADB and the BECC.

The urgency and complexity of the border problems demanded quick responses, thus the slow implementation process was viewed by several critics as a broken promise taking form either as an outright institutional failure or a lack of commitment from the governments. In any case, the reality is that the institutions were expected to address

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<sup>66</sup> Sovereignty was an issue for Mexico during the bank negotiations too, apparently that negotiation cost SRE's legal adviser his job, over sovereignty related concessions (Hurtado 2008).

deficits accumulated through several years of environmental neglect, and delayed implementation challenged pent up public expectations. The institutional differences included different federal institutions dealing with environmental issues and a different federal system in both countries: a two tier system in the U.S. versus a three tier on the Mexican side, plus the existence of Native Americans that also demanded a different institutional framework (Spalding and Audley 1997). Other political differences regarding centralization and federalism challenged cooperation and understanding (Bath and Neighbor 1999) and several cultural differences emerged during the implementation process (Dominguez 2007).

During the first months of 1994, the negotiations between U.S. and Mexico officials defined elements that tried to balance the institutions and respond to their own perspectives and political culture. The sites of the institutions were decided considering this balance on mind, the Bank in U.S. territory and the Commission in Mexican territory, the first bank director a Mexican, and the first general manager for the Commission a U.S. national. The roles of the deputy managers were also disputed, with a larger quarrel over the BECC, since the Mexican government alleged that the first projects would be water and wastewater on the Mexican side suggesting the need for a more active role of the Mexican deputy general manager (Herrera 2007; Cabrera 2007). The agreement that was finally reached changed the charter description of the roles of the general manager and the deputy general manager, creating a co-direction for BECC (Perez 2006). The U.S. position stressed the fact that the head of the Commission for Environmental Cooperation (CEC) –negotiated as part of the side agreement for the environment—was

Mexican, so in order to keep the balance; the general manager of BECC should be American (Perez 2006; Herrera 2007). The Mexican team insisted the first manager of the BECC should be theirs because they were afraid of the political implications that might derive from the participation of nongovernmental actors (Cabrera 2007).

These differences in political culture are very well exemplified in the debate over public participation (Spalding and Audley 1997). The Americans wanted a more inclusive BECC, but the Mexicans tried to concentrate the Board of Directors' decisions, keeping the NGOs participation limited to the Advisory Committee (Hobbs 2007, Bravo 2007). Both agreed to keep public participation out of the Bank realm (Perez 2006). The issue of sovereignty played a role in the definition of the location of BECC; Commissioner Herrera (2007) opposed the location in San Antonio considering that the Mexican local authorities would be seeking authorization of projects in an entity located not only outside Mexico but away from the border—at one point during the negotiations the possibility of having alternating locations depending upon the nationality of the general manager was also considered (Cabrera 2007). The concepts dominating the design and implementation of the institutions were three: transparency, public participation, and bottom up approaches (Herrera 2007).

Finally, the priorities for the BECC and NADB were defined during the negotiation, but clarified during the implementation stages. During the NAFTA debate, the environmental problems along the border included a myriad of different aspects not limited to water and wastewater infrastructure. For instance, the existence of open dumps

which eventually caught fire on the Mexican side was a common source of complaints on both sides (Onate 2008). The people from SEDESOL thus pushed for the creation of landfill and street paving infrastructure, while CILA and CNA -during the implementation- pushed the agenda for water and wastewater infrastructure. The EPA was concerned with wastewater treatment because of untreated discharges to the river (Cabrera 2007, Cabra 2007). Eventually, backed by a NABD financed World Bank study that showed the larger deficit on this type of infrastructure, BECC's resources were directed to water (Dominguez 2007).

### **NADB Implementation**

The expectation of the Mexican government and the U.S. Treasury Department during the negotiation was that even with the eventual passage of NAFTA, it was unlikely the Bank would be implemented. Such had been the case with at least one other credit institution proposed by the U.S. government and other countries that was never implemented (Roberts 2007).<sup>67</sup> The emphasis of the Clinton campaign speech that led to the side agreements was not on financing border infrastructure projects (Gantz 1996). The Zapatista rebellion and the Colosio assassination were critical political factors that caught the attention of both governments at the beginning of 1994. In addition to the turmoil in Mexico, NAFTA's implementation drew greater public interest than did the side agreements' institutions. And finally the hurried negotiation process and the innovative characteristics of the institutions led the U.S. and Mexican governments to continue negotiations aimed at defining the nuts and bolts of the general initiative that was approved (Herrera 2007; Cabrera 2007). This hasty process led to errors even on the

translated documents that later would generate differences of interpretation.<sup>68</sup> (Hobbs 2007)

After tedious negotiations between the U.S. and Mexico governments, the first meeting of the Board of Directors was held in June of 1994 where the new statutes and a temporary administrative commission was appointed to manage the Bank before the directors were hired.<sup>69</sup> On November 10<sup>th</sup> and December 9<sup>th</sup> 1994, the U.S. and the Mexican governments respectively made their first 25 percent monetary contributions to the Bank.<sup>70</sup> In December 1<sup>st</sup> of the same year Victor Viramontes was the first employee of the Bank, hired as deputy general director representing the U.S.<sup>71</sup> On February 1<sup>st</sup> 1995, Alfredo Phillips Olmedo<sup>72</sup> was hired as the first Bank general director representing Mexico. The Board of Directors approved internal organizational policies in August 14<sup>th</sup>, and credit policies and operational procedures later in December 18, 1995 (NADB 2005).

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<sup>67</sup> The case in question is the Middle Eastern bank that despite being approved was never implemented.

<sup>68</sup> As an example of those differences, the Border Environmental Cooperation Commission does not translate as the *Comision de Cooperacion Ecologica Fronteriza*. The emphasis in Mexico at the time was in the concept of 'ecologia' rather than 'medio ambiente' or 'ambiental', and it was reflected on the names of the government departments and in the law.

<sup>69</sup> The administrative details, including hiring the first personnel was made by U.S. treasury department staff. Lisa Roberts came as part of the Treasury department support staff during implementation, and later invited as NADB's general counsel (Roberts 2007).

<sup>70</sup> This first appropriation was made days before the Mexican devaluation, in the case of Mexico with the new Zedillo administration. Both governments supplied their second contribution that amounted 50 percent of the total, a year later.

<sup>71</sup> He was hired out of a regular public open search (Roberts 2007).

<sup>72</sup> The first Mexican Bank director was invited for the post by new president Zedillo during the first days of December 1994, but later was proposed to the BD and formally appointed until February 1995. It coincided with a recognition presented to Pedro Aspe and Lloyd Bentsen for the creation of the NADB by the Nature Conservancy of Texas; they were former heads of finance and treasury departments in Mexico and U.S. respectively (Nuñez 2007, Bennett 1995).

The bank's location was decided in April 1994. After strong lobbying from San Antonio officials and activists,<sup>73</sup> it was decided that the Bank would be located in San Antonio and the BECC in Ciudad Juarez.<sup>74</sup> The presidency of the Board was to alternate between the Mexican Secretaria de Hacienda and the U.S. Treasury department. The bank's performance was subject to the BECC's operations since it could only finance projects certified by BECC. The Commission concluded its first certification criteria for projects in August 31<sup>st</sup> 1995, and shortly after it began certifying projects that were forwarded for NADB's review.<sup>75</sup> The first members of the Board of Directors (BD) were very hands on people and some of them were involved in the negotiation process (Roberts 2007). They conducted business by first holding a closed meeting among themselves where most of the policy issues were defined, later an open meeting with the members of the bank staff, where the projects and the operations were discussed and decided, and finally a public meeting for information purposes (Nuñez 2007). The main actors on the board were the representatives from Hacienda and Treasury, Jose Sidaoui and Peter Schall respectively, and also Ricardo Ochoa from International affairs of Hacienda—he was always and continues to be attentive to Bank issues, even to this day (Cabrera 2007). Also assisting from SECOFI was Mexican undersecretary Jaime Zabudovsky, from SEDESOL representatives Jorge Lepe, and Jaime Sancho his delegate, who always attended the meetings, and from SEMARNAT Jose Luis

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<sup>73</sup> Henry Cisneros among them, (Nuñez 2007) during the negotiations San Antonio was also considered an option for the BECC (Herrera 2007).

<sup>74</sup> An additional office of the program for regional community development in the U.S. is located in the district of Representative E. Torres in California, and was operative December 1<sup>st</sup> 1995 (Gantz 1996, Torres 2007).

<sup>75</sup> This factor is not always considered by critics of the bank regarding its slow operation during the first years.

Samaniego from international affairs representing Julia Carabias, SEMARNAP's head.<sup>76</sup>

The level of the board's members helped to speed up the decision making process at the beginning of the institution. SEMARNAP minister Carabias was very much interested on the development of the Bank, even more than those at SEDESOL (Nuñez 2007), and was also very supportive of the BECC (Dominguez 2007).

The Board membership of the bank clearly differs from that of the BECC in two aspects; all Board members are government representatives, and no local authorities are represented. This characteristic accounts for the more pragmatic vision that NADB developed, trying to speed up the process of environmental certification, and emphasizing the economic and financial criteria for supporting projects over other elements. This tension has emerged during several points of the BECC/NADB relationship. In late 1995 a bank Board meeting was held without inviting BECC representatives, this led to coordinating meetings and a memorandum of understanding among the institutions signed in Phoenix, Arizona in 1996 to define their working relationship.<sup>77</sup> Later in 2000, the same economic emphasis led to the first initiatives to modify the institutional mandate and operating rules of the institutions, with the bank proposing different ways to speed up the process and prioritize financial considerations. Victor Viramontes argued that this characteristic helped the bank gain ready access to national decision makers, enhancing funding availability and also accountability (Spalding and Audley 1997). The lack of public participation in Board meetings or any other process of the Bank reinforces a more

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<sup>76</sup> Part of the confusion out of the hurried process led to the appointment of SEMARNAP as a member of the BD for the NADB, and SEDESOL as members of the BD for the BECC, during the implementation this situation was reversed in practice, leaving the PROFEPa area representing SEMARNAP on the BD for BECC and SEDESOL as the Mexican representatives for the BD of the bank (Cabrera 2007).

technical and economic perspective, in contrast with the BECC where public participation helped strengthen the sustainable development components as opposed to a more economic perspective of the bank (Spalding and Audley 2007). Another interesting feature of the bank's Board of Directors is the fact that the Mexican delegation decided to have the Commerce Ministry instead of Foreign Relations represented on the Board, in contrast to the United States. Apparently this decision reflected tension between the two Mexican ministries during the NAFTA negotiations, leading to presidential intervention in favor of Commerce (Salinas 2000, Herrera 2007).

One reason for the pragmatic lending attitude of NADB can be found in the fact that by its own estimations, the bank could only supply about 25% of the border's existing financing needs, thus establishing the need for enhancing its capital capacity with mechanisms that included other banks, local and state authorities, and private funds. The Bank defined the lending conditions during the implementation phase, more like a regular type bank instead of a development bank (Gantz 1996). This situation would be challenged by the reality of the border communities, which lacked the matching resources or even the tax capacity to pay for the loans under the format defined by the Bank (Torres 2004). To respond to this demand and as part of the evaluation phase described later on in this chapter, the functioning of the bank would be adjusted, and the BEIF and other assistance programs would be created to address the problem.

According to bank officials, the sustainable development concept at the bank was very important, and translated as economic sustainability, through the analysis of the

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<sup>77</sup> Despite this effort, tensions and lack of coordination continued over time (Cabrera 2007).



financial viability and sustainability of the projects (Roberts 2007, Garces 2007, Nuñez 2007, Cabra 2007, CEC 1996). In that regard another idea that permeated the implementation of the bank from the negotiation phase, was the separation of the financial decisions and the political decisions, relegating public participation to the BECC process as a way to isolate non-economic pressures on the bank decisions (Garces 2007, Roberts 2007). Nevertheless, compared to other development banks, the NADB is very open regarding their projects, numbers, and programs, a fact supported by evidence that no one has asked documents because they are publicly available (Roberts 2007).

Phillips Olmedo identified the main challenge of the bank as changing the border culture about water and wastewater infrastructure subsidies, particularly in the context of a huge demand for infrastructure and facing a four-year drought in the region. Another important influence was the decentralization and privatization initiative of the Mexican federal government that created a context favoring bank support for local authorities and communities (CEC 1996).

Another important difference between the bank and BECC was the integration of personnel. From the beginning, Mexicans and Americans were working as members of the same institution without stressing nationality, contrasting sharply with the situation at the BECC which will be discussed later. Apparently, this situation derived from the explicit managerial attitude of both bank directors. Alfredo Phillips Olmedo had a diplomatic, international financial background,<sup>78</sup> and Victor Viramontes was a Mexican-

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<sup>78</sup> Phillips-Olmedo was director of INFONAVIT at the time that president Zedillo invited him to be the first NADB director, before he was Undersecretary of Housing and Federal Properties under the Secretary of Social Development with Luis Donaldo Colosio, earlier he worked for the International Monetary Fund, the

American U.S. citizen from a border state who also had water and financial backgrounds (Dominguez 2007; Roberts 2007).

From the very beginning the Community Adjustment Program (CAP) with ten percent of the bank's capital was managed as a separate institution, only considered part of the bank for the annual reports. The CAP reflected Congressman Torres's insistence on labor training or project development for worker displacement—the program office was located in Los Angeles, CA in Torres' district (Torres 2007). The money committed to that office cannot be used binationally; it is reserved only for projects in the United States. In the case of Mexico, its ten percent was taken and managed also by BANOBRAS without NADB's participation in the administration of those projects (Garces 2007; Roberts 2007).

In January 1997, Alfredo Phillips resigned as the Managing Director of the NADB, and in May of the same year Victor Viramontes assumed the position as the new Managing Director and Raul Rodriguez Barocio as the deputy Managing Director. After this managerial change the implementation stage can be considered completed and the evaluation phase of the institution begins.

### **BECC Implementation**

During the negotiation phase, the Mexicans hurried to approve the new border environment institutions since the goal was to gain enough votes for NAFTA's passage.

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Inter-American Development Bank, and the Bank of México among other financial posts. He also served as Ambassador of México in Canada and Japan (CEC 1996, Nuñez 2007).

Their negotiating instruction was agreeing to the deal, with the economic sectors of the Mexican government taking the lead without paying much attention on the details of the environmental negotiation. SEDESOL personnel, on the other hand, were more cautious. But after NAFTA passed, Mexico's official position changed; now, during the implementation phase, the institutions should be constrained. The agreement had been imposed on the Mexican government, so the interpretation of the charter had to be done from the most restrictive perspective (Cabrera 2007). The Mexican officials directly involved were Miguel Limon from PROFEPA that had substituted Santiago Onate,<sup>79</sup> and Javier Cabrera;<sup>80</sup> from Secretaria de Relaciones Exteriores Andres Rozental, Commissioner Arturo Herrera<sup>81</sup> and Jose Antonio Mateos as the legal adviser of SRE. Another important actor on the Mexican team was Mario Aguilar in charge of environmental affairs in the Mexican embassy in Washington. Some of the drafts would be prepared in Washington, and then communicated to Mexico City for review, approval or modification; Mario played that liaison role (Herrera 2007, Cabrera 2007).

One of the differences during the implementation period was the role that CILA (Mexican section) played, contrasting with the role played by the American section of the IBWC. Significant pressure on the IBWC model had emerged from the negotiation

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<sup>79</sup> He was invited to the Colosio presidential campaign on November right after Colosio was nominated Mexican presidential candidate of the PRI. Onate joined the campaign as head of international affairs of PRI (Onate 2008).

<sup>80</sup> Javier Cabrera participated during the negotiation of the CCA, he was not part of the negotiating team of the BECC/NADB, but later he participated during the implementation negotiations, as member of the Board of Directors for BECC as alternate of PROFEPA head Antonio Azuela, and finally as the second general manager of BECC and his third deputy general manager until 2004.

<sup>81</sup> Commissioner Arturo Herrera participated in the negotiation stages by drafting the advantages and disadvantages of using an enhanced version of the existing IBWC/CILA mechanism, or creating a new Commission. He later advised the SRE team during the implementation stages, and finally participated as one of the more influential members of the BECC's Board of Directors until 2004.

debate, with environmental organizations and academics voicing the shortfalls of the IBWC. While this criticism was generally directed at the IBWC mechanism which included both the Mexican and American sections, the political culture of social participation and government access made the CILA (Mexican section) politically impervious to the criticism on the Mexican side. This was not the case with the American section, where Commissioner Narendra N. Gunaji was criticized and marginalized from the implementation stages,<sup>82</sup> both by EPA and the State department representatives (Herrera 2007, Cabrera 2007). Even after the nomination of John Bernal as the new US-IBWC Commissioner and ex-officio member of BECC's Board of Directors the U.S. State department posted a representative to observe the Board meetings, exerting significant influence on the discussions (Cabrera 2007). In fact, one of the reasons for the rejection of the first proposed BECC office site which was to be adjacent to the CILA offices in Ciudad Juarez, was the EPA's explicit opposition and desire to differentiate the new institutions from IBWC/CILA (Herrera 2007)—to the point that EPA representatives were willing to pay the rent on the new offices if sited at a different location.<sup>83</sup> (Cabrera 2007)

The position of the CILA Commissioner represented the SRE's more conservative vision on sovereignty issues,<sup>84</sup> clearly evident in the rejection of the San Antonio option discussed above. It also brought to bear a century's experience with bilateral cooperation

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<sup>82</sup> Manuel R. Ybarra IBWC American section secretary played a significant role leading the technical committee appointed for BECC administrative implementation (Ramirez 2008).

<sup>83</sup> In the end, the Mexican government paid, half a million obtained from Jose Angel Gurria, Minister of Hacienda, and another half a million from Julia Carabias Ministry of SEMARNAP, evidence of the government's support for the institutions and the willingness to honor the agreement (Dominguez 2007).

<sup>84</sup> The CILA/IBWC mechanism was created precisely to guard territorial sovereignty, years before dealing with water issues (Herrera 2007).

and engineering knowledge of the border, particularly on water issues.<sup>85</sup> (Herrera 2007; Cabrera 2007) On the other hand, this very historical perspective was a constraint for the development of the new institutions, agencies that were forged precisely to overcome the IBWC-CILA limitations that were criticized during the negotiations. CILA and IBWC also represented a potential conflict of interest in decisions over the management of water projects that were traditionally handled by CILA/IBWC (Cabrera 2007, Bravo 2007).

On the American side, the stronger position was held by the EPA team led by Jerry Clifford and personnel from his office of International affairs. EPA-International Affairs has maintained a leading role throughout the development process of both institutions, and even today remains a member of the unified Board of Directors. During the implementation stage, Bill Nitze played a very important role, serving later as a member of the Board of Directors representing EPA (Cabrera 2007, Bravo 2007). A key person from EPA during the first years of BECC was the late Pat Whelan (Hobbs 2007). The rest of the board members represented local authorities and border citizens with Jorge Bustamante and Linda Taylor representing the citizens of Mexico and the United states respectively.<sup>86</sup>

Another important debate that signaled two of the main ideas impacting the implementation was the issue of public participation. The Mexicans wanted to limit public participation every way they could, following a political tradition of central

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<sup>85</sup> Minutes 294 dealing with project planning for some of the Mexican border cities, and Minute 299 as an agreement establishing the possibility of providing IBWC/CILA technical support to BECC project development, are clear examples of the technical support.

<sup>86</sup> A detailed composition of the first Board members can be found on Varady et al. (1996).

decision-making and corporative governmental decisions. The Americans, on the other hand, were trying to push for an American model that included transparency, accountability and access. The tension was evident with the decision, promoted by the Mexicans, to hold the first Board meeting as a closed session; after several protests from NGOs, the Board decided to change the format and have only had closed sessions prior to their public meetings (Varady et al. 1996). At the first meeting of the Board of Directors, the only resolution that passed without unanimous vote was the decision sustained by the Mexican delegation to avoid binational public participation in the review of Mexican projects. This position was defended by SRE until the very last minute when undersecretary Rozental tried to convince Linda Taylor, the U.S. citizen representative on the Board to abandon her position. Both parties held to their positions and the rules passed over Linda Taylor's opposing vote.<sup>87</sup> (Cabrera 2007, Bravo 2007)

In October 1994,<sup>88</sup> the governments decided to appoint the CILA/IBWC as a technical committee and the general administrators' responsibilities were approved (Perez 2006). The CILA/IBWC commissioners were the first de facto administrators of BECC, they began to hire personnel, locate offices and manage the budget before the general administrators were hired,<sup>89</sup> and gave administrative support even after the administrators were hired while BECC built their administrative staff (Herrera 2007). The first public meeting of the Board was held in November 1994, a year after charter

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<sup>87</sup> Until now it has been the only non unanimous decision of the BECC Board (Bravo 2007).

<sup>88</sup> On May 1994, the U.S. government issued an executive order to implement BECC, and from May to October, Board of Directors members were nominated (Varady et al. 1996).

<sup>89</sup> Payroll was handled in cash by the CILA personnel of the Mexican section in absence of administrative staff and procedures at BECC (Bravo 2007).

approval and almost a year after being legally in place.<sup>90</sup> The first general manager, Roger Freundfelder, and the first deputy general manager, Luis Raul Dominguez, were hired in February 1995. The BECC and NADB thus had their directors named at about the same time. The nomination of Luis Raul Dominguez was suggested by the newly appointed NADB director Alfredo Phillips.<sup>91</sup> (Dominguez 2007) There were two secretaries and two general directors in a huge empty space,<sup>92</sup> with a budget<sup>93</sup> sufficient to begin the hiring process to build the BECC. An effort was made to balance strategic positions along national lines as the hiring proceeded.<sup>94</sup> (Dominguez 2007) The U.S. State Department keenly supported the principle of balance, seeking to maintain an American presence at key managerial levels (Perez 2006). From the beginning this decision differentiated the BECC from the NADB, and caused cultural and political differences that permeated the BECC's first years. The internal divisions created by this approach led the Board trying to correct the nationalistic perspectives after the first two managers resigned and were replaced in 1997; in fact some argue that the division was the main reason for the resignation of the first administrators (Browne 1997). An internal memorandum from the executive committee in July 1996 gives evidence of the conflicting authorities of both administrators (Perez 2006). In any case, the process contrasted with the NADB's development, signaling the way different actors produced different institutional outcomes during the implementation phase.

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<sup>90</sup> The discussions of governmental officials negotiating implementation details happened during 1994.

<sup>91</sup> The first proposal was Jaime Sancho from SEDESOL who declined and later served as representative of SEDESOL to the NADB BD (Dominguez 2007).

<sup>92</sup> After rejecting the CILA office space; it was decided to locate BECC at the Torres Campestre building, just across from the current BECC location in Ciudad Juarez, Chih.

<sup>93</sup> The amount authorized on the implementation bill was 5 Million from the U.S. side and expected to be matched by the Mexican government, this amount never was appropriated, and it was reduced to approximately 1.5 Million from each side the following year (Hobbs 2007).

<sup>94</sup> Even today, BECC reports include a national flag over the picture of personnel indicating national origin.

The next step after hiring personnel was developing rules and procedures and the first certification criteria. The organizational structure was approved by the Board during their third special meeting May 19, 1995. The American proposal included 40 people, while the Mexicans proposed only 17, mainly due to budgetary constraints. In the end, they agreed on a small structure allowing for growth depending on work load and priorities defined by the Board (Perez 2006).<sup>95</sup> The implementation process involved several administrative cultural differences.<sup>96</sup> The Americans wanted to have everything under U.S. administrative protocols, denying the reality of a binational institution, while the Mexicans clearly understood that it was not a Mexican institution but did not understand its binational character, often catapulting minor procedural issues into binational negotiations (Hobbs 2007; Dominguez 2007; Cabrera 2007). The first certification procedure definition consumed a lot of time because it included public participation. When the first draft was defined and published for comments on June 2, 1995, it was based on previous institutional procedures of several institutions including the IDB, World Bank and other Mexican and American federal and state institutions. After public comments were received, approval of the final draft had to be delayed to consider some of the public feedback. It was finally approved on August 31, 1995 (Perez 2006; Dominguez 2007; Spalding and Audley 1997). After the certification definition procedure concluded, the certification of projects was streamlined aiming to compensate for more than a year and a half of BECC implementation without any certified project

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<sup>95</sup> There were 18 full time plus several temporary employees at the beginning, by 1996 the structure included 30 employees (Perez 2006).



(Dominguez 2007). The first projects to be considered signaled a contrasting institutional culture among Mexicans and Americans. Mexicans wanted to certify projects identified through governmental programs existing in SEDESOL, IBEP, CILA/IBWC, while the Americans argued for the bottom up approach, consulting the public on which projects should be considered. This is an example of the way different cultural factors played a role during the implementation phase of the joint institutions (Herrera 2007, Dominguez 2007, Bravo 2007).

In January 1997, Roger Freunfelder and Luis Raul Dominguez resigned as general managers at a closed special BECC Board meeting. In May of the same year Javier Cabrera and Pete Silva were named General Manager and Adjunct General Manager, respectively. Both were members of the Board of Directors during the implementation phase of the institutions, and as managers specifically tried to bridge the national divide generated during the first phase, striving to inaugurate a true binational institution.<sup>97</sup> (Hobbs 2007; Bravo 2007; Cabrera 2007; Herrera 2007)

### **Evaluation of the Institutions**

The last policy cycle stage is defined as evaluation, and basically represents a feedback mechanism that would reinitiate the policy cycle. In the case of BECC and NADB this stage involves small adjustments to their policies that would not significantly

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<sup>96</sup> The border perspective is so different from the Washington and Mexico perspectives that even today the institutions are misunderstood by central federal officials, less problematic on the U.S. side because of their decentralized governmental structure, particularly in EPA (Cabrera 2007).

<sup>97</sup> An assessment after the first two years of the institution shows that binationality in terms of bilingual processes, projects from the two countries, personnel and Board membership fares well despite the internal tensions (Varady et al. 1996).

change the institutions but would impact their consequences. The first two years of implementation left the institutions without any environmental infrastructure projects, giving the appearance of failing at their main purpose. At the end of 1995, and after the first certification criteria were defined, some projects were certified and subsequently considered for financing by the bank. Through this process, several realities surfaced leading to adjustments both in the bank and in the commission. First, for example, the certification criteria were updated for BECC; second, the EPA selected the Bank to manage BEIF grant funds and other related adjustments focused more attention on assisting poor communities with their projects; third, the Water Conservation Infrastructure Fund (WCIF) was implemented; finally, in response to formal evaluation, the institutions' charter was amended which, in turn, initiated another policy cycle. This section addresses these institutional responses at this evaluation stage.

### **The BECC's Certification Process**

During the implementation process, by February 1995, after the general managers were hired, the Board and staff initiated development of the certification criteria for environmental infrastructure projects. As early as August 10, 1994, the U.S. BECC board members met with different bureau representatives from the U.S. Department of the Interior (DOI) in Washington, D.C. and requested assistance with the development of certification criteria. The DOI published 'Criteria and Guidelines for Evaluating Projects and U.S.-Mexico Border Activities' in English and Spanish almost a year later in April 1995 (DOI 1995). This was one of several documents that BECC drew upon before publishing its own draft for public comments on June 2 of the same year. Finally, after

consideration of the public input,<sup>98</sup> the ‘Guidelines for Project Submission and Criteria for Project Certification’ were approved the last day of August, (BECC 1995) featuring a last minute change to include stronger community participation as a sustainable development indicator, which showed the importance of open meetings and the support of the advisory council (Spalding and Audley 1997).

The first projects were certified using these guidelines less than a month later<sup>99</sup> and BECC continued certifying projects using the same document. The pressure to deliver after a slow implementation period insured that the projects were more plans than fully developed projects. For instance, the first certified Ensenada project was never constructed—it was actually built in a different location using a completely different design. Other projects suffered significant modifications or were long delayed because of rushed certifications (Bravo 2007).<sup>100</sup> The various pressures to certify projects included the prospect that the U.S. Senate might cancel the U.S. allocation of funds, appeals by proponents of the projects that needed resources, and the fact that the Board needed to show some results (Perez 2006). NGO criticism quickly emerged because the first certification did not sufficiently incorporate public input and or deal adequately with the post-certification stages—public opinion played an important role given that BECC claimed transparency and openness (Hobbs 2007; Perez 2006). The Board quickly saw the need to revise the criteria ‘in light of real conditions and the demands of its border residents’ (BECC 2005). Thus it decided to re-open consideration of the certification

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<sup>98</sup> 69 members of the public submitted comments for this first draft (Carter and Ortolano 2002) More than 150 written comments were received according to Spalding and Audley (1997).

<sup>99</sup> A water plant for Brawley CA and a wastewater treatment plant in Ensenada, B.C. were certified by BECC in September 28<sup>th</sup> 1995 (NADB 2005).

process. After several public meetings and more than 200 written comments from citizens, governmental, and non-governmental entities to revise and upgrade the guidelines,<sup>101</sup> the new set of criteria were approved in November 9 1996, at Laredo, including changes in the area of human health and the environment, technical and financial feasibility, project management, sustainable development and public participation (BECC 2005, Hobbs 2007). These criteria remained in place until they were replaced in 2007 by the new prioritization and certification procedure (Hobbs 2007).

Among the components of the certification criteria, sustainable development was an issue that surfaced with the very first version, with debates over ways to promote the sustainability elements of the projects with the environmental NGOs<sup>102</sup> and Linda Taylor as their major advocate on the Board (Bravo 2007; Herrera 2007). And clearly this issue was paramount in the acceptance of the revised 1996 version, further refined and upgraded through incentives and qualification scales. BECC personnel, members of the Board, and the Advisory Council strengthened the training and outreach requirements to promote the sustainability concepts on every project, and finally BECC published guidelines on how to apply sustainable development criteria in project development (Perez 2006). This example shows how an evaluation process forced by public opinion changed the policy, strengthening sustainability elements that later became a distinctive characteristic of BECC.

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<sup>100</sup> The Nogales and Reynosa projects can be good examples.

<sup>101</sup> Carter and Ortolano (2002) found only 46 public comments in BECC files.

### **Financial Alternatives, Technical Support and Capacity Building**

Another example of institutional adjustment derived from evaluation is seen in the initial approaches of BECC and NADB towards community infrastructure projects and the existing funding alternatives. During the NAFTA debate an early consensus about the need to address the environmental infrastructure deficit along the border was reached, but the means for doing so remained unresolved. While the NAFTA discussions evolved, the governments began to address border problems first unilaterally, later with some sense of parallel efforts through IBEP, and finally through joint efforts using the IBWC/CILA mechanism. Once the BECC and NADB were in place a brief transition occurred while IBWC/CILA still was in charge of some of the infrastructure construction and project development for some binational commitments. Later, after the transition, BECC and NADB adjusted their policies in response to criticism as well as learning from the actual process of certifying and financing border projects (BECC 2005). Therefore, we can trace policy change regarding border infrastructure construction,<sup>103</sup> and the adjustments to the policy as part of an evaluation stage of BECC and NADB.

One of the first Mexican government reactions to NAFTA related criticism of environmental conditions along the border was an effort to unilaterally finance border environmental infrastructure.<sup>104</sup> This occurred about the same time the IBEP draft was

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<sup>102</sup> With a significant participation of ATI, BEP, and TCPC.

<sup>103</sup> An assessment over BECC/NADB operation from 1994 to 2000 states that they developed eight times more border wastewater infrastructure projects than the IBWC did in almost sixty years of work on border sanitation issues (Carter and Ortolano 2002).

<sup>104</sup> Patricio Chirinos Mexican Secretary of Urban Development and Ecology made the announcement in October 1991 (Hogenboom 1998).

made available for public comment. The Mexican government initiated several infrastructure works along the border beginning in 1993 using World Bank funds and federal budget for landfills and water works. The governments had agreed to work in a cooperative fashion developing the IBEP as part of the May 1, 1991 fast track commitments. In the end an amount of \$460 Million was committed by the Mexican government over a period of three years, while the U.S. government offered \$380 Million over a period of two years pending U.S. Congress approval (EPA/SEDESOL 1992; Atkeson 1992). This coordinated effort was somewhat unilateral since it involved few binational projects. The budgets were mainly managed by each federal government.

On the U.S. side the problems along the border were largely being addressed by state governments, gradually supported by some federal government aid. The EPA's Region 6, through its water office, had obtained resources for water and sanitation projects for border area low income settlements (known as *colonias*), joining forces with the State of Texas through the Economic Distress Assistance Program (EDAP) (Cabra 2007). The EPA program set a goal of providing 80% coverage in a 7-8 year period, assuming that the funds would not be permanently available. The total was around 500 million dollars invested by EPA. This program was also complemented with funds available through Rural Development from the Agriculture Department, and other support programs by the Department of Housing and Urban Development (HUD). The same type of program was generated for New Mexico with a modest 25 million budget. EPA Region 9, in charge of Arizona and California, also initiated a similar program

aimed more at Indian reservations.<sup>105</sup> (Cabra 2007) Also, the first efforts to monitor and analyze the water quality of the Rio Grande/Bravo were carried out with EPA funding coordinated with the State of Texas, other federal agencies, the IBWC/CILA<sup>106</sup> and CNA. This comprehensive monitoring effort was already subsumed under the IBEP mantle (Cabra 2007; Herrera 2007).

The next step from the EPA perspective was to address the urban untreated discharges to the Rio Grande coming from the Mexican side. A program was developed using funds from the Construction Grant Program from EPA headquarters. The first targeted cities from Region 6 were Ciudad Acuna and Piedras Negras Coahuila, and Reynosa Tamaulipas with a 10 Million grant. The first two cities already had a concession for wastewater treatment plants, so the support was for sewer systems; in Reynosa the project included sewer system and wastewater treatment. The program was implemented by IBWC/CILA, but from the early stages EPA agreed with CNA that the leadership on decisions would be theirs. EPA began to consider the Mexican and the local perspective, contrasting with the top down approach of IBWC/CILA. A technical committee was created for each city, including state representatives, the IBWC/CILA, EPA and CNA (Cabra 2007). At the same time, EPA Region 9 had the Tijuana, B.C. project under construction, and projects at Mexicali, B.C. and Nogales, Sonora under planning and development.

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<sup>105</sup> According to a 1990 GAO report, 85% of colonias' residents lived along the Texas border counties, with significantly less residents in the other three Border States (Carter and Ortolano 2002).

While implementation talks for the NADB and BECC were held, a 10 million grant for Matamoros and Nuevo Laredo Tamaulipas was provided. BECC and NADB were now part of the technical committees for these projects. EPA brought Steve Allbee from the EPA Office of Water and Waste Water's border affairs unit -that used to work on Municipal programs-, to help with the implementation of these programs, and also with the implementation of the Border Environmental Infrastructure Fund (BEIF).<sup>107</sup> The BEIF was originally part of the 'U.S. -Mexico border program' budget (Cabra 2007) which predated BECC and NADB, but later EPA decided it should be managed by the NADB (Herrera 2007). Arturo Nunez was the NADB officer responsible for managing the Fund. The transition from the period of IBWC/CILA involvement may be seen as a continuous collaborative effort of the Mexican and American governments addressing the water problems along the border through EPA and CNA, which was subsequently channeled through BECC/NADB once they were ready to manage BEIF (Cabra 2007). From the perspective of IBWC/CILA this transition was part of the technical support they contributed to the implementation of BECC/NADB, and also as a supplemental effort to help border communities to plan and develop the projects that later would be submitted for BECC certification—the wording in Minute 294 is very clear in this regard (IBWC 1995). The EPA's position regarding IBWC was lukewarm, which explains its preference for interacting with CNA first, and later with BECC/NADB.

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<sup>106</sup> See Minute 279 from the IBWC/CILA over Sanitation problems at Laredo and Nuevo Laredo, August 1989. And in particular Minute 289, from November 13, 1992 'Observation of the Quality of the Waters Along the United States and Mexico Border'.

<sup>107</sup> Steve Allbee is considered very important during the first phase of BECC implementing the technical assistance programs (Bravo 2007).



In 1994, the Mexican government entered an economic crisis, experiencing a devaluation that skyrocketed credit rates and sent countless businesses into bankruptcy. The fear of credit was very well justified in Mexico. In the past, development of water infrastructure works usually included a grant component or was completely financed by the federal government without the need to repay by user fees or any other means (Carter and Ortolano 2002). From the first modernization efforts, and particularly after 1994, the federal government's decentralization efforts usually meant that local governments would have to face the burden of infrastructure costs, without a tax base that allowed for repayment, and heavily subsidized user fees. Therefore, local authorities lacked the funds to enter in the projects, even if certified. The NADB was very keen on enforcing its policy of economic feasibility and some sort of operation and maintenance costs after construction. The final result was that by the end of 1996, the bank had not utilized any money for credits (NADB 2005). The lack of technical capacity and resources of the local communities was finally recognized. In Minute 294, these elements are explicitly mentioned as justification for the involvement of IBWC/CILA and the use of BEIF funding (IBWC 1995). Several critics of the implementation of the institutions ridiculed their refusal to recognize the obvious national economic asymmetry (Carlsen and Salazar 2002; Villeda 2002).

These elements constitute the background for the modification of the infrastructure funding structure of NADB when it began to manage the BEIF<sup>108</sup> and the creation of the following technical support programs: The Institutional Development

Cooperation Program (IDP),<sup>109</sup> and the Project Development Program (PDP) in the NADB, for assistance to the communities, plus the Project Development Assistance Program (PDAP) established by BECC in 1997.<sup>110</sup> Another important decision made in 1997 was the establishment of the Coordinating Committee including CNA, EPA, BECC, NADB, and IBWC/CILA to decide over matching funds availability and allocation.<sup>111</sup> This committee has proven to be a very important mechanism borne of the necessity to coordinate efforts, and also highlights the importance of CNA, as well as the fact that the other Board members might not need to be present.

Some argue that the transfer of the BEIF to NADB management by EPA was a move to allow the bank to show results in lieu of harsh criticism since few credit operations were in place to help communities to finance their projects (Cabrera 2007, Bravo 2007). Another perspective contends that the BEIF grant money was needed by the communities to fund projects otherwise unaffordable through standard credit mechanisms (BECC 2005; Carlsen and Salazar 2002). According to Cabra (2007), from the EPA

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<sup>108</sup> Collaboration agreement signed between EPA and NADB on April 21<sup>st</sup> 1997 with the first allocation of funds by 170 Millions of dollars. EPA approves the accessibility rules in July 24<sup>th</sup> 1997, and in April 24<sup>th</sup> the first BEIF grant is approved for Naco, Sonora (NADB 2005).

<sup>109</sup> It was approved on December 2<sup>nd</sup> 1996 (NADB 2005). The program assists public utilities in achieving effective and efficient operations by reinforcing their institutional capacities thus creating a stronger financial foundation that will support the development of future infrastructure (Carter and Ortolano 2002). It was promoted by Victor Viramontes and designed by Laura Brown and Raul Rodriguez. In 1999, a complementary program, the Utility Management Institute (UMI), was promoted by Lisa Roberts and Victor Viramontes to assist the professionalization of the water utilities personnel in Mexico (Nunez 2007).

<sup>110</sup> This program uses also EPA's BEIF funds, and institutionalized technical assistance previously provided by BECC, first by their own staff and later through paid consultants (BECC 2005). Examples of activities funded through PDAP grants are the preparation of municipal master plans, project design documents, and environmental impact statements (Carter and Ortolano 2002).

<sup>111</sup> The Coordinating committee was agreed upon over a workshop held May 12-14 1997, and its first quarterly meeting was held July 16<sup>th</sup> of the same year (NADB 2005). Later it evolved to formalize the 'Memorandum of Understanding Concerning the Program of Joint Grant Contributions for Drinking Water Supply and Wastewater Infrastructure Projects for Communities in the United States-Mexico Border Area', signed September 25<sup>th</sup> 2000 between EPA and CNA and further assumed by IBWC/CILA as a binational cooperation effort within their mandate in Minute 304 (IBWC 2000).

perspective the bank as a development institution was the best option to manage the Fund and, in addition to compensating for the evident insufficiency of project funds, the BEIF grants were designed to create accountability, initiating a learning process, especially for the Mexican communities. The grant money would make projects financially feasible but with a credit component to be paid mainly through user fees. Another argument for the lack of loans from the NADB usually claims that the loan rates were not competitive, but in reality, they were about the same as most of the banks in the U.S.,<sup>112</sup> and better than the ones offered by the Mexican banks (Garces 2007)—the fear of credit on the Mexican side and the lack of resources owing to the 1994 devaluation better explains the absence of credits (Cabra 2007; Garces 2007). In any case, clearly, the availability of grant money, plus the commitment of the Mexican government to provide matching funds on the Mexican projects selected for BEIF funding, changed the financial landscape of the border. Afterwards, the projects began to flow in larger amounts.<sup>113</sup> (Torres 2004)

The EPA and CNA are institutional actors that generated a change in the policy design of the institutions, which originally excluded grant money, and was based on equal funding by the governments denying the evident economic differential.<sup>114</sup> The original design of the NADB, notwithstanding its nomenclature, does not intend any transfer of funds from rich to poor countries (Carter and Ortolano 2002). It is more a

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<sup>112</sup> Kelly et al. (2001) mention 1% above the U.S. market rate.

<sup>113</sup> At the beginning Mexico did not want to approve grants because of the economic crisis, but also because the federal government felt that it had already invested enough with the capitalization of the NADB, the perspective changed later to make matching funds available for the BEIF grants (Nunez 2007).

<sup>114</sup> “the United States, with an annual gross national product (GNP) of over US\$6 trillion, contributed the same amount to capitalize NADBank as Mexico, whose GNP was roughly 4% of the United States’ GNP in 1994” (Carter and Ortolano, 2002).

regular bank than a development bank.<sup>115</sup> (Garces 2007; CEC 1996) From its conception it was designed more as a bank, if compared to the WB and the IDB, that has partners that invest money and partners that request loans, in this case equal capital, loan access, and decision-making (Hurtado 2008). The technical assistance, institutional development and capacity building programs addressed the other deficits found along the border communities that highlighted the asymmetries of the countries.<sup>116</sup> When the institutions were designed, and even during implementation, these elements were overlooked, but after the poor results, public criticism, and mounting evidence of the need for adjustment, both institutions reacted with the policy modifications that followed from the evaluation of the institutions, generating greater capacity for financing and developing projects since then.<sup>117</sup> It also produced a different outcome. Now the process is different in at least three ways from other development financial institutions: 1) Financial feasibility may include grant money from EPA through the Border Environmental Infrastructure Fund (BEIF), 2) there is support for institutional capacity building and financial sustainability, and 3) the process includes a public participation component and a public acceptance mechanism (Tovilla 2001). Apparently, asymmetries finally found their way into the institutions, denied in concept during the negotiation and implementation stage, recognized in practice during evaluation (Carlsen and Salazar 2002; Bravo 2007).

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<sup>115</sup> A significant departure from the European models considered in the original proposal of the NADB (Fishlow et al. 1991).

<sup>116</sup> The technical assistance programs of the BECC are: Project Development Assistance Program (PDAP), Capacity Building Needs & Solid Waste Technical Assistance Program, Technical Assistance for Mandate Expansion Projects, Public Participation, Sustainable Development Program, State Inter-institutional Coordinating Committees Program, the BECC's Participation in the Border 2012 Program. The NADB programs are divided into the categories of 1) financing: Loan & Warranty Program, COFIDAN, Border Environment Infrastructure Fund (BEIF), Water Conservation Investment Fund (WCIF), Solid Waste Environmental Program (SWEP); and 2) technical assistance and training programs: Institutional Development Cooperation Program (IDP), Utility Management Institute (UMI), Project Development Program (PDP), plus some outreach activities (BECC/NADBa 2004).

## **The Water Crisis and an Unexpected Policy Change**

Giving the arid conditions of the border, water conservation is a critical priority for sustainability throughout the region. Nevertheless at the time of the design and implementation of the BECC and NADB, water conservation was not considered in any of the assessments of environmental infrastructure needs along the border. The assessment was mainly over water and sewer systems, wastewater treatment, and solid waste and these were the stated priorities in deliberations in the charter (McKinney 2000). Water conservation was incorporated as important when the two boards authorized the certification and funding of new sectors in 2000 (BECC 2000).

The 1944 Water Treaty has been considered the grandfather of U.S.-Mexico cooperation. It stipulates national water entitlements and specifies protocols for water appropriation for the Colorado River and the Rio Grande/Rio Bravo. The region's arid conditions and extensive reliance on irrigation, coupled with a prolonged period of drought since 1992, contributed to a deficit of water diversion from Mexico to the United States (Garcia-Acevedo and Ingram 2004). In the case of the Rio Grande/Rio Bravo, Mexico is obligated to deliver to the United States an amount of 326,000 acre feet of water annually. However, the treaty procedure for water allocation on the Rio Grande/Rio Bravo stipulates accounting cycles of five years to accommodate for variations due to climatic conditions and availability of water in any particular year. In the event that Mexico is unable to deliver the stipulated volume of water, it can balance

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<sup>117</sup> See Table 2 on Carter and Ortolano (2002) for an assessment of the impact of these measures from 1997 to 2000. Every project had PDAP or IDP support and all but one had BEIF grants.

volumes within the 5-year cycle. The Treaty further provides that in the event that a deficit should occur at the end of a five year cycle that debt may be rolled over to the next five year cycle provided both nations agree.<sup>118</sup>

In 2001 Mexico found itself arrears in deliveries in the fourth year of the second five-year cycle. A partial water release program together with continuing negotiation and search for supplemental measures to alleviate the problem was agreed upon in March, specified in Minute 307 (IBWC 2001). The political pressure brought to bear by Texas water users mounted, and the possibility existed that the partial releases agreed upon could not be completed as agreed. Public opinion played a significant role in framing the conflicting views of Mexican and American water users, and even scarcity conflicts between upstream and downstream Mexican water users influenced the debate. The governors of the states involved also played a prominent role, in the case of Texas motivated by domestic elections, in the case of the Chihuahua governor, as political leverage against the Mexican federal government.

The issue made its way to the bilateral presidential agenda, the first time since the salinity crisis that a water issue had become so prominent (Garcia-Acevedo and Ingram 2004). Several consultations were made, and the office of the Mexican president commissioned the Instituto Mexicano de Tecnologia del Agua (IMTA)<sup>119</sup> to generate different scenarios of potential rainfall and accumulation of water that could facilitate a

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<sup>118</sup> TS 994 Utilization of Waters of the Colorado and Tijuana Rivers and of the Rio Grande Treaty between the United States of America and Mexico. Signed at Washington February 3, 1944. See Article 4 d).

<sup>119</sup> IMTA is the Mexican national research institution on water issues.

reasonable negotiation process. The study considered several scenarios<sup>120</sup> in which Mexico might fail to comply with the 1944 Water Treaty obligations. Among the alternatives, conservation efforts were considered on the upstream irrigation districts located in Chihuahua. Several voices proposed the strategy of water conservation to strengthen reforestation and environmental services as a means of addressing the crisis, including IBWC/CILA and Mary Kelly from Environmental Defense (ED) who also supported the idea based on field work in the Conchos watershed. Other voices from the irrigation districts claimed that CNA proposed the idea as part of their efforts to create recently authorized watershed councils and watershed management. It was certainly true that both CNA and SAGARPA had some programs with resources to improve water conservation and also true that BECC and NADB were then considering including water irrigation projects (Reed 2007). CNA had studies to improve water conservation through technology improvements but was conscious of the problem of over-allocation of water rights (Bravo 2007).

In June 6<sup>th</sup> 2002, Mexican president Vicente Fox sent Eduardo Sojo<sup>121</sup> to Washington leading a delegation with a proposal to address the water debt problem, including water conservation efforts that would avoid problems in the future, in addition to a commitment to partial deliveries of water until Mexico was in full compliance. The IBWC's Minute 308 describes the details of these agreements, which among other

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<sup>120</sup> The study was reviewed by the Mexican section of the CILA, which included several observations before it was finalized and presented to the office of the Presidency.

<sup>121</sup> He was the Coordinator of public policy from the Presidential office, and economic adviser to President Fox.

elements included the use of capital funds from NADB<sup>122</sup> to finance water conservation projects directed to solve the water debt crisis, and begin a sustainable management of the Rio Bravo/ Rio Grande watershed (IBWC 2002). The BECC and NADB staffs were not involved in anyway during the negotiation process, (Garces 2007) except insofar as the IBWC/CILA Commissioners were ex-officio members of the BECC Board of Directors, but in this instance they served in their role as commissioners, not as Board members. In August 20<sup>th</sup> 2002, the NADB Board met in San Antonio, Texas to pass resolutions associated with the agreement, including principles for NADB Water Conservation Programs, the establishment of the Water Conservation Infrastructure Fund (WCIF), the creation of a Project Development Program (PDP) and technical assistance for water conservation projects (NADB 2005; Abel 2002). The implementation of the agreement forced the BECC and the NADB to speed up the certification and financing process given the urgency of the situation, and proved that the process could be enhanced and streamlined.<sup>123</sup> (Garces 2007; Roberts 2007)

The creation of the Water Conservation Infrastructure Fund (WCIF) and the certification of the water irrigation projects changed the institutions' priorities, and process, through an external directive from the Mexican and American presidencies. The consequences and outcomes were altered through a very short policy cycle that involved actors that were part of the binational environmental cooperation policy regime (BECC), arriving at a modification of policy to solve a political crisis, and in turn opening the

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<sup>122</sup> 40 million from the NADB capital for water conservation projects on each country.

<sup>123</sup> On September 24<sup>th</sup> 2002, the BECC Board adopted a resolution to expedite water conservation projects (Abel 2002).



possibility of a larger impact on border environmental sustainability and governance for the institutions.

### **Mandate Change and Institutional Adjustments**

After reviewing two policy changes derived from the early evaluations of the institutions' performance, and one more resulting from an external circumstance, I now turn to consider a further internal adjustment of the institutions resulting in mandate reform that can be described as a policy change resulting from a formal evaluation of the institutions beginning in 2000. This mandate reform initiated yet another policy cycle including the stages of agenda setting, policy formulation, decision making and implementation, and eventually further evaluation in the future.

The reform of the institutions spans a time frame of about six years, from 2000 to 2006, which is longer than it took for the institutions creation, from agenda setting in 1990 to implementation in 1995. This policy change can be considered an adjustment rather than a major change, and although external conditions can be accounted for, endogenous forces may be considered the main sources of change.

By the end of the decade objective analyses of the institutions showed the bank had been involved in some financing of certified projects, particularly after it began to manage grants from BEIF, yet was still deficient in lending, with most of its credit capacity untapped. As of December 2000, 97 percent NADB's financing portfolio was comprised of BEIF grants and only 3 percent loans (Carter and Ortolano 2002). A GAO

report argued that unless the NADB charter was changed to allow lower cost financing, the bank could not efficiently address the border's environmental infrastructure deficit (GAO 2000).

Immediately following the election of President Fox in Mexico, in July 10<sup>th</sup> 2000, the NADB convened experts from different fields in a workshop discussing alternatives to optimize its credit capacity.<sup>124</sup> The NADB Board adopted a resolution the next day to explore the expansion of activities to improve the use of its credit capacity, and finally on November 16, 2000, the NADB board approved the new sectors, and a new low interest rate credit mechanism (NADB 2005). A few weeks later on December 6, the BECC Board adopted a resolution to certify projects from new sectors<sup>125</sup> aligned with the NADB Board resolution (BECC 2000; Kelly et al. 2001). The rationale for new sectors, including hazardous waste and clean energy alternatives, was based on the possibility of attracting private investment and therefore potential credits (Cabrera 2007).

Mexico and United States inaugurated new administrations at the end of 2000 and the beginning of 2001 with presidents Vicente Fox and George W. Bush respectively. President Fox proposed the idea of expanding NADB's mandate to create a tri-national institution capable of financing Mexico's development borrowing from the European Union experience (Hobbs 2007; Kelly et al. 2001). The idea by itself diminished BECC's

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<sup>124</sup> The idea of new sectors came from Victor Viramontes, and was reviewed by Laura Brown, Raul Rodriguez and Arturo Nunez, at the end it was a Board decision that not necessarily was based on the workshop discussions (Nunez 2007).

<sup>125</sup> 'These additional types of projects will include but are not limited to, projects that improve air quality, public transportation projects, projects related to clean and efficient energy, and projects that improve municipal planning and development, and water management' (BECC 2000).

role since the emphasis would change to development projects outside the border rather than border environmental infrastructure (Cabrera 2007). NABD's newly appointed Managing Director Raul Rodriguez<sup>126</sup> floated the idea of a unified and renewed NADB institution, incorporating the BECC as a section of the bank (Hobbs 2007). Apparently, the notion of eliminating BECC or merging it with the bank was considered in the final months of Ernesto Zedillo's administration, when bank personnel discussed alternatives with the presidential office and the Hacienda ministry. Raul Rodriguez attributed NABD's lending problems to BECC's bureaucracy (Cabrera 2007). The divergences among the institutions, with their economic, and social and environmental emphasis, raised questions about the institutions' future and role (Perez 2006).

Over the course of the first months of 2001, the governments of Mexico and the United States began informal consultations about modifying the institutions (GNEB 2001). During the Mexican president's first visit to the United States on September 5-6 2001, both presidents Fox and Bush decided to form a binational working group to open public consultations for recommendations on strengthening the BECC and NADB (White House 2001). Leaders of the mandate reform process were the U.S. Treasury and the Mexican Finance ministry (Hobbs 2007). Other members of the working group were the U.S. Department of State, Mexican Foreign Relations, EPA, SEMARNAT, and IBWC/CILA (Nauman 2002). The launching of a new era in binational relations was envisioned, given the expectations raised by the first non-PRI Mexican president in over

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<sup>126</sup> Raul Rodriguez became the managing Director of the bank on October 16<sup>th</sup> 2002. He came to the NADB right after Arturo Nunez and Alfredo Phillips Olmedo in March 1995 invited by the latter; he was named Adjunct Managing Director of the bank in March 1997, when Alfredo Phillips resigned to become a PRI

70 years and also because President Bush considered the relationship with Mexico the most important for the United States (Bush 2001). Within this context a new immigration approach was proposed by Mexico, which included the possibility of NADB financing projects in specific migrant origin zones in Mexico as a disincentive migration to the U.S.<sup>127</sup>, matching these funds with money sent by Mexican workers in the U.S. to their families in Mexico (TCPS 2001).

One week after the U.S.-Mexico binational commission meeting, the terrorist attacks of September 2001 dramatically changed the priorities of the United States, leaving the Mexican bilateral relationship astray. The U.S. government's change of priorities is considered the main external impact to the BECC and NADB during this period, because it diverted funds to the new war on terror and the American intervention in Iraq that diminished the flow of resources for the border, primarily through BEIF reductions (Cabra 2007; Bravo, 2007; Garces 2007; Roberts 2007; Herrera 2007).

Both the governments of Canada and the United States rejected the idea of the tri-national 'reconstruction' or development bank (Cabrera 2007). While consultations were in progress, Mexican officials from the Finance Ministry (Hacienda) argued that NADB capital was underutilized and could be better used for other purposes besides border environmental infrastructure.<sup>128</sup> The U.S. Treasury department considered downsizing

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candidate to the Mexican Congress. Victor Viramontes first adjunct managing director assumed then as managing director of the bank from 1997 to 2000 (Nunez 2007, NADB 2005).

<sup>127</sup> This concept was included as part of the arguments for the bank proposed by Hispanic and environmental organizations almost a decade earlier, as well as the European Regional Development Fund, and the possibility of expanding the role of the bank in the future (Ward 1993).

<sup>128</sup> Top officials from Secretaria de Hacienda nicknamed NADB as the 'NADA Bank', translated as 'nothing bank' because it was not using his potential lending capacity nor its capital (Hurtado 2008).

bureaucracy by merging the institutions.<sup>129</sup> (Nauman 2002) The Mexican government's border czar, Ernesto Ruffo, saw the need for the bank to expand to other sectors more related to economic development along the border, with the greater involvement of border state governments' and capital (Ruffo 2001) and supported the idea of a consolidated institution (Cabrera 2007). Several organizations, including, Good Neighbor Environmental Board (GNEB), TCPS, the William C. Velasquez Institute (WVI), North American Integration and Development Center (NAIDC), and actors like Mark Spalding that had been instrumental during the NAFTA debate and in the institutions' implementation, opposed the merger, basically arguing that the design of both institutions included the certification of projects prior to financial considerations to distinguish the bank from other development institutions like the World Bank. They advocated strengthening the institutions through more technical assistance grants, providing larger appropriations for BEIF grant money and lower interest rates from the bank, and giving time for the new sector reform and low interest mechanism to render fruit (GNEB 2001, Kelly et al. 2001, TCPS 2001, Hobbs 2007). Other institutions that advocated keeping both institutions were the Free Trade Alliance, NWF, and the four American border governors (Nauman 2002). During the public consultations the Texan state government officials opposed the merger and Commissioner Ralph Marquez proposed instead a business process review<sup>130</sup> (Hobbs 2007).

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<sup>129</sup> These two economic arguments will resurface in 2006 when The Mexican Secretaria de Hacienda and the U.S. Treasury considered the closure of the bank (Dominguez 2007, Garces 2007, Roberts 2007).

<sup>130</sup> A private consultant was hired and the report proposed some efficiency measures for the institutions, including avoiding duplication of efforts and better coordination (Stone and Webster 2004).

The agenda setting process incorporated several elements for debate, with two main sources for the reform initiatives, President Fox's proposal to create a bank with a larger scope than border environmental infrastructure, and the questionable efficiency of the institutions, particularly the underutilized credit capacity of the bank. There was consensus about the reform, but during the policy formulation stage several alternatives were considered: merging the institutions, expanding the geographic scope and mechanisms to increase bank lending (Nauman 2002). In March 22, 2002, Presidents Bush and fox met in Monterrey and defined the components of the reform: A new geographical jurisdiction that extends 300 Kms south of the border in Mexico, a unified board of directors along the lines of BECC's Board with 10 members, and flexibility for the bank on low interest rates and a percentage of its capital for grants. Their proposal also included evaluating the institutions' procedures to enhance project development, financing, and execution, and searching for ways to increase private investment (Perez 2006; BECC 2005).

The period of consultation and internal infighting that characterized the policy formulation stage concluded when the governments of Mexico and United States signed the protocol to amend the original charter of the institutions on November 26, 2002.<sup>131</sup> The decision making stage produced an agreement that included keeping the two separate institutions but collapsing their Boards of Directors into one for better coordination and efficiency, aligning the fiscal year of both institutions, making the certification and financing decision simultaneous, (NADB 2007) and including a practical veto capacity

since projects would now need to be approved by the federal Board representatives from the environmental and financial sectors of both countries to pass. The chairmanship of the board would alternate between the Mexican representative from Hacienda and the U.S. Treasury department representative as it used to be on the NADB Board. The previous BECC board was different since the chairperson did not have to be a government representative or from a fixed position, as long as the nationality of the general manager alternated (BECC/NADB 2006). The new decision also included removing the IBWC/CILA Commissioners as ex-officio board members, a status they previously enjoyed with the BECC board, and the dismissal of BECC's advisory council.<sup>132</sup> Partially compensating for this the change, the agreement also added public participation to the NADB board by including a border state representative and a border citizen representative from each country. During the negotiations the Mexican CILA Commissioner pointed out that Mexican representation on the Boards was uneven,<sup>133</sup> contrasting with the similar representation of U.S. officials which helped the American representatives to have more consistent decisions.<sup>134</sup> (Herrera 2007)

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<sup>131</sup> It was signed by the Mexican Ministry of Foreign Affairs Jorge Castaneda, and the Under Secretary for International Affairs Department of the Treasury John B. Taylor, in Mexico City, and Washington, DC respectively (BECC 2002).

<sup>132</sup> This element was absent of the main discussions, nevertheless its dismissal did not create significant opposition, mainly because it was thought not to be working properly or needed to strengthen public participation (Reed 2007; Bravo 2007; Roberts 2007).

<sup>133</sup> While EPA was a member of both Boards, and the U.S. State department kept a permanent observer in the BECC board and was a member of the bank board, the Mexican delegation was represented by SEMARNAT and SEDESOL in the BECC and NADB boards respectively, without a Foreign Relations representative on the Bank.

<sup>134</sup> The new BD includes the same cabinet members from both countries, and that was not the case on the previous boards.

After a long and delayed legislative approval process,<sup>135</sup> the protocol finally entered into force in August 6, 2004 (NADB 2005; BECC 2005). This requires a note of explanation as to why modification to an executive agreement had to obtain the approval of both U.S. chambers. When it was time to submit NAFTA implementation legislation for approval, it was decided by the White House to include the side agreements in that piece of legislation. There was nothing that mandated the executive do that, so it was a political decision. Charnovitz (1996) explains the situation and calls the agreement a *congressional-executive agreement*. That decision constitutes a precedent that forced the executive going back to the U.S. Congress for the change of mandate; therefore this institutional arrangement delayed entry into force for almost two years. In Mexico, in both cases the approval of the agreement occurred first, and the modification protocol later, passing through the Senate as any international agreement must according to the Mexican Constitution.

The last meeting of the original Board of Directors from BECC was in Hermosillo, Sonora in 2004 (Bravo 2007). Daniel Chacon was named managing director of BECC on 2005, replacing Fernando Macias, and no deputy general manager was named by the U.S. government until 2007, when Maria Elena Giner was named deputy general manager.<sup>136</sup> Jorge Garces was named the new managing director for the NADB October 18, 2005, after the term of Raul Rodriguez ended on October 15<sup>th</sup>.<sup>137</sup> (NADB

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<sup>135</sup> The reform was approved by the Mexican Senate on April 8<sup>th</sup> 2003, March 12<sup>th</sup> 2004 by the U.S. Senate, and March 25<sup>th</sup> 2004 by the U.S. House of representatives (NADB 2005).

<sup>136</sup> The delay involved a disagreement on the U.S. side, over operational budget discussions with Mexico and later with a public search procedure.

<sup>137</sup> It stayed 5 years, even though the mandate modification that would allow it entered into force a year after his 3 year period ended.



2005a) No deputy managing director was named from Mexico until May 1, 2007 when Hector Camacho was appointed under the new administration.<sup>138</sup>

The implementation of changes can thus be considered as beginning on August 2004 when the reforms were in force, and after the new Board of Directors became operational. The unified Board was formally installed and had its first meeting on June 21, 2006.<sup>139</sup> During the first meeting of the new unified board new bylaws to adjust BECC and NADB to the modified charter were approved.<sup>140</sup> (NADB 2007) In the meantime the general manager of BECC and the managing director of NADB were appointed without a Board of Directors in place, which signals the low importance that both governments placed on the implementation of the new mandate.

## Findings

The preceding narrative shows that the implementation and evaluation stages of the policy cycle are associated with significant changes in the outcomes and consequences of the two institutions. These stages defined rules, processes and programs that in turn generated more certified and better financed projects, as well as new governance formats and institutional capacity building. As in the previous chapter the stages were not linear, with some changes introduced right after evaluation while others created a new policy cycle.

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<sup>138</sup> This omission reflected the lack of interest of the Ministry of Hacienda about the institutions.

<sup>139</sup> The appointment of the non-federal members of the Board was made in January 30<sup>th</sup> of 2006. New Mexico State Representative Lorenzo A. Larranaga and Jacob M. Monty were appointed as the border state and public representatives for the United States, respectively. Governor Eugenio Elorduy Walther from Baja California, and Roberto Zambrano Villarreal were nominated as the border state and public representatives for Mexico, respectively (NADBank 2006).

<sup>140</sup> Available at [http://www.nadbank.org/pdfs/BECC-NADB%20Bylaws%20\\_Eng\\_.pdf](http://www.nadbank.org/pdfs/BECC-NADB%20Bylaws%20_Eng_.pdf)

The original design was meant to insure a complimentary effort aimed at building up border environmental infrastructure. Yet once the institutions were operational it become evident they were at cross purposes. Their collaboration was further complicated by duplication of efforts and lack of coordination. This led to a charter reform that unified the Board of Directors and addressed some of the institutional design problems.

Actors involved as directors of both institutions played a significant role in defining the outcomes; institutional constraints mattered less, with the exception of the BECC design that allowed for public access and voice, which enabled a variety of non-governmental actors to influence the implementation and evaluation of BECC. Not surprisingly, governmental actors assumed the principal roles during implementation, but the BECC design provided for a high level of non-governmental actors' participation that became one of its signature features, even impacting the NADB evaluation, as it affected the functioning of BECC.

The policy regime associated with these institutions changed significantly at the implementation stage, with fewer actors and institutional constraints involved, but with a larger role for ideas. In NADB, the ideas of economic sustainability, including no grants and no low interest rate credits predominated at the beginning, and they were adjusted later through evaluation based on an internal learning process as well as external pressures, mainly from academics and community proponents. Modernization and decentralization were also important in defining the relationship with the border

communities. The programs developed to increase capacity clearly confirm the theory on decentralization that call for this type of processes (Chema and Rondinelli 2007).

In BECC, the understanding and implementation of binationality went a long way, involving elements of sovereignty, bureaucratic infighting, and cultural and political differences. Surprisingly it was not the case in the bank implementation. One possible explanation is the absence of SRE and CILA from the bank implementation, plus the role of the first managing directors.

The ideas of decentralization and modernization were both important in the bank and the commission's implementation, strengthening the role of the communities and local actors. The mandate reform appears to be a setback in that direction since local representation was diminished in bank and commission decision making. Public participation was a key element of BECC implementation, and at the same time unearthed the differences existing in Mexico and the United States in that regard, involving a learning process and adjustment on both sides.

The evaluation stage reveals elements of an institutional learning process but also reaction and adjustments to pressures from the border actors, and the background conditions. In the case of the certification procedure modification for BECC, public opinion and public participation were the main factors defining the decision to change, as well as shaping the early BECC reforms. In the case of the bank, the economic conditions in Mexico at the beginning, and the availability of grant money from EPA and CNA later on, changed the pace of project financing, together with the capacity building programs

in the NADB and the BECC, constituting a significant departure from the original institutional design and ideas accorded by the governments.

These adjustments recognize the asymmetries between the countries in a practical and subtle manner. The political discourse still claims that the institutions function with equal resources from the parties, but in practice the technical and economic support of EPA represents a most needed resource that helps to address, in part, some of the contrasts between the countries. Still, the commitment does not fully balance the relative differences. The institutional changes clearly point to the need for further recognition and adjustment to national asymmetry.

The creation of the coordinating committee represents also a significant adjustment that signals the importance of CNA in the governance of the institutions, as well as questioning the role and relevance of the financial institutions for the BECC and NADB. The key and beneficial participation of Hacienda and the Treasury department during the implementation of the bank turned into considerations against the permanence of the institutions during the reform discussions, and even contributed to the aborted initiative to abolish the institutions in 2006. This issue receives further consideration in the next chapter.

As far as external or background conditions are concerned, both presidential races and changes in government showed a significant impact, first slowing the implementation pace in 1994, and later sparking the debate for reform in 2000-2001. Interestingly

enough, the mandate reform of the institutions was carried on the wings of a debate between Mexico and the United States that had little to do with the environment. A similar situation happened with the La Paz Agreement, when in the face of stark disagreements over foreign policy issues; the need to have an agreement showing political good will permitted the environmental agreement. Later, the need for a comprehensive trade agreement (NAFTA) between Mexico, Canada and the United States, ended up creating the most innovative environmental institutions for cooperation among the countries. In 2000-2001, the Mexican proposal sought to address the immigration issue through a financing institution for development and structural adjustment, an objective that did not materialize but which fostered the institutional reform of BECC and NADB.

The other external factor that impacted and defined changes for the institutions was the water crisis of the Rio Grande in 2001, which allowed the institutions to significantly enlarge their scope, and could represent a larger impact on the region's environment and governance in the future. The cooperation of BECC/NADB as an instrument that complemented the institutional reach of the CILA/IBWC mechanism in solving the water dispute signals a promising path for border environmental governance, and the opportunity to address water conservation clearly engages a regional sustainability priority.

The bureaucratic ability of U.S. agencies to maintain continuity in Board representation as well as the consistent diplomatic consensus of the agencies involved

gave them leverage and allowed them to more effectively pursue domestic public policy interests through these binational institutions. That is evident in the case of the Rio Grande/Rio Bravo water quality issue and the need to address the health effects of untreated discharges and lack of sanitary infrastructure on the border.<sup>141</sup> EPA and Texas followed a continuous and consistent policy before the institutions were in place coordinating with the Mexican government, through IBWC/CILA and technical committees with CNA and State governments first, and the coordinating committee and BECC/NADB projects later. The BEIF management as well as the expanding support of BECC for the Border 2012<sup>142</sup> programs is further evidence of this institutional cohesion. That is not the case with Mexico, which changed actors at different stages of the policy cycle. That and bureaucratic infighting has compromised a consistent Mexican environmental policy for binational environmental problems through the BECC/NADB institutions, from dismissing SRE from the NADB Board to denying CNA participation in any of the Boards, diminishing Mexico's continuity and level of official representation in the Boards, and finally trumping the possibility of better environmental border policy consistency.

The changes to BECC and NABD during implementation and evaluation improved their ability to develop border environmental infrastructure, thus affecting the outcomes and consequences of the institutions. After a stumbling beginning, when prospects of failure were real; the institutions appear to be consolidating their border presence, strengthened by recent reforms. The terrorist attacks of September 2001,

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<sup>141</sup> This aspect was described discussing the previous efforts to the BEIF financing earlier in this chapter.

<sup>142</sup> This issue will be better described in the following chapter.

changed government priorities for the border, and affected the availability of economic resources and the political saliency of environmental concerns. The next chapter examines this influence in greater detail for its impact on the governance of these joint institutions.

## **Chapter 6**

### **Environmental Governance: Institutional Outcomes and Consequences**

This chapter covers the outcomes and consequences of policy change at the BECC/NABD institutions. These are the final elements needed to complete the analysis of environmental policy change along the border and identify the variables that produced the policy change and later institutional adjustments. I argue that the policy change defined new environmental governance practices for the U.S.-Mexico border. In this section I highlight the elements that support this argument. Other questions also need to be addressed regarding the BECC and NADB's implications for the evolution of border environmental governance and, broadly speaking, for other areas of bi-national cooperation between Mexico and the United States. The exploration of these issues draws on elements of multi-level governance in framing explanations for environmental policy change along the border and considering its implications.

The chapter begins listing the outcomes and consequences of BECC and NADB, then follows with a discussion of the multilevel governance elements affecting BECC and NADB, and the presentation of a typological categorization of the institutions. It follows with a discussion of BECC and NADB interactions with other relevant actors in border environmental governance and a review of the current social, political, environmental, and economic realities affecting border environmental governance. These facts are used



to frame and discuss the likely trajectory for the institutions' near term development and the direction border environmental governance is likely to take in the near future.

### **Summary of Assessments**

Policy outcomes are characterized by a mix of the policy's contents: the goals, objectives, instruments and settings defined during the decision-making stage, and their deployment during implementation stage, which produce real-world consequences (Hoberg 2001). The operationalization of the dependent variable, policy outcomes, for this case study includes resulting formal agreements and commitments and their administrative characteristics including their goals, objectives, measures and accomplishments. The consequences will be compared using: meetings, programs, projects and negotiations of other agreements or adjustments to those agreements.

Table 6.2 at the end of this chapter, which compares the main instruments of binational environmental cooperation policy between Mexico and the United States, illustrates the advance of policy change from the 1944 Water Treaty, to the La Paz Agreement, and finally to the BECC/NADB Agreement. The BIEP was proposed by the governments during the negotiation of NAFTA to improve the La Paz Agreement with some resources committed by the governments, still with unilateral but somewhat coordinated efforts. Border residents and other political actors pressed the governments to go beyond that approach, basically assuring a financial entity or bank to provide funding for environmental infrastructure, and procedures that would improve the local access and involvement in project development and decision making, a sharp departure from the

earlier scheme of the IBWC/CILA in terms of public participation, and from the La Paz Agreement in terms of resources. The BECC/NADB mechanism was the governments' response, as a bargaining chip to gain NAFTA approval rather than a real commitment to the newly defined instruments for environmental cooperation. The implementation and evaluation of the institutions gave way toward adjustments to the defined policy, more attuned to the border realities and expectations of border actors, and finally to the NADB/BECC modifications that represent the most recent adjustments in binational environmental policy.

The main institutional characteristics that differentiate the linked agencies from previous approaches are: binationality, a two step process of certification and financing of environmental infrastructure projects, financial resources for border infrastructure projects, several programs designed to build local capacity along the border, public participation and transparency, and a bottom-up approach in the definition of the projects to be certified and financed. Finally, another element that made the institutions different, and that will be discussed in greater detail below is the new governance arrangement for the U.S.-Mexico border that followed from the establishment of BECC and NADB.

Before proceeding, it is useful to describe some distinctive characteristics of the institutions, as well as their weaknesses, strengths and challenges drawing from discussion in the preceding chapter and various assessments<sup>143</sup> of BECC and NADB.

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<sup>143</sup> Several assessments have been made about the BECC and the NADB by academic scholars, (Mumme and Sprouse 1999; Mumme and Moore 1999; Liverman et al. 1999; Carter and Ortolano 2002; Torres 2004; Villeda 2002; Cordoba 2001; Hufbauer and Schott 2005; McKinney 2000; Lehman 2001; Perez 2006) governmental offices, (GAO 1994; GAO 1996; GAO 2000; Tiemann 2004) private consultants,

Key institutional characteristics:

1. Complementing institutional mandates of certification and financing (BECC/NADB) strengthened through the 2004 reform by a common Board of Directors.
2. Bi-nationality expressed in location of offices and composition of Board of Directors, staff, administrators, language and balance of projects on both countries.
3. Public participation expressed in its programs, certification procedures, responsiveness to criticism, and composition of their Board.
4. Sustainable development practices included as requisites in their certification procedure, training and assistance programs and projects' financial structure.
5. Border focus, accomplished by its territorial jurisdiction and priorities of environmental infrastructure: water supply, water conservation, wastewater, solid waste, and new sectors, and the inclusion of border citizens and officials from the region in their Board.<sup>144</sup>
6. Capacity building developed through specific programs as a response to lack of project development, participatory mechanisms, and economic capabilities, particularly in small communities and sub federal governments.
7. Long learning process and flexibility expressed by the adjustment through internal institutional reforms to local economic, social and political realities, after the small amount of certified and financed projects during the first years of the institutions.

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(Stone and Webster 2004) and the institutions themselves (BECC/NADB 2004a; BECC/NADB 2008). These reports have different emphases. However every one presents proposals for institutional improvement or identifies challenges to overcome.

<sup>144</sup> The local representation on the new unified Board is somewhat diminished compared to the previous BECC Board, but enhanced if compared with the previous NADB Board.

8. Subsidizing capabilities expressed through technical assistance programs and grants from other institutions channeled through their institutional process.

Main institutional weaknesses:

1. Need for a comprehensive plan for the border to define priorities and outcome efficiency, with a more comprehensive approach instead of project driven (Mumme and Sprouse 1999; Hufbauer and Schott 2005).
2. Duplication and lack of efficient coordination with other border environmental agencies (Stone & Webster 2004)<sup>145</sup>.
3. Loan rates and grant flexibility by the NADB not competitive enough (Hufbauer and Schott 2005; GAO 2000)<sup>146</sup>.
4. Grant dependency to make most of the projects financially feasible (Carlsen and Salazar 2002; Carter and Ortolano 2002; Lehman 2001).
5. Small impact compared with the identified infrastructure needs along the border (Carter and Ortolano 2002; EPA 2001; Lehman 2001; COCEF 2005; Hufbauer and Schott 2005).
6. Short of initiative to promote projects, reactive instead of proactive (Mumme and Sprouse 1999)
7. Require flexibility to consider different public participation schemes (Lybecker 2006).
8. Long certification and financing process (Stone & Webster 2004)<sup>147</sup>.

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<sup>145</sup> This weakness has been reduced since the constitution of the Coordinating Committee, plus the recent involvement of BECC as EPA support on Border 2012, and the consolidated Board of directors.

<sup>146</sup> This point partially addressed through the reform and the bank low interest rate mechanism.

<sup>147</sup> This point significantly improved after the mandate reform and internal adjustments.

9. BECC's lack of control over project implementation after certification (Chacon 2007; Garces 2007).
10. Limited budget for staff and operations in BECC (Carlsen and Salazar 2002; Dominguez 2007).
11. The need for evaluation of environmental benefits of the projects after implementation, (Reed 2007; Hufbauer and Schott 2005) and
12. Deficient incorporation of border asymmetries in their institutional design (Villeda 2002; Torres 2007).

Main institutional strengths:

1. Public participation processes and ability to incorporate public input (Varady et al. 1996; Spalding and Audley 1997; Liverman et al. 1999).
2. Transparency (Roberts 2007; Varady et al. 1996; Liverman et al. 1999).
3. Accountability (Roberts 2007; Cabra 2007; Liverman et al. 1999).
4. Federal institution with a regional character.
5. Strengthens bi-national cooperation and consensus building (Bravo 2007; Cabrera 2007).
6. Promotes democratization in the region (Lybecker 2006).
7. Promotes NGO's development (Liverman et al. 1999).
8. Highly interactive with different tiers of government and non-state actors.
9. Contributes to decentralization processes in the border (Lybecker 2006).
10. Emphasis on ecological and economic sustainability.
11. Preference for assisting disadvantaged communities (Gandara 2007; Cabra 2007).

12. Bottom-up approach (Herrera 2007).
13. Avoidance of the regulatory or standard-driven approach.
14. A demonstrated trend of improving their use of resources (Stone & Webster 2004).
15. Human health and environmental analysis as part of its certification process  
(Liverman et al. 1999).
16. Ability to respond to new emerging situations.

Core challenges facing the institutions:<sup>148</sup>

1. Lack of comprehensive master plans and inadequate preparation of proposed projects.
2. Limited financial, administrative, commercial and operating capabilities of some  
local agencies responsible for providing water, sewage and sanitation services.
3. High cost of projects and insufficient community resources.
4. Inadequate revenue for the sound operation and maintenance of existing systems,  
coupled with resistance to user fee increases.
5. Insufficient interest and limited success with private sector participation.
6. Comprehensive coordination and leadership for environmental projects along the  
border.
7. Increasing overall performance towards expected results.
8. Strengthening local representation and interaction while improving federal  
administrative recognition.
9. Manage the implementation policies derived from the Mexico-US differences, and  
finally

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<sup>148</sup> The first five challenges listed come from BECC/NADB 2008 Joint Report. The others are challenges identified by the author.

## 10. Surviving threats to disappear the institutions.

The first five challenges are clearly identified by the institutions and they have strategies to address them (BECC/NADB 2008). The first and second challenges are being addressed through capacity building; the third challenge besides the institutional strategy of low interest loans needs to be addressed by mixing grant resources with an adjustment of fiscal policy on the Mexican side that mobilizes more local resources. The fourth challenge also requires more public participation and ownership of the projects after certification, coupled with capacity building efforts. The fifth is currently attended by opening new sectors that might be more likely to incorporate private investment. The remaining five challenges listed above were identified through this investigation, and various options for addressing them are discussed after the governance characteristics of the BECC and NADB are analyzed in the following sections of this chapter.

In assessing the impact of these institutions, the data available about the programs developed and the resources invested by BECC and NADB throughout the border can be used as indicators in addition to the characteristics already listed. Another concrete measure of institutional policy consequences is the number of projects certified and financed. The percentages of projects on each side of the border can be used to highlight binationality. And finally, the trend towards increased projects and technical assistance evident over the life of the institutions also provides a good indicator of their maturity and the significant consequences of their operations (See Table 6.1, and Figures 6.1-6.3).

In the case of the BECC, a sum of US\$34.43 million has been allocated to date to aid in 260 environmental infrastructure projects in 144 communities.<sup>149</sup> The funding for those projects is distributed as 36% and 64% for Mexican and American projects respectively, even though 54% of the total number of projects is from Mexico and the remaining 46% are for projects in the U.S.<sup>150</sup> As of 2008, BECC has certified 141 projects with an estimated cost of US\$3 billion, with approximately 55% of the projects from United States and 45% from Mexico. NADB has authorized US\$22.59 million in grant funding to carry out 225 studies for 103 communities. The bank has also authorized US\$930.5 million in loans and/or grant resources to support 119 of those projects, with 55% and 45% of American and Mexican projects respectively, nevertheless, the Mexican projects represent a little over 63% of the total cost of the projects (BECC/NADB 2008; NADB 2008).

Table 6.1 Comparison of Projects and Technical Assistance from BECC and NADB in 2000 and 2008

Consequence	2000 <sup>151</sup> Projects	US\$ Million	2008 Projects	US\$ Million
BECC technical assistance	91	16.7	260	34.4
BECC certified projects	43	968.0	141	3000.0
NADB technical assistance	93	9.6	225	22.6
NADB financed projects	31 <sup>152</sup>	276.0 <sup>153</sup>	119	930.5

<sup>149</sup> A community may have several projects; communities are not duplicated in total count.

<sup>150</sup> The cost associated with the Mexican projects is relatively lower.

<sup>151</sup> Data for 2000 is from Lehman (2001); Data for 2008 is from BECC/NADB (2008), and NADB (2008).



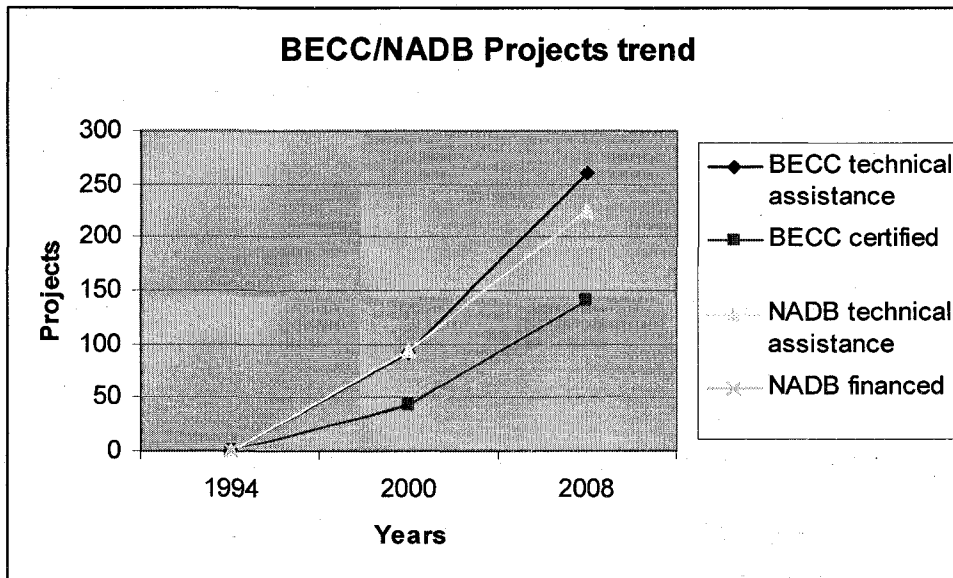


Figure 6.1 BECC/NADB projects trend from 1994 to 2008

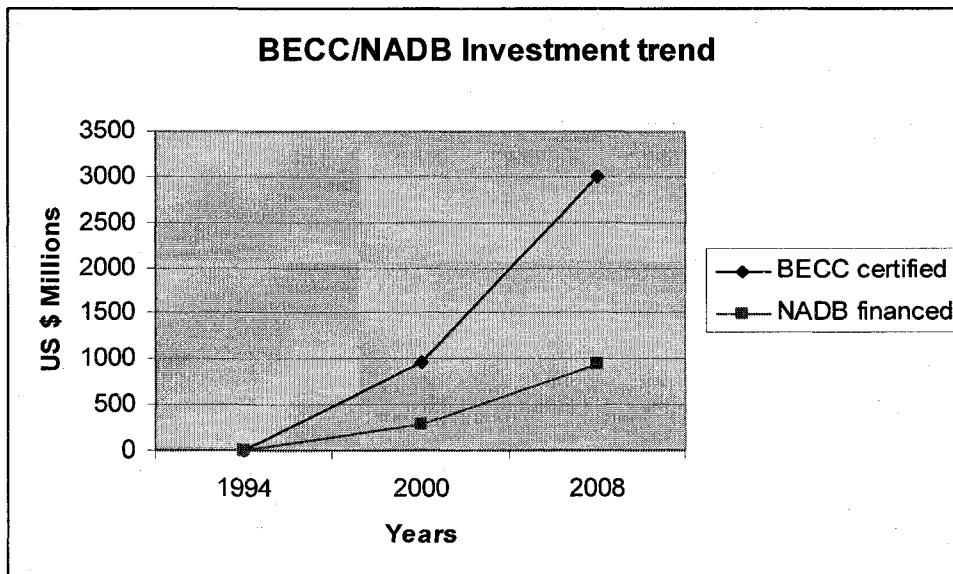


Figure 6.2 Investment trend for BECC/NADB's projects from 1994 to 2008

<sup>152</sup> The sponsors of nine projects did not seek NADB funding or were redesigning their projects; three other projects were still under process (Lehman 2001).

<sup>153</sup> \$11 million in NADB loans and \$265 million in BEIF grant funds to partially finance these projects (Lehman 2001).

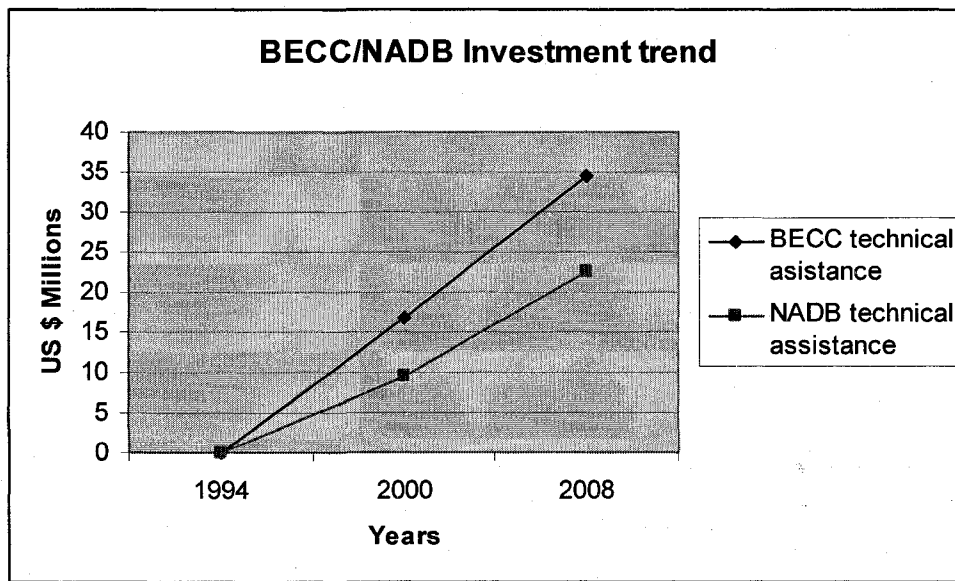


Figure 6.3 Investment trend for BECC/NADB's technical assistance from 1994 to 2008

A comparison of the outcomes and consequences (See Table 6.2) between the different binational efforts to address environmental issues mark at least two major policy changes, and several minor adjustments. From the 1944 Water Treaty onward, minor adjustments were incorporated to address the nascent salinity-sanitary-environmental problems on an ad hoc basis through IBWC/CILA minutes. The first collaborative initiatives, including the Memorandum of Understanding between EPA and SMA in 1978, may well be described as fledgling efforts to address oncoming environmental challenges and precursors of the La Paz Agreement. The La Paz Agreement represents a major policy change as it formally established and routinized U.S.-Mexican environmental cooperation at the agency level, establishing the working group mechanism via annexes to the Agreement. The next major policy change was the creation of BECC and NADB, responding both to the limitations of IBWC/CILA and the La Paz Agreement. The 2004 BECC/NADB mandate reform constitutes a further adjustment to

this policy measure, but cannot be considered a major policy change given the comparison of their outcomes and consequences (See Table 6.2).

The La Paz Agreement framework was used for the IBEP proposal, subsequently reshaped as the Border XXI from 1994-2000, and resurfaced later as the Border 2012 in 2003. These efforts constitute the ongoing dialogue and collaboration of a broader range of border environmental issues, inclusive of the efforts on infrastructure building by BECC/NADB.

### **The BECC and NADB as Multi-level Governance (MLG) Institutions**

Hooghe and Marks (2003) offer two distinct definitions of governance institutions. What they term Type I institutions are associated with “dispersion of authority to a limited number of non-overlapping jurisdictions at a limited number of levels”. This type of governance resembles and adjusts more to a traditional hierarchical arrangement in federal states. What they call Type II institutions envision a “complex, fluid, patchwork of innumerable, overlapping jurisdictions”. Their Type II approach resembles the new governance arrangements described in this case study. Thus the Type II construct helps explain in greater detail the elements and constraints that enhance border environmental governance and bi-national cooperation.

The main implication of Type II governance is moving away from state-centered explanations, to a more polycentric explanatory approach that involves actors at different levels, where the state no longer retains a monopoly on the policy process. This enables

different actors to pursue their interests through the process at different levels and places (Jones and Clark 2001). Drawing on decentralization concepts, the Type II pattern of governance also directs attention to the possibilities of the institutions created in the 1990's as a way to responding to decentralization needs in Mexico and the United States, as well as to the importance of incorporating public participation in border environmental governance (Chema and Rondinelli 2007).

The MLG typology advances four attributes that are useful for distinguishing between types of governance: general-purpose versus task-specific orientation; nonintersecting memberships versus intersecting memberships; jurisdictions at a limited number of levels versus no limit to the number of jurisdiction levels; and system wide architecture versus flexible design. My assumption is that BECC and NADB fit the Type II typology reasonably well. Just how they express these attributes is evident in the evaluation that follows.

#### Type II Characteristics

*Task-specific jurisdictions.* The BECC certainly fits the description since its purpose is task-specific despite the ambiguity and broad definition of its task as provided in the BECC's formal mandate. The BECC-NADB Agreement stipulates that "The purpose of the Commission shall be to help preserve, protect and enhance the environment of the border region in order to advance the well-being of the people of the United States and Mexico" (McKinney 2000). The NADB has also a task specific purpose, to finance the projects certified by BECC. Nevertheless, the scope of the

institutions was given a sharper focus with the modification introduced in 2004 “In making certifications pursuant to this Section, the Board of Directors shall give preference to environmental infrastructure projects relating to water pollution, wastewater treatment, water conservation, municipal solid waste, and related matters” (BECC/NADB 2004). This paragraph highlights their task-specific character, and the relevance of water related infrastructure projects on the institutions and thus their impact on border environmental governance.

*Intersecting memberships.* The BECC and NADB manifest this characteristic in three different ways; 1) their Board of Directors includes members of treasury, finance, state department, foreign affairs and environmental areas of both federal governments, and also representatives of citizens and state governments along the border; 2) both institutions have territorially overlapping of jurisdictions since their border area jurisdiction encompasses territory of both countries and part but not all of the border states territories, as well as several local government and municipal territories included within; and 3) different federal governmental agencies as IBWC/CILA, EPA, SEMARNAT, CNA, border state governments, and other financial institutions participate in proposing projects, partially funding projects, and building capacity as part of their certification process.

*Many jurisdictional levels.* The BECC and NADB work explicitly at different levels: first, the bi-national level, second, the federal level in both countries, third, the state level in both countries, fourth, the local/city and county level in the United States

and at the municipio level in Mexico, and fifth, their work with small communities on both sides of the border, even with private projects. Finally, depending on the particular project under consideration, they involve a large number of NGO's, academics and citizens, through the certification process in the case of BECC, with a rather circumspect behavior in the case of NADB as it is involved in institutional capacity building for water utilities staff through UMI, and project proponents authorities through the IDP. The federal systems in the United States and Mexico work so differently that each government needs to be considered as a different level. In terms of territorial reach, even though it is clearly defined as 100 km north of the border into the United States, and 300 km south of the border into Mexico, the BECC/NADB mandate allows the agencies to consider jurisdiction outside that area provided the Board of Directors consider that the project would remedy a transboundary environmental or health problem.

*Flexible design.* Several moments in the history of these institutions highlight their flexibility. At the beginning of its institutional life, BECC defined its certification criteria through an intense consultation of citizens, NGOs, academics and local governments, exhibiting a considerable degree of inclusiveness and responsiveness. The adjustment to address the water debt problem through the Water Conservation Investment Fund is another landmark, revealing the flexibility of both institutions. The mandate reform implemented in 2004 which changed the institution to correct noted deficiencies clearly points towards flexibility. These examples support the argument that the institutions are able to flexibly respond to changing citizen preferences and are capable of accommodating new government priorities. What does not fit well with the description

provided by Hooghe and Marks (2003), at least until now, is the longevity of BECC and NADB, because the Type II multi-level governance institutions are supposed to be transitory, established only as needed and discontinued once they are no longer useful. In theory, if sufficient funds were available for the projects that are required along the border, sometime in the future the institutions would not be needed anymore.<sup>154</sup> Another caveat from the MLG typology suggests that Type II jurisdictions are always embedded and overlain in nested patterns in contrast with Type I jurisdictions which are designed with respect to particular policy problems, not with respect to particular communities or constituencies. In this case we can argue that a little of both conditions exist in the design of the institutions. They comply with the nested character of Type II jurisdictions represented by IBWC/CILA and EPA/SEMARNAT, but they are designed specifically to address the needs of the border communities.

This evaluation supports a characterization of BECC and NADB as Type II MLG organizations, meaning that Mexico and the United States agreed to create an innovative mechanism of governance as part of their binational efforts, effecting a significant policy change. As discussed earlier in this study, the intentions of the governments were not clearly defined with respect to the reach of these institutions; the only goal at the time of their creation was to have a negotiation tool to gain NAFTA approval. Later, during the implementation phase, the goal was constraining these institutions. Finally, however, through public and local participation, coupled to the flexible design of BECC and NADB, the outcome was the consolidation of this unique organizational design. Such

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<sup>154</sup> If the governance format is evaluated by each project, then it complies with the stated prescription, because once the project is certified public participation recedes, leaving construction and implementation

Type II MLG are more likely to be found in Europe where integration and regionalization is common, contrasting with the more state centered approach of North America, clearly depicted in the rest of the binational efforts existing between Mexico and the United States. Blatter (2001) characterizes the BECC and NADB as a hybrid institutional arrangement located somewhere between a commission and a connection, and argues that North America is likely to create and sustain a multi-polity system of international governance rather than the MLG arrangements that typify modern Europe.<sup>155</sup>

### **Environmental governance roles of BECC and NADB and implications**

This section focuses on the role that BECC and NADB play within the new environmental governance regime for the U.S.-Mexico border (Mumme 1996), and the possible consequences for environmental governance and other bilateral cooperation efforts between Mexico and the United States. This new regime formally incorporates local state and municipal governmental actors, as well as windows for the public participation of academics, non-governmental organizations and citizens.

The interactions that BECC and NADB have with local authorities, nongovernmental organizations, academics, and private investors are documented in previous chapters. Intergovernmental interactions for environmental border management through the binational Coordinating Committee<sup>156</sup> where federal institutions from Mexico and the United States harmonize their environmental efforts should also be recognized.

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to the governmental entities.

<sup>155</sup> Blatter (2001) argues that functionalists might regard the existing loose MLG arrangements in North America as a first step into a full blown MLG system.



Finally, increasing interactions with EPA managed border programs, like the BEIF through the NADB and some aspects of the Border 2012 plan through BECC create room for these institutions to tackle broader areas of environmental governance, even though they were basically designed for environmental infrastructure certification and financing (BECC/NADB 2008).

The NADB manages the Border Infrastructure Fund (BEIF) from EPA, which provides for grant and matching funds otherwise absent from the border on both sides. In Mexico, this funding mechanism commits CNA to allocate funding to the border that cannot otherwise be used in Mexico's southern or central regions, where the water and wastewater infrastructure deficit is substantially greater. While the current tax system prevails in Mexico, states and/or local governments are not presently able to incur the needed expenses for infrastructure needs, thus federal participation via grants is vital for the financial viability of the projects. On the U.S. side, the BEIF has proven to be a successful mechanism for supporting border infrastructure given the low tax base and low political clout of poor and small communities that populate the border. Through the Project Development Assistance Program (PDAP), and the public participation programs of BECC, the institution interacts directly with all border communities' authorities, and non-governmental users and advocates of projects (Bravo 2007).

The NADB also interacts directly with sub-national authorities financing and providing support through its Institutional Development Cooperation Program (IDP), the

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<sup>156</sup> Coordinated by BECC and NADB, include CNA, CILA, IBWC, EPA and State government representatives for specific projects.

Project Development Program (PDP), and particularly with water utilities' agencies, through the Utility Management Institute (UMI). These programs are oriented toward capacity building and allow for the development of institutions, personnel, and priority projects as determined by local communities, contrasting with the previous institutional arrangements. According to Chema and Rondinelli (2007), this is a key factor in successful decentralization, and in the long term strengthening of sustainable development approaches as designed during the 1990's.

The governance formats of BECC and NADB have been singled out as one of their innovative characteristics (Villeda 2001; Liverman 1999; Mumme and Moore 1999). I assert that these procedures and practices may potentially be adapted to advance bi-national governance and cooperation throughout the region. As Torres (2004) explains, it is important to consider the role that BECC/NADB plays for the overall environmental governance of the region even if the extent of their institutional impact is indirect or marginal (Ibáñez 2006; GAO 2000), localized in México (Torres 2002), or limited to the northern Mexican border region (Assetto, Hajba and Mumme 2003; Lybecker 2003).

Identifying and understanding the multiple and complex interactions of BECC and NADB with different state and non-state actors can improve their efficiency, reaction to institutional policy and external changes, and be ready to respond to incoming environmental, economic and political challenges (Hooghe and Marks 2003; Ibáñez 2006). This way the incremental institutional approach to change inherent in their

institutional design (Torres 1999) can be better directed to enhance border region environmental governance.

The analysis provides evidence that the BECC and NADB have stimulated and created opportunities for other actors' institutional change along the border. Commissioner Herrera (2007), for instance, acknowledges incorporating sustainable development concepts and openness in CILA's strategic planning derived from his experience as a BECC Board member. Former IBWC Commissioner John Bernal acknowledges such institutional learning during his term at the U.S. Section in the 1990s, knowledge that contributed to the Section's adoption of citizens' forums as a participative mechanism.

Acting within their mandate, both BECC and the NADB have the potential to respond to particular challenges confronting both federal governments where solutions appear to exceed the mandates of other agencies. Such innovation is evident in the case of implementing the Water Conservation Investment Fund (WCIF) to help diffuse the Texas-Mexico water conflict (Boucher 2002). This case exemplifies the adjustment the U.S. and Mexican federal governments are capable of making, using the flexible mandate of the institutions to solve the highly critical problem of transboundary water-environmental governance that clearly exceeded the operational and policy scope of the IBWC and CILA.

After the creation of BECC and NADB, the monopoly on border water infrastructure projects held by IBWC/CILA gradually diminished. Concurrently, the role of BECC and NADB grew to solve presidential urgencies like the water debt crisis, when the institutional policies were adapted so that BECC/NADB could certify and manage the WCIF aimed to solve the crisis. This role allowed the institutions to interact with the irrigation users, providing a substantial opportunity to become involved in regional water conservation.

An advantage of the BECC/NADB model is that it allows for the participation of private funding. Water users may propose water conservation projects associated with fallowing, improved conservation or water transfers to address the growing urban water demand. This mechanism may be used as an innovative tool for enhancing environmental governance along the border through the mobilization of private capital and the greater participation of agricultural stakeholders, particularly those in Mexico, that have often been neglected in water development. Access to agriculture water users and their resources is increasingly a key element of border environmental governance.

The new administrative and policy framework is a good example of a multi-level governance (MLG) approach for environmental management (Hooghe and Marks 2003). The need for multilevel coordination implicit in the governance approach, responds to the multifaceted problems presented by environmental issues. Institutional coordination should happen between vertical and horizontal flows of authority, including state and non-state actors (Bressers and Kuks 2003). This is certainly the case with BECC and

NADB as they respond to environmental challenges along the U.S.-Mexico border. The rationale is that local problems cannot be solved exclusively by local actors, but require the involvement of state, federal or international institutions and networks. The same holds true for global, international or regional problems that need the participation and cooperation of local actors (Bulkeley and Betsill 2005). The motivation of local actors as they pushed for these new border focused environmental institutions was precisely informed by this notion of subsidiarity and a realization of the importance of including actors at multiple levels of government and society in border environmental decision making.

The border does not exist as a unitary region with homogenous conditions. On the contrary, an array of ecosystems, economic regions, and urban interactions are found there. The potential to utilize the BECC/NADB approach to project development, certification, and financing based on the involvement of local communities, and non-governmental actors, may well be enhanced by institutionalizing the engagement of local actors in a manner that is sustained through the implementation and operation of the projects.<sup>157</sup> The projects can also be analyzed within the watershed perspective considering the flexibility and territorial jurisdiction of the institutions. In the end such innovations may lead in the direction of configuring new institutionalized governance formats that track projects and planning for emerging needs within specific regions and communities along the border. Organizations formed as part of the certification process may well gain representation that contributes to the political organization of the border as

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<sup>157</sup> This is something that has raised concerns before with the previous BECC Board of Directors (Bravo 2007).

a whole. This process is bound to vary in different areas of the border as problems and conditions vary widely throughout the region.

The most important part of the multilevel governance concept is not the identification of the appropriate levels for policy implementation but providing for interactions between different levels that increase the overall incentive structure of those affected by the governance. Thus the study of governance across social scales for sustainable development is not just about empowering different levels, but also about assessing the cumulative effects of governance as a whole (Bressers and Rosenbourn 2003). A slow trend of nested institutions building up environmental governance can be observed with the coordination of planning efforts through the La Paz agreement mechanism, the IBWC/CILA and the BECC7NADB. Further evidence that confirms the cumulative effects of governance is seen in the binational Coordinating Committee. Once it was established, it increased the capacity of every agency involved as well as the capacity of state governments. Its challenge is to find the possibilities that multi-level governance offers in order to fix deficiencies of particular actors at any one level with complementary efforts at other levels.

The dynamics of power arrangements of institutions at different levels depend on actors' options and changing external circumstances, thus collaboration is highly contingent on relevant actors' commitment (Bressers and Rosenbourn 2003). This is one of the main challenges that the new governance arrangements for the environment face along the border. My assessment indicates that local governments are not reacting

appropriately to build political leverage and representation within the institutions, thus limiting their potential. There is also a need for greater commitment from federal actors to deepening the decentralization and empowerment of local officials and actors, particularly on the Mexican side, allowing the development of the institutions for more comprehensive planning exercises.

It has been argued that regional organizations have advantages over global organizations in terms of environmental governance, with specific benefits because of the small number of actors involved, the possibility for issue linkage and because they enhance connections with national and global governance systems (Betsill 2007). The BECC and NADB thus have the potential to strengthen environmental governance by using their regional linkages as a relative advantage compared to those of the central federal government actors. What clearly emerges from this brief recollection of BECC/NADB border interactions, however, is that these institutions are better suited than any other border organization to accommodate and promote the multi-level cooperation needed to address environmental issues at different scales.

### **Potential Dismissal of BECC and NADB, and Alternatives**

Despite the significant improvement of environmental governance along the border derived from the bottom-up approach in project development, the BECC-NADB institutions are still heavily dependent on federal budgets, via the BEIF and the matching funds from CNA, to carry out water, water conservation, and wastewater infrastructure. Recent moves to diminish BEIF and concomitant CNA funding to the region, as well as

the federal initiatives to abolish the institutions all together are hard to explain given the evident benefits the institutions brought to the border region's environmental governance and infrastructure.

One explanation for this situation follows from the special conditions existing at the time of the NAFTA side agreements, when the U.S. and Mexico governments agreed to the institutions' existence as a bargaining chip for NAFTA approval. After the special conditions allowing a border issue to reach the national agenda ceased, the political leverage of the region expired. The option here is to consider the current bilateral interests of the American and Mexican governments and look for opportunities to reinstate and strengthen their interest in the border region's environmental agenda.

Another implication of the special conditions surrounding the creation of the institutions is that regional actors were not adapted to the new regime offered by the federal government. State legislatures in Mexico did not move to change credit conditions for municipios and communities that would allow them to access the NADB's financing, instead reproducing centralist practices sustaining municipio dependency on state governments. Such were the cases of Chihuahua and Baja California, where the legislatures denied the possibility for municipios to access credits to help finance NADB approved projects.<sup>158</sup> The state governments, instead of building upon the institutions' capacity to commit more federal funding for the region, did not change their traditional negotiation points with the federal government to access funding, in some cases viewing

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<sup>158</sup> Both credits were for street paving infrastructure, and political reasons rather than economic arguments were called upon for the rejection.



the BECC process as yet an extra burden in securing federal support (Cabrera 2007; Dominguez 2007). The point is that a decentralization effort initiated by the federal governments was not accompanied by local adaptations, which could have strengthened local government opportunity to realize the full benefits intended, particularly in Mexico (Herrera 2007).

The case of the *colonias*' infrastructure project in Texas is an exception that allowed Texas to increase infrastructure through BEIF. On the opposite side is Nuevo Leon which considered that the communities within their jurisdiction were not sufficiently important. This situation is changing now that BECC and NADB's territorial extension in Mexico has broadened to include Monterrey, the state capital, and surrounding metropolitan areas (Dominguez 2007).

The institutional change in 1994 and the subsequent reform of 2004, established a pair of federal institutions that allowed for limited public participation but provided no mechanism of sub-national representation as part of the institutions themselves. The BECC's local government and citizen representatives were appointed by the federal governments instead of being representatives of the region proposed to the federal governments. The issue of representation might bring accountability plus commitment from sub-national and local non-governmental actors, increasing the possibility that border actors actually embrace BECC and NADB as border institutions designed for federal responses to the region, instead of federal institutions acting along the border allowing limited regional input.

Currently, the level of federal attention to the institutions is uneven. On the U.S. side the federal agencies follow a very consistent agenda, led by EPA on environmental decisions, and the U.S. Treasury on financial decisions. The U.S. governmental representatives pursue long term programs through the institutions, using them as an integral part of their policy implementation for the border. Mexican officials, besides having different representation on the Boards of the institutions before the 2004 reform, have changed through time, with the federal representatives keeping a low profile and placing a low priority on border agendas (Bravo 2007, Cabrera 2007). They are therefore unable to use the institutions as a proactive policy federal instrument for the border.

The explanations offered here point to the lack of political organization of the border states, counties, cities and municipios, as well as non-governmental entities working in the borderland. At their 2004 assembly in Santa Fe, New Mexico, the Border Governors Conference discussed the possibility of having a coordinating executive office to follow up on common interest issues. This may provide a mechanism to organize and lobby together for environmental infrastructure and better representation in the binational agencies. In fact, during the 2007 lobbying process to raise the EPA's BEIF proposal, set at 10 million USD for fiscal year 2008, the governors met with NADB and BECC staff discussing ways augmenting the Fund's capital, which the U.S. Congress finally raised to 25 million (Chacon 2007).

Border municipios on the Mexican side are now trying to organize again. On the U.S. side of the border, county governments are organized through the Association of Border Counties but have not yet begun to effectively use their resources to avail themselves of BECC/NADB resources or support these agencies' interests. Local efforts that involve non-governmental and governmental actors on binational environmental issues appear intermittently without a specific political agenda that might strengthen border environmental governance through the BECC/NADB. The weakness of border area political organization can be seen in the absence of opposition to the changes in BECC/NADB mandate in 2004 and later legislation—the Real ID Act of 2005—that allows the U.S. Department of Homeland Security to override NEPA restrictions to erect security fencing along the border (Mumme 2006).

#### **Current Border Realities affecting BECC/NADB**

A brief discussion of current issues affecting environmental governance at the border is necessary in order to reflect upon the existing background conditions along the border that may favor an enhancement of environmental cooperation or other types of bilateral cooperation. The U.S. presidential elections, national security priorities, and social and economic circumstances are considered.

*The 2008 U.S. Presidential Election.* The United States in 2008 is immersed in a presidential campaign that provides an opportunity for issues to be brought to public attention. The Democrat candidate has suggested that he would like to enhance the environmental and labor conditions associated with NAFTA, contrasting with the

unqualified support for the trade agreement by the Republican candidate (Easton 2008, Obama 2008, McCain 2008). The possibility exists that this issue may be part of the campaign debate, forcing the candidates to express particularities about their positions. Back in 1992, during the last weeks of the campaign, Democrat candidate Bill Clinton expressed the need to include side agreements on labor and environmental issues before NAFTA approval. After his election, the side agreements were negotiated, including the formation of BECC and NADB.

*U.S. National Security.* After the September 11 attacks, the U.S. government's border priorities changed, switching from environmental protection, economic development and trade, to security, siphoning resources towards financing the wars in Afghanistan and Iraq. The result is evident in a reduction of border project funding from EPA through the BEIF (Cabra 2007; Cabrera 2007; Roberts 2007; Garces 2007). The new priorities emphasize border security (Morales 2008), including construction of a border fence and overriding environmental regulations in order to do so (Mumme 2006). This development, which arguably threatens environmental security, should also be analyzed as a strategic conjuncture affecting the course of binational cooperation in border environmental management. The signing of the La Paz Agreement and the Agreement to create BECC and NADB were, after all, realized when the governments had other priorities, the Mexican debt and the Central America crisis in the case of the former, and a trade agreement in the latter case.

The securitization of the border (Morales 2008; Payan 2006) is an unusual example of a border-regional topic that made it to the national agenda. The challenge here is to attach environmental demands to that topic and be part of the debate. One possible avenue for doing so is to address the environmental impacts derived from the border security infrastructure and operation.<sup>159</sup> This study suggests the basis for a border environmental outlook which, in turn, may lead to a border wide planning effort led by BECC and NADB, taking advantage of their MLG capacity for extensive interactions. A border environmental plan might arguably justify an alternative allocation of resources, as part of an effort to balance economic development, sustainable development, and security.

*Economic and Societal Considerations.* The current economic recession in the United States affects Mexico, particularly the economy of its northern border that heavily depends on exports and trade with the United States. It also affects the economies of the American border cities in as much as they depend of Mexican trade and development. This circumstance justifies the continuous support of infrastructure investment as a way to support the region's economy, and at the same time it lowers the saliency of environmental concerns since the business sector can aggressively ask for environmental breaks in order to support jobs (Hoberg 2001).

Finally, drug related violence along the Mexican border arising from the war on drugs that the Mexican government has launched, not only diminishes the saliency of environmental issues in public opinion, but also affects cooperation efforts between

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<sup>159</sup> See Cordova y Vazquez, and De La Parra (2007), and also El Universal (2008).

Mexico and United States due to mutual accusations and acrimony related to drug trafficking, guns trafficking and smuggling, corruption, and drug consumption.

Nevertheless it also creates the potential to explore new cooperative efforts. The Merida Initiative (U.S. Embassy 2008), recently approved by the U.S. Congress, which directs U.S. funding for Mexico's war on drugs, represents the type of opportunities derived from the governments' shared concerns. Such development may benefit from the BECC-NADB experience. The characteristics of the institutions can be assessed as a possible model to engage in more efficient collaborative efforts among the governments. The BECC-NADB certification and funding model, for instance, might be suitable for allocating funding for special programs addressing violence and drug related problems on both sides of the border.

## **Findings**

The governments of Mexico and the United States created new border environmental governance through BECC and NADB. The special characteristics of the institutions include: binationality, a two step process of certification and financing of environmental infrastructure projects, financial resources for border infrastructure projects, building local capacity along the border, public participation and transparency, and a bottom-up approach in the definition of the projects to be certified and financed.

The BECC and NADB fit the Type II multi-level governance format, an institutional arrangement that is particularly appropriate for advancing cooperation

between different institutional actors including non-state actors. The multiple interactions documented of BECC and NADB provide evidence of this potential.

The institutions have helped to strengthen the following aspects of environmental governance: they complement other governance efforts, particularly those of the EPA/SEMARNAT/CNA and IBWC/CILA, to address environmental issues along the border; they constitute a governance model that stresses true bi-nationality in composition, resources and decision making processes that has proven useful for diffusing bi-national tensions, increasing interactions along the border, complementing the traditional approaches with flexible territorial jurisdiction especially suitable for transboundary environmental issues; the institutions support decentralization efforts, do not challenge sovereignty, and provide flexibility for policy generation; the institutions promote public participation and empower different local groups, sustaining the saliency of environmental issues and providing transparency and accountability in decision making, proving themselves a successful model of public inclusiveness in policy making; and the institutions have successfully promoted sustainable practices, environmental, bottom up approaches, and regional and local projects with a high level of public acceptance and economic and environmental feasibility, strengthening environmental governance within the region.

Despite the noted improvements in environmental governance along the border, there is ample room for strengthening current arrangements. Economic, administrative,

and human resources capacity challenges persist, and several proposals exist to overcome these limitations (BECC/NADB 2008).

The adjustment needed to fully use the potential of BECC/NADB decentralization needs to be promoted by border state governments, legislatures and local authorities. Sub-national authorities, as well as local non-governmental organizations should adjust their policies to fully benefit from this binational approach, strengthen their representation, and secure continuing support for this type of federal institutions.

The interaction of BECC/NADB with agriculture water users is limited, and appears that the WCIF—utilized in helping to diffuse the water debt crisis—should be extended and improved to address the problem of water scarcity, drought and conservation along the border.

Several suggestions regarding comprehensive transboundary environmental planning, cooperation and management, as well as other issues for regional sustainable development can be accommodated given the MLG features of the BECC/NADB, nevertheless, local organization and lobbying is needed to commit both federal governments to expand the institutional mandate in that direction. The border needs to be deconstructed as a whole homogenous region, and redefined as sub-regions that respond to the logic of mutual interests of communities willing to cooperate and develop projects, as it has been the case in some European regions. Other proposals related to watershed



management (Brown and Mumme 2000) may be explored through these institutions. The key is to fully utilize the MLG characteristics described herein.

The present background conditions of presidential elections in the United States and the change in priorities for the border present opportunities for agenda setting in border environmental management. In particular, funding for the border, and addressing the environmental implications of border security projects and infrastructure. The economic and social condition of both countries since September 11, 2001 and the prevailing circumstances along the border presents a challenge for the environmental agenda, nevertheless, previous experiences demonstrate that policy change in this issue-area is not usually derived from a primary or overarching environmental interest or agenda, but may emerge from a conjuncture of other issues which, given the right conditions, provide opportunities to effect policy change that advances binational environmental cooperation.

Finally, the U.S.-Mexico border has other problems besides the environment that need innovative non-territorial and flexible solutions. The failure of central approaches currently utilized by the federal governments on both countries to deal with immigration and security concerns, suggests examining the experience of a Type II governance model in exploring suitably promising alternatives for managing various binational issues along the U.S.-Mexican border. The next chapter evaluates the strengths and limitations of different theoretical approaches for analyzing policy change using the evidence provided by the BECC/NADB case study

Table 6.2 Policy Outcomes and Consequences: Comparison of U.S.-Mexico Environmental Cooperation Policy

Policy outcomes: Document agreements' characteristics including policy contents: goals, objectives, instruments and settings  
Consequences: Meetings, programs, projects, negotiations of further agreements.

<b>Comparison of U.S.-Mexico Environmental Cooperation Policy</b>						
<i>Characteristics to compare</i>	<i>1944 Water Treaty and Minutes</i>	<i>1972 Basis for Collaboration</i>	<i>1978 MOU SMA/EPA</i>	<i>1983 La Paz Agreement</i>	<i>1993 BECC/NADB Agreement</i>	<i>2004 BECC/NADB Agreement Reform</i>
Actors: Signatories and Responsible authorities	United States and Mexico Governments IBWC/CILA	Health authorities of Ciudad Juarez and El Paso, and the Pan American Health Organization	Mexican Sub Secretariat for Environmental Improvement and the U.S. Environmental Protection Agency	United States and Mexico Governments  SEDUE-SEDESOL-SEMARNAP-SEMARNAT/EPA, IBWC/CILA	United States and Mexico Governments U.S. Treasury/Secretaria de Hacienda, Department of State/SECOFI, SEDESOL-SEMARNAP-SEMARNAT/EPA, IBWC/CILA	United States and Mexico Governments U.S. Treasury/Secretaria de Hacienda, Department of State/SRE, SEMARNAT/EPA,
Resources	Public works remain under the authority of each country's Commissioner. Each government is in charge of their expenses and the joint expenses shall be borne	Each party shall make available personnel, equipment, services, and facilities, and information. PAHO will provide coordination, planning	Parallel projects each party considers appropriate and joint actions for specific problems. One coordinator from each party. Each	Parallel projects each party considers appropriate and joint actions for specific problems. One coordinator from each party. Each party responsible for their expenses and personnel. Special	Equal apportionment of BECC budget and NADB capital. Budget, loans and Capital can be used indistinctively on both sides of the border. BEIF grant money can be used in Mexico under certain conditions.	Equal apportionment of BECC budget and NADB capital. Budget, loans and Capital can be used indistinctively on both sides of the border. BEIF grant money can be used in Mexico under certain conditions.

	equally by the governments (prorated proportionally to the benefits)	studies, final reports, and technical assistance	party responsible for their expenses and personnel. The MOU actions subject to availability of funds.	arrangements may exist for training, equipment transfer and construction of 'installations'. The Agreement actions subject to availability of funds.	CNA grant money can be used only in Mexico. BECC office in Cd. Juarez, Chih. NADB office in San Antonio, TX.	CNA grant money can be used only in Mexico. BECC office in Cd. Juarez, Chih. NADB office in San Antonio, TX.
Issues	Use, allotment, monitoring, exchange of information, investigations, plans and public works to manage international waters, changes in the bed of the rivers and flood control and, preferential attention to the solution of all border sanitation problems. Boundaries.	Sampling, lab analysis, studies, and exchange of information of air pollution.	Environmental problems of mutual concern in border areas, any environmental protection matter. Pollution abatement and control along the border, early warning system on environmental problems. Review and consultation on national policies and exchange of information. Possibility of	Environmental problems of mutual concern in border areas. Pollution abatement and control along the border, early warning system on environmental problems. Review and consultation on national policies and exchange of information. Possibility of including non-governmental and other governmental participants. Public information protocol. Definition of the border area.	Certify and finance environmental infrastructure projects to help preserve, protect and enhance the environment of the border to advance the well-being of the people. Assist states, localities, and other public entities and private investors coordinate, prepare, analyze, evaluate and organize environmental infrastructure projects. Giving preference to environmental infrastructure	Certify and finance environmental infrastructure projects to help preserve, protect and enhance the environment of the border to advance the well-being of the people. Assist states, localities, and other public entities and private investors coordinate, prepare, analyze, evaluate and organize environmental infrastructure projects. Giving preference to environmental infrastructure

			including non-governmental and other governmental participants. Public information protocol.		projects relating to water pollution, wastewater treatment, municipal solid waste, and related matters. Binationality on language, personnel, resources and jurisdiction. Public participation, transparency, and new governance format. Limits to grants and loans. Finance of community adjustment programs in Mexico and United States in support of NAFTA.	projects relating to water pollution, wastewater treatment, water conservation, municipal solid waste, and related matters. Binationality on language, personnel, resources and jurisdiction. Public participation, transparency, and new governance format. Limits to grants and loans. Finance of community adjustment programs in Mexico and United States in support of NAFTA. Unified Board of Directors, term of general manager and managing director adjusted, new rules for low interest and grant capabilities, dismissal of BECC
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Jurisdiction	Both sides of the boundary line or river serving as a border	Ciudad Juarez and El Paso	The border and both countries for particular issues. Recognizes IBWC jurisdiction on border sanitation.	Border area including 100Kms on each side of their boundaries. Recognizes IBWC and Water Treaty jurisdiction, and BECC may enter in cooperation arrangements with them. NADB may enter in arrangements with other entities including multilateral banks.	Border area including 100Kms on each side of their boundaries. Also projects outside the area that might remedy a transboundary or health problem. Recognizes IBWC and Water Treaty jurisdiction.	advisory council. Border area including 100Kms into U.S territory and 300Kms into Mexican territory. Also projects outside the area that might remedy a transboundary or health problem. Recognizes IBWC and Water Treaty jurisdiction.
Longevity	Indefinite. Currently 63 years	Undefined	Five years extendable. Superseded by the La Paz Agreement	Indefinite. Currently 25 years	Indefinite. Modified after 11 years. Almost 15 years including reform.	Indefinite. Currently 4 years. Almost 15 years including reform.
Legal Format	Treaty status in both countries. Approved by the U.S. Senate. The Commissioners have diplomatic status. Special agreements	Agreed by the parties document.	Memorandum of Understanding in force through an exchange of notes, by the U.S. State Department and Mexican	Agreement signed by the Presidents, in force through an exchange of notes, by the U.S. State Department and Mexican Secretary of Foreign Affairs. Provides for specific	Agreement signed by the Presidents, Approved by the Mexican Senate and also approval of implementing legislation by both chambers of the U.S. Congress. (Congressional-	Protocol signed by the Mexican Foreign relations Ministry and the Undersecretary for International Affairs from the U.S. Treasury Department. Approved by the

	and decisions are recorded in Minutes.		Secretary of Foreign Affairs.	arrangements through annexes.	Executive Agreement).	Mexican Senate and both chambers of the U.S. Congress. (Congressional-Executive Agreement).
<b>Consequences</b>						
Meetings	Constant	As needed	Yearly in alternate countries.	Yearly at minimum, in alternate countries. Six working groups created to address specific issues.	BECC's Board at least quarterly, special sessions, at least one public meeting designed as the Annual meeting. NADB's Board as needed.	At least twice each calendar year, at least one public meeting designed as the Annual meeting.
Programs	Water monitoring	Sampling air pollution in the area	NA	JRT and JCP, hazardous materials' flow protocol, IBEP, Border XXI, JAC, U.S.-Mexico Border 2012 Program.	The technical assistance programs of the BECC are: Project Development Assistance Program (PDAP), Capacity Building Needs & Solid Waste Technical Assistance Program, Technical Assistance for Mandate Expansion Projects, Public Participation,	The technical assistance programs of the BECC are: Project Development Assistance Program (PDAP), Technical assistance with BECC funds for water and wastewater; solid waste; and new sectors projects, Special Grants, Public Participation,

					<p>Sustainable Development Program, State Inter-institutional Coordinating Committees Program, and the BECC's</p> <p>Participation in the Border 2012 Program. The NADB programs are divided in 1) financing: Loan &amp; Warranty Program, COFIDAN, Border Environment Infrastructure Fund (BEIF), Water Conservation Investment Fund (WCIF), Solid Waste Environmental Program (SWEP); And 2) technical assistance and training programs: Institutional Development Cooperation Program (IDP), Utility</p>	<p>Sustainable Development Program, State Inter-institutional Coordinating Committees Program, and the BECC's</p> <p>Participation in the Border 2012 Program (Grant administration and logistics). The NADB programs are divided in 1) financing: Loan Program, COFIDAN, Border Environment Infrastructure Fund (BEIF), Water Conservation Investment Fund (WCIF), Solid Waste Environmental Program (SWEP); And 2) technical assistance and training programs: Institutional Development Cooperation</p>
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Projects	Several public works outlined in the treaty, further water and sanitation works agreed upon, including more than 50 projects	Studies of specific contaminants.	NA	Tijuana wastewater, Cooper smelters negotiations. And air monitoring for the Juarez-El Paso area.	<p>Management Institute (UMI), Project Development Program (PDP), plus some outreach activities.</p> <p>US\$30.3 million has been allocated by BECC to aid in 228 environmental infrastructure projects in 131 communities. BECC has certified 105 projects with an estimated cost of US\$2.41 billion. NADB has authorized US\$14.6 million in grant funding to carry out 166 studies for 78 communities. NADB has authorized US\$696.5 million in loans and/or grant resources to</p>	<p>Program (IDP), Utility Management Institute (UMI), Project Development Program (PDP), plus publications and some outreach activities.</p> <p>US\$34.43 million has been allocated by BECC to aid in 260 environmental infrastructure projects in 144 communities. BECC has certified 141 projects with an estimated cost of US\$3 billion. NADB has authorized US\$22.59 million in grant funding to carry out 225 studies for 103 communities. NADB has authorized US\$930.5 million in loans and/or grant resources to</p>
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Agreements	133 Minutes (180-312) in 62 years	None	None	Five Annexes, one appendix, the IBEP and the follow up Border XXI, and Border 2012.	At least 4 IBWC/CILA related minutes. Several Board decisions on bylaws, rules, and project certification and financing. Adjustment of priorities to include new sectors' certification and financing in 2000. Charter reform in 2004.	support 85 projects. (BECC/NADB 2004).	support 119 of those projects (BECC/NADB 2008, NADB 2008) (Cumulative data before and after the reform).
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## **Chapter 7**

### **Theoretical Observations**

#### **Policy Change and Governance**

This dissertation studied BECC and NADB as a case of policy change affecting environmental cooperation between Mexico and the United States focusing on the implications for binational environmental governance. This chapter reviews and summarizes the different theoretical elements that advance our understanding of policy change and governance along the border.

This study of environmental governance along the Mexico-U.S. border, profits from the use of different theoretical approaches that share certain assumptions. These different approaches direct analytical attention to distinct but complementary aspects of policy change and governance in this issue-area. Historical Institutionalism (HI), the Policy Regime Framework (PRF), and Punctuated Equilibrium (PE) all share a focus on understanding policy processes over long periods of time. Each of these approaches, and the multilevel governance (MLG) approach, also used in this study, considers the importance of institutions while varying in certain respects. While Historical Institutionalism stresses the importance of institutions in policy change, PRF and PE both place greater emphasis on the role of actors and their strategic maneuvering to advance their interests. MLG provides a typology and an emphasis better suited to describe the

elements of environmental governance along the border, and the inclusion of nongovernmental actors in the policy process, while providing a perspective that, without denying the role of governmental actors, departs from a state-centered perspective and distinguishes among the different authorities involved. The use of the PRF contributes by integrating the interactions of policy regime elements and background conditions with the stages of the policy cycle, thus allowing for both a chronological and process based assessment of major and minor changes to the policy regime.

### **Historical Institutionalism and the Big Picture**

Historical institutionalism (HI) helps us to look at the overarching contexts and interacting processes that shape and reshape public policymaking, policy changes that can be identified by substantive agendas, temporal arguments, and attention to contexts and configurations (Pierson and Skocpol 2002). Considering binational cooperation for environmental purposes between Mexico and the United States in a period that encompasses almost the last 40 years, using as a starting point a water treaty signed by both countries back in 1944, provides a sufficiently long timeframe to use the approach and look at the way policy has changed throughout this period. A synthesis of relevant events and policy milestones for environmental cooperation between Mexico and the United States is presented in Table 6.2. Some of these policy changes are really minor or may be seen as adjustments to a particular policy<sup>160</sup>, while other changes clearly depart from previous policy outcomes and consequences. We can extract valuable conclusions

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<sup>160</sup> This is the case of the BECC/NADB reform that can be explained more with the perspective of dynamic constraints (Thelen 1991).

by looking at the relevant contexts and configurations existing when particular changes were made.

Adopting the HI approach reveals five important influences on Mexico-U.S. environmental governance (besides those discussed in chapter three). These are: 1) the historical development of different environmental capacity along the border; 2) the cumulative pattern of the border region's environmental degradation; 3) the nested character of U.S.-Mexico environmental cooperation on environmental issues; 4) the change of environmental policy as a byproduct or unintended consequence while addressing other issues dominating the bilateral agenda; and 5) the preeminent role that U.S.-Mexico presidential meetings have exerted on policy change.

Despite the fact that both nations began to develop their administrative apparatus for environment protection and legislation about the same time during the 1970's, substantial differences in financial and human resources limited Mexican institutional capacity and led the government to assign a lower priority to environmental protection than its neighbor state. This, compounded by differences in the decentralization of both federal systems, meant the Mexican side of the border lagged behind in technical and administrative capacity to address environmental issues. American states and cities with more decentralized fiscal and political powers were positioned to address border issues earlier than the federal government or in coordination with the federal government, while on the Mexican side states and municipios would not develop environmental capacities until the 1990's after legislation changed to allow cooperation between state, municipal,

and federal authorities. Even then, cooperation was hindered by insufficient fiscal resources. This stark asymmetry is evident during the BECC-NADB implementation period of the mid-1990's.

Another historical element that significantly affected the 1993 environmental negotiations is the urban growth and industrialization catalyzed by the Border Industrialization Program (BIP) after 1965. This program did not anticipate the infrastructure needs addressing environmental –and other- types of impacts. During the 1991-1993 negotiations, the border environmental infrastructure crisis linked environmental issues to the trade negotiations. These two elements, differentiated environmental border capacity and neglect of the BIP's environmental impacts, constituted the structural underpinnings of public demands for policy change in 1993. This point will be thoroughly discussed later using punctuated equilibrium.

The nested character of binational environmental governance already highlighted by Mumme (1996) is corroborated by this study. The evolution of environmental governance along the border built upon existing instruments, beginning with the 1944 Water Treaty and IBWC/CILA, using the IBWC's minutes' mechanism to address particular issues. These issues first emerged as water quality issues, later as environmental problems. Subsequently, when institutional development in Mexico and the U.S. generated national environmental departments and the nature of border environmental problems broadened to include other challenges like air quality, the governments added a new mechanism, the La Paz Agreement, but kept the previous

arrangement to continue addressing the unique and treaty mandated responsibilities that fall within IBWC/CILA jurisdiction. The third milestone for environmental cooperation was defined by the side agreement to create BECC/NADB to certify and finance border environmental infrastructure. Concurrently, the La Paz Agreement with its working groups and annexes evolved to become the IBEP, Border XXI, and Border 2012, but coexisting with IBWC/CILA, and the institutions of BECC/NADB.<sup>161</sup>

Path dependent processes are seen in the evolution of this nested approach. The continuity of each of the three different mechanisms and the further development of minutes, working groups-annexes, border planning mechanisms, and finally binational environmental infrastructure certification and financing, is evidence of the reinforcing PE feedback mechanisms of the three different approaches over time (on feedback mechanisms see, Thelen 1999). When the La Paz agreement was signed, for example, the possibility of expanding the CILA/IBWC mandate was considered, but once this option was discarded, the new approach was augmented and reinforced through informal practices and further agreements (both minutes and annexes). At the next juncture during the NAFTA negotiations, the possibility of using the La Paz agreement to deliver the IBEP was considered again, as well as the option of expanding the CILA/IBWC mandate. For a second time this possibility was rejected. The new institutions, BECC and NADB, were structured separately from the first two mechanisms of bilateral cooperation, expanding the possibilities of environmental governance and slowly reinforcing the capacity of the BECC/NADB agencies to assume responsibilities

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<sup>161</sup> In chapter three, the particulars of the evolution of environmental cooperation are described in greater detail.

previously addressed by the preceding institutions. Consistent with the expectations of HI theorists (Pierson and Skocpol 2002), this process shows the sequencing and path dependence mechanisms at work in binational environmental cooperation between Mexico and the United States.

Presidential meetings provided the junctures needed for the key IBWC/CILA minutes affecting bilateral cooperation, the 1978 MOU, the La Paz Agreement, the negotiation of NAFTA and its side agreements including BECC/NADB. A presidential summit also provided the juncture for the BECC/NADB reform. Except in the case of the salinity of the Colorado River, a dispute settled after more than ten years of diplomacy, none of the other meetings placed the environment as the lead topic on the presidents' meeting agenda. In 1977, the subject was launching a new approach to bilateral cooperation; in 1983 the Mexican debt and the Central America crisis were the key issues; in the 1990's trade led the agenda; and in 2001 the topics were immigration and development. Despite not topping the agenda, the impact of these summits on environmental policy change is evident when comparing the outcomes and consequences. This is particularly true in 1983 and 1993 with the La Paz Agreement and the BECC/NADB accord. A curious coincidence of ten year periods<sup>162</sup> can be accounted for if we consider the 1973 Minute on the salinity of the Colorado River, the 1983 La Paz Agreement, the 1993 BECC/NADB and NAAEC agreements, and the 2002-2004<sup>163</sup>

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<sup>162</sup> Ten years earlier, in 1963, the health departments of Mexico and the United States signed a Memorandum of Understanding to cooperate on border environmental sanitation under the auspices of PAHO, after a binational conference held in Mexico city, no significant consequences are documented after this early effort.

<sup>163</sup> The reform was agreed at the end of 2002, but entered in force in 2004 after legislative bodies in both countries approved it; this legislative approval was path dependent upon the first approval in 1993.

BECC/NADB reforms. This is probably just coincidence as it is hard to describe it as a cycle or to associate these patterns with similar causal conditions, except that the international conferences organized by the United Nations manifest a similar timing: Stockholm 1972, Nairobi 1982, Rio 1992, and Johannesburg 2002. Mexican environmental policy usually responds to these international events, strengthening legislation or administrative capacity for the environment.<sup>164</sup> It is possible, therefore, that these international meetings might be important as a prerequisite of administrative elements available for the conjunctures,<sup>165</sup> providing evidence of how international trends have different domestic effects (Thelen 1999; Hass et al. 2004).

To the questions of why these policy changes occurred at these particular times, the HI approach provides evidence of the accumulation of environmental problems for long periods of time, and a political or policy conjuncture provided by local protests, a recent international environmental event and the creation or modification of a Mexican environmental structure or law, adverse economic conditions, and a presidential meeting. Discussions and complaints in the case of the Colorado River salinity from 1961 to 1973 led to the decision to solve the problem after a presidential meeting using the IBWC/CILA mechanism, a year earlier the United Nations Conference for the Human Environment (UNCHE) had launched the issue of international environmental cooperation, and Mexico and the United States had organized their environmental agencies. In the 1970's the countries developed their environmental legislation and

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<sup>164</sup> The multilateral leverage that the Mexican political system cultivated during the period under study, as a way to counterbalance the power asymmetry with the U.S. may explain why it was more sensitive to international conferences than the U.S.



bureaucratic structures as environmental problems accelerated along the border as an externality of the recently established BIP initiative which, coupled with other industrial threats, created the incentive to partially address the issues in 1978. This process culminated in a presidential agreement in 1983, as a sign of good will and cooperation among the two countries in the context of a severe economic crisis in Mexico that affected the United States. On the Mexican side another element of the conjuncture was the creation of SEDUE, providing a counterpart to EPA and raising the administrative priority of environmental issues from the previous SMA.

In 1993, the accumulation of problems—addressed only in part by the governments through the La Paz agreement and its annexes, and the IBWC/CILA—provided a cause for environmental negotiations within the trade agreement; again the conjuncture was the presidential trade negotiation, the environmental problems along the border, the activism of several new actors, and the institutional constraints of the U.S. politics implicit on a fast track negotiation of trade agreements. An international environmental event and Mexican reform of its environmental sector, changing from SEDUE to SEDESOL, INE, and PROFEPA, as well as a recession that affected the economy of both countries during the negotiation process, also preceded or accompanied these developments. Finally the NADB/BECC reform came about after an eight year period of implementation and evaluation of the institutions, with the critical juncture provided by the 2001 state negotiation of the U.S. and Mexican presidents over

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<sup>165</sup> The conjunctures are the meetings of the presidents that sparked the policy change and the accumulation of unsolved border environmental problems that underlay public concern.

immigration and development, an international conference in 2002, and also an economic recession affecting both countries.

A pattern of increasing complexity can be observed also in the actors and institutions involved in binational environmental policy change. This pattern coincides with the increasing saliency of environmental issues and the growth of environmental non-state actors during the 1980's, particularly along the border. Another pattern that can be considered path dependent is the consistent inclusion of greater numbers of actors through the institutional designs over time. Institutional development can be traced from the closed meetings of the IBWC/CILA mechanism, to the limited inclusion of subnational authorities and experts through the La Paz Agreement, and finally to the greater participation of nongovernmental actors in the BECC/NADB mechanism.

While the HI approach affords important insights as to how the interactions of context, background conditions, actors, and institutions affected the long scope of policy change in border area environmental governance, these elements together do not sufficiently incorporate the complexity of the 1993 negotiation process in explaining these policy transformations. A more detailed scrutiny of this particular process is required. The complementary perspectives of policy regime theory (PRT) and punctuated equilibrium (PE) both assume the same institutional incentives and constraints used by HI (Thelen 1999), thus providing additional analytical tools that help capture the details of this process. These are discussed in the two sections that follow.

## **The Policy Regime Framework and Policy Change**

The complexity of the negotiations that concluded with the agreement to create the BECC and NADB in 1993, can be better analyzed using a framework that breaks the process into stages and allows the analyst to approach the varying interactions between different actors at different levels with institutions and ideas at every step of the process, allowing comparisons among varying influences. Such a framework also helps to analyze the first years of the institutions' implementation, feedback, and further modifications to the agencies and the binational environmental cooperation policy regime (BECR) (Hessing et al. 2005).

The policy regime framework (PRF) was developed to ascertain the magnitude of policy change and its causes. Therefore it is particularly suitable for analyzing the creation of BECC and NADB. It uses the policy cycle stages as time frames and processes to analyze the policy regime interactions; the policy regime is comprised of actors, ideas and institutions. The effect of background or external conditions upon the policy regime is evaluated looking for causal relationships or elements that impact the policy regime, opening opportunities for policy change. Policy change is measured by policy outcomes and consequences produced as a compounded dependent variable from the interactions of background conditions and regime components (Hoberg 2001; Wilson 2000).

Applied to this case the PRF is helpful for understanding the rich context and elaborate interactions that led to the policy change. As discussed in chapter six, the

BECC and NABD's policy consequences have been substantial. Comparing policy outcomes is a useful means of assessing the significance of the policy change. The framework also provides an analytical tool for assessing the affect of the independent variables involved—the details of these interactions are described in chapters four and five. The three interacting processes identified and described in chapter 4 involving the trade negotiations, the trade/environment implications and negotiations, and the border environmental infrastructure, challenge the analysis based on affinities based on belief systems; the evidence point to the strategic maneuvering of actors within the institutional and ideational context through the different stages of the policy cycle as a better approach to understand policy change. In chapter five, the implementation and evaluation stages of the policy cycle are discussed, and the effects on policy consequences provide evidence of the importance of using all the policy cycle stages to better understand the process, instead of focusing only on some of the stages.

The theoretical value of incorporating different approaches within the policy regime framework is suggested by several prominent policy theorists. Hoberg (2001) argues that the PRF helps in understanding a convergence of several theoretical approaches explaining policy change, among them: historical institutionalism, punctuated equilibrium and the advocacy coalition framework. Wilson's formulation (2000) also attempts to synthesize the literature on policy change and resolve some of the existing controversies. Schlager (2007) proposes a change in the ACF name and some of its assumptions, incorporating several overlapping theoretical efforts under one framework in what she calls The Policy Subsystems and Policy Change Framework. All these

scholars agree that these approaches can be complementary despite their particular analytical emphases.

The utility of the PRF as a tool for examining the unfolding of changes to the BECR and for understanding its political evolution over time is evident as we examine the sources of policy change, the influence of background conditions on the policy process, the catalysts and stages of policy development, and the role and influence of institutions, ideas, and actors on the policy process and its outcomes. The PRF helps track and clarify relationships in each of these aspects as seen below, resulting in a thoughtful account of policy evolution and change in this issue area.

*Sources of Policy Change.* With this in mind, the source of policy change, whether emanating from within the regime or from changes in its background conditions, should be identified if we are to have a full account of change to the BECR. Our case study confirms that policy change arises from the interplay between endogenous and external forces. The accumulation of environmental problems along the border is an endogenous opportunity for labor and border environmental organizations to make alliances and challenge the status quo of binational environmental cooperation. These actors seized the opportunity to link trade and environmental issues when the governments decided to negotiate a free trade agreement—obviously the decision to negotiate constitutes an exogenous factor that allowed border issues to gain saliency through the agenda setting debate. The ACF as well as the PRF considers that internal and external shocks redistribute critical political resources; our case provides evidence

confirming this theoretical element. The PRF, however, by describing the interactions of background conditions and policy regime elements through the policy cycle process, is more consistent for this case because the ‘redistribution of critical political resources’ evolves with several feedback processes and interactions during the whole cycle, from agenda setting to policy formulation and decision-making where the outcomes happen, but including the implementation and evaluation stages where the ‘real life consequences’ occur (Hoberg 2001). The Mexican president’s decision overturning a long tradition of U.S.-Mexico bilateral policy by engaging in a free trade negotiation with the U.S. and actively lobbying U.S. domestic political institutions clearly highlights the role of strategic actors and power for policy change, and underscores the systemic political differences between Mexico and the United States at the time. The variation of alliances and coalitions, and the changing roles of different actors during the process are better captured by focusing on actors with different power and access, than trying to understand the process through coalitions. Thus, for this case study, the approach proposed by PRF is better for understanding the sources of policy change than the one offered by the ACF.

*Background Conditions.* The PRF assumes multi-causality, and a dynamic interplay of regime elements and background conditions or stressors through the different stages of the policy cycle, thus several background conditions are potentially important in shaping the context for interactions of regime elements in policy change. At the same time the specific importance of independent variables will vary at different stages of the cycle. The background conditions considered in this study were: international events,

elections, public opinion, economic conditions, the macropolitical system, and other policy sectors (Hoberg 2001, Wilson 2006).

The decision to negotiate NAFTA prompted by the rearrangement of global economies in regional blocks provided the most influential background condition for the creation of BECC and NADB. It provided the opportunity to discuss trade and environment interactions, as well as generating opportunities to address the U.S.-Mexico border environmental disaster.<sup>166</sup> International events like the UNCED conference at Rio and its preparatory meetings and forums and the tuna/dolphin dispute and its resolution within the GATT framework stimulated networking among governmental and nongovernmental actors, diffusing sustainable development concepts and serving as sources of arguments for the environmental/trade debate.

The U.S. elections in 1992 redefined the problem. It restarted the policy cycle and rearranged the balance of power and actors involved in the process. The Mexican elections in 1994 shuffled the Mexican actors involved, created the juncture for political turmoil, and effectively changed policy priorities, changes that affected the implementation of the institutions.

Public opinion played a role not only during elections but also in accelerating and framing debates, particularly when the negotiations spilled out to the public and allowed for opposition and the realignment of support, giving saliency to the emerging debate. At

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<sup>166</sup> The argument of the three processes happening at the same time and influencing each other is developed in chapter four.

the end of the negotiation, public opinion provided legitimacy to some actors for the final NAFTA vote, through public support and opposition as measured in several polls during the course of action.

Economic trends and events in the United States and Mexico also constituted serious background constraints. In the United States they helped to frame the debate over the NAFTA negotiations and its potential impacts on jobs, and the economy in general. In Mexico the economy constrained the federal government's political options, confronting it with the option of achieving a successful negotiation or, failing that, reckoning with a probable scenario of economic collapse or serious effects on Mexican financial markets.

Features of the macro-political system are important as background conditions but are also relevant as institutional elements of the policy regime. They allowed the Mexican government to align political domestic support for the negotiation given the dominant party system's control of the legislative branch and its corporative arrangements with the labor and business sectors. Strong executive dominance of the policy system allowed a shifting of historical relations with its northern neighbor based on the determination of one person, the Mexican president. In the U.S. the trade negotiations involving U.S. congressional authorization constrained the access points and timing of the policy cycle. Different partisan positions and constituencies constrained the options available during the negotiation. The role of Canada as a third party negotiator also constrained the options and reallocated power balance during the negotiation.



Finally, the interaction of trade, labor, and environmental policy areas allocated different resources and actors and constrained strategies during the negotiating process. Spillover from these three policy areas clearly affected policy change, sometimes constraining change, as was the case in the trade policy area which opposed including environmental issues until the very last moment, but also, curiously, sustaining the institutions a decade later when the possibility of eliminating them was at stake—in both cases the trade regime supported stability. Once the trade policy area admitted some environmental actors it created a precedent that endured, modifying the trade policy arena to include environmental concerns in further trade negotiations, even if these concessions were not as substantial as the ones included in the NAFTA side agreements. The trade policy area also had a significant impact on the interpretation of the sustainable development discourse for the environmental policy area, tying the free trade initiative to environmental benefits, constraining protectionist environmental measures and advocating the economic feasibility of projects. The labor policy area had a definite impact on public opinion and policy when it conditioned its support for NAFTA to the labor commission side agreement and the NADB negotiation, joining forces with Hispanic and environmental groups on the latter effort, but also providing congressional contacts and leverage to border environmental interests as they focused on the *maquiladora* industry's environmental pitfalls.

*Policy Regime Interactions.* The hypothesis of elected officials being the most important actors in policy making, as well as the constraints imposed by their political ambition (Hoberg 2001), is confirmed by evidence presented in this case study. The

presidents and their negotiating teams were bargaining with each other but also with members of the U.S. Congress in order to advance their interests. President Bush's need to use the negotiation as an electoral tool made him offer environmental concessions and conclude the negotiations before the 1992 election. In the Mexican president's case, a winning majority in the Mexican Congress gave his negotiators enough political bargaining capital to continue negotiations with fewer constraints.

Regarding actors' strategic use of ideas by appealing to widely shared values and expert authority in framing arguments (Hoberg 2001), the evidence shows how both federal governments used the USTR environmental report and academic reports to argue that free trade would generate jobs benefiting the economy, as well as being beneficial for the environment. They also denounced free trade opposition as protectionists and detractors of Mexico's modernization and democratization. They were able to gain some environmental support from the groups accepting the liberalization discourse, regardless of guarded governmental commitment for environmental interests. Border area environmental organizations were successful in framing the border's lack of infrastructure and resource deficiencies as a constraint to further economic liberalization, and ultimately to sustainable development.

Regarding actors' strategies for altering the institutional arena, or changing the ideational context of decisions to promote their interests (Hoberg 2001), several examples are found in this analysis.<sup>167</sup> An example of changing the rules of the game to overcome structural bias is seen in environmentalist support for fast track negotiations in exchange

for a consulting role in trade deliberations. Some environmental organizations also gained access to policy formulation mechanisms. This they did by effectively protesting their lack of participation in the BECR through the public meetings held to discuss the USTR report and the BEIP drafts, and later by persuading the institutions to be more inclusive, incorporating in BECC-NADB the principle of nongovernmental access to decision-making and public consultation mechanisms. Other examples are seen in the shifting of venues to gain better perceived institutional advantages (Hoberg 2001). Environmental groups challenged the Tuna-Dolphin policy and later challenged the USTR negotiation by taking the issue of whether NEPA's EIS requirement applied to NAFTA to the courts. Early in the process they opposed fast track in an effort to constrain the negotiation through the U.S. Congress, and finally, after the negotiations concluded, they lobbied Congress to reject the agreement. A further example of venue shifting is seen in the Perot campaign's appeal to public opinion and grassroots mobilization in an effort to bolster congressional opposition to NAFTA.

Attempts to shape elite and public opinion using symbolic manipulation were made by all the actors involved, seen, for instance, in the elevated rhetoric concerning the border region as an environmental disaster, and in efforts to disqualify protectionism as naïve economics or failure to support the requisites of a strong modern economy. Other examples are evident in the use of images portraying NAFTA's threat to domestic jobs and Mexican advertising campaigns to promote an awareness of Mexican environmental improvements in the U.S. public. The Clinton administration orchestrated a media and grassroots campaign with the business sector and other allies to counterbalance the

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<sup>167</sup> The PRF acknowledges that uses profusely the arguments developed by PE.

opposition campaign, with research papers and arguments being disseminated profusely by advocates and opposition, and finally using focusing events like the Gore-Perot debate, the support of recognized actors, and former U.S. presidents, that were staged for the media to impact public opinion. This account of governmental and nongovernmental actors strategic maneuvering provides evidence of the regime interactions with ideational and institutional contexts as assumed by the PRF approach.

The PRF argues that ‘some of the major pressures for change emerge from within the policy regime’, yet regime elements operate within background conditions that are ‘typically the most powerful forces for significant change in policy’ (Hoberg 2001). The assumption here is that the policy regime can produce change but significant change is usually derived from important change in background conditions. Hoberg (2001) suggests with respect to background economic conditions, ‘there tends to be an inverse relationship between profitability and the power resources of industry groups in a particular sector’. Economic adversity, he argues, diminishes both public and government support for environmental values as citizens and elected officials worry that any type of regulatory effort could worsen economic conditions.

The evidence found and presented in chapters four and five supports Hoberg’s argument and also discloses an apparent contradiction. The United States and Mexican economies were under stress and recession during the last part of the NAFTA negotiation and during the U.S. electoral campaign. Both Mexican and U.S. business sector representatives and associations were given full access to the negotiations, and even

granted concessions at the last minute during the final voting process. The Bush administration allowed the inclusion of only minor environmental safeguards in NAFTA's text, behavior that conforms to Hoberg's argument. Nevertheless, environmental concessions were made to advance NAFTA support. During the campaign, Bill Clinton, the Democratic presidential candidate, carefully avoided criticizing NAFTA and antagonizing the business sector, even to the point of risking confrontation with powerful labor and environmental constituencies. So he chose a middle way between the opposition of Perot and the support of Bush, conditioning his support of NAFTA on labor and environmental side agreements. This strategy succeeded with the business sector, which opposed protectionism through environmental regulations and environmental taxes. In the final process, the business sector supported the NAFTA because it saw the environmental and labor side agreements as minor concessions that were necessary in order to pass NAFTA. The apparent contradiction lies in the fact that despite recession, and financial volatility, environmental institutions were created as a byproduct of the NAFTA and supported by the business sector. Thus, the powerful business sector strategically chose to use its heightened power to support the environment even at a time of economic stress in a successful effort to gain much greater benefits through NAFTA.

*Stages of Policy Change.*<sup>168</sup> Using a slightly modified PRF approach developed by Wilson (2000, 2006), policy regimes may be seen to unfold in three<sup>169</sup> dimensions: the power arrangement, which may include coalitions, interest groups, state and non-state

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<sup>168</sup> These stages or phases refer to policy change not to the stages of the policy cycle.

<sup>169</sup> In the earlier version of this approach (Wilson 2000) a fourth dimension was considered: the policy itself that includes goals, rules and processes. The updated version (Wilson 2006) used for this analysis only considers three dimensions.

actors; the policy paradigm, promoted by the dominant actors or coalition that defines the problems and solutions; and the organization of the policy making and implementation structures, mainly comprised of governmental actors.<sup>170</sup> This perspective assumes that every element of the policy regime tends to support stability, allowing for incremental change through bargaining and compromise rather than significant change (Wilson 2000). It explains how the implementation process operates to sustain the policy and how implementation is itself an integral part of the policy regime. This was clearly the case in the BECC and NADB implementation process, when the nongovernmental actors played a significant role in maintaining the openness, transparency and inclusiveness of the original design and became critical actors in the policy regime, despite the fact that access is usually limited for nongovernmental actors in this stage of the policy cycle. It also helps explain the limited set of incremental adjustments the BECC and NADB made during their first decade of existence, some of these consolidated with the 2002-2004 reform. From this perspective, a stressor or enabler<sup>171</sup> impacts the policy regime and creates conditions favorable to change. Wilson (2000) proposes five stages (or phases), not necessarily unfolding in sequence, for the policy change: 1) stressors/enablers, 2) paradigm shifts, 3) legitimacy crisis, 4) power shifts, and 5) organizational and policy change. A discussion of these stages as they are evident in this case follows.

1) *Stressors/Enablers*. Wilson (2000) cites the end of the cold war, manmade disasters, rapid urbanization and rapid institutional changes, and cumulative processes as examples of potential stressors on policy regimes. All of these are evident in this study.

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<sup>170</sup> This description emphasizes specific interactions of the policy regime elements.

The leading stressors in our case were the end of the cold war and the creation of regional economic blocks, Mexico's adoption of major policy changes affecting U.S.-Mexico relations and other aspects of domestic government, the emergence of the new sustainable development discourse and unprecedented trade/environment linkages, and the accumulation of environmental problems along the U.S.-Mexico border due to rapid urbanization and industrialization. Also evident are secondary influences, such as state level changes in Mexican government that may be conceptualized as spillover effects or enablers. These stressors were conducive to greater influence by border environmental groups that enabled them to gain access to the BECR by means of the trade/environment debate, an alliance with labor interests, and the access granted through a convergence of fast track negotiation and the presidential campaign.

2) *Paradigm Shift*. A policy paradigm change occurs when the dominant version of a policy approach is contested and alternative versions gain credibility out of enabler events. The paradigm of ad hoc attention to specific bilateral problems, through institutions lacking much local input or sufficient resources to address the growing accumulation of border environmental problems was effectively contested, with the strong images of environmental problems at the border used during the public debate throughout the negotiations. The paradigm shift included the basic ideas that delivered BECC and NADB supported by academic reports: resources for border environmental infrastructure and clean up, bottom up approaches, sustainable development, local and

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<sup>171</sup> This concept is expressed as 'background condition' on the PRF (Hoberg 2001), or as 'external perturbations or shocks' on the ACF (Sabatier and Weible 2007).

public participation, openness, and transparency, and binationality.<sup>172</sup> The ideas were publicized through several forums during the Rio preparatory meetings, congressional hearings, public consultations for the USTR and IBEP drafts, letters to the negotiators, academic events, and through media campaigns. Images of the border area's adverse environmental conditions were widely disseminated by different actors, including highly respected institutional actors like the American Medical Association, broadening and strengthening public demand for border environmental improvement.

3) *Legitimacy Crisis*. A legitimacy crisis occurs when the old policy paradigm is contested and people lose confidence in the old regime. At this point, political leaders committed to policy change challenge the existing regime and propose alternatives, using several strategies to expand the issue, capture media attention, and shift venues away from established policy communities.

In this study, the growing opposition to the trade negotiations from the beginning led the EPA to approach the USTR to deal with the emerging trade/environment linkages. In response, the Mexican government began a public relations campaign to highlight changes in environmental enforcement, including the substitution of the SEDUE by new environmental agencies. The existing BECR was explicitly challenged through the IBEP and USTR public consultations; clearly the government response intended to keep the regime in place with modifications to the IBEP, supporting the idea of stability and

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<sup>172</sup> The other element contested about the lack of environmental law enforcement on the Mexican side, was addressed through the creation of PROFEPA and strengthening inspection capabilities particularly along the border during the negotiations, notwithstanding domestic events and pressures also were considered for the Mexican administrative reforms (Onate 2008).



incremental change within the same regime. The opposition grew and used the side negotiation process to keep pressing for a new regime, and finally, the governments reluctantly accepted the creation of BECC and NADB as a strategic concession before the NAFTA vote. The crisis of the old regime is evident in the EPA's opposition to IBWC/CILA involvement during BECC implementation after 1993, the limited influence of the IBWC American commissioner in this process, and the EPA's preference to coordinate policy initiatives with CNA officials rather than with IBWC/CILA representatives. The public outcry and opposition of border and environmental advocates to the IBEP, leading to its post-negotiation abandonment by the environmental agencies of both countries and subsequent refurbishing through the Border XXI and Border 2012 mechanisms in coordination with the BECC/NADB and CILA/IBWC, is ample evidence of this legitimacy crisis.

4) *Power Shifts*. Power shifts occur in different ways, either by the defection of factions of the dominant regime or coalition, mobilization of grassroots organizations, emergence of new sources of power, changes in the political composition of elected officials, and gains in leadership, knowledge, and resources of challenging groups. The environmental/trade debate clearly empowered opposing groups, and created a realignment of roles for EPA and USTR. These alliances built across labor, human and consumer rights, and environmental advocates in the three countries, as well as the decision of the U.S. government to gain support from the major environmental groups shifted the relative power of the environmental groups challenging the old regime. The involvement of the U.S. Congress in fast track and final approval represented a key

rearrangement of power, the results of the 1992 U.S. elections also constituted a major rearrangement of power, changing the negotiating team and including the side agreements in the agenda. The Mexican elections in 1991 endowed the Mexican negotiating team with extraordinary capacity, and the 1994 Mexican election changed the main environmental officials involved during the negotiation and approval phase, drawing in new actors for the implementation and evaluation phase of the new institutions' development. Finally, the 2000 elections shifted government composition and priorities in both countries, and the September 11, attacks also rearranged the priorities and affected the institutions' development.

5) *Organizational and Policy Shift*. The final stage in the change process as outlined by Wilson involves changes in the policy implementation process and in policy goals. Four types of regime changes are possible: a) dissolution/recreation, b) consolidation, c) internal reorganization, and d) new creation. The establishment of the BECC/NADB and the adoption of new, binational, policy goals and procedures aimed at certifying and financing environmental infrastructure for the border fits Wilson's characterization of new policy creation, though this new policy remains nested in previous institutional arrangements.

*The BECR: Institutions, Ideas, and Actors*. Policy regimes are organized around specific policy issue areas (Wilson 2000). In our case the policy issue area is binational environmental cooperation. The original regime was defined by the IBWC/CILA commissioners, SRE and State Department officials, and the presidents of Mexico and

the U.S. as the main actors, and water users and state representatives as interested beneficiaries. The core institutions involved were, the 1944 Water treaty, IBWC/CILA, and the minutes mechanism; the ideas were peaceful settlement of water and border limits conflicts, expenses carried by each government according to availability and relative benefits, territorial sovereignty, and appropriation of water for development.

The regime was altered by the emergence of a new paradigm of environmental protection during the 1970's. This new paradigm sprang from several circumstances that affected binational cooperation. The U.N. Stockholm Conference constituted an international focusing event, the salinity problem was reframed as a water quality and environmental problem and finally tackled through minute 242 in 1973, and new actors and institutions were included with the creation of EPA and SMA and new environmental legislation in both countries. Also, local experts along the border were addressing environmental health related issues of air pollution derived from rapid demographic growth and industrialization—the BIP's initial environment effects were felt along the border at this time. Several local border cooperation initiatives for monitoring air quality began leading to the 1978 MOU. Growing dissatisfaction with the IBWC/CILA mechanism's environmental imitations and the lack of inclusiveness for the new environmental actors led to the 1983 La Paz Agreement (LPA) formulation redefining the policy regime.

The new actors were SEDUE and EPA representatives, members of the working groups with limited access to border states' officials and experts; the new institutions

were the LPA and its annexes, and it kept the original actors of the previous regime. The ideas now emphasized bilateral border environmental cooperation,<sup>173</sup> parallel but coordinated efforts, recognition of the IBWC/CILA mechanism inaugurating the nested characteristics of the policy, intergovernmental coordination led by SEDUE and EPA on environmental issues, a different definition of border region, amplified from the previously narrow borderline limit to include a 100 km stretch on both sides of the boundary, and the same approach to sharing resources, with resources committed on a case by case basis depending upon availability, but with disputed interpretations on project cost sharing. The background conditions were the Mexican debt crisis that affected the U.S. banking system, the different national approaches to Central America's civil conflicts, and presidential elections in Mexico that shifted economic policies and reshaped environmental bureaucracy. Some border activism is evident, mainly on the U.S. side, protesting transboundary water and air pollution problems.

These were the constituting elements of the binational environmental cooperation policy regime (BECR) in 1990 when a new policy cycle was initiated. After Mexican President Salinas's initiative to begin free trade negotiations was favorably received by U.S. President Bush, a leakage of the preliminary talks to the press activated support and opposition from several interests, constituting a focusing event and highlighting the role of the media as an actor.

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<sup>173</sup> The question of when bilateral cooperation on environmental issues formally began is subject to dispute. The language of the 1944 Water Treaty is not explicit about the environment but considered water sanitary problems, and indeed environmental water quality related problems were addressed cooperatively under that framework.

The emergence of the issue gave labor organizations in the U.S. the perfect window of opportunity to build upon their association with border environmental activists, and also to connect with their U.S. congressional representatives opposing the potential negotiation. The Mexican government quickly organized corporate support from business and labor associations, as well as the support of a majority in the Mexican legislative body, but requested discussion forums in the U.S. Senate to sanctify the negotiation as one that was domestically supported.<sup>174</sup> At this point U.S. labor organizations enabled their new allies to access a trade negotiation that had not previously been open to environmental influence. The border's environmental problems were used as a powerful image and agenda setting discourse on the free trade consequences for the environment. The Tuna/Dolphin case represented another focusing event for the U.S. environmental organizations that justified linking trade and environmental issues, formal opposition from environmental organizations began, already linked with labor opposition. The EPA noted the potential trade/environment debate and asked the USTR to address the issue, an example of further agenda setting later in the policy formulation process. The U.S. President subsequently announced his intention to seek fast track authority from the U.S. Congress, a decision that required negotiators to comply with the institutional arrangements in place for this procedure. The presidents of Mexico and the United States assessed the opposition of labor and environment interests, and defined their positions addressing border environmental concerns while keeping the trade, labor and environment issues as separate.

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<sup>174</sup> Note the differences between the U.S. and Mexico political systems regarding access and power of the government compared with those of nongovernmental interests.

The binational environmental cooperation regime (BECR) is formally drawn into in the policy process at this point, engaging the agenda setting debate.<sup>175</sup> The opposition framed the issues as linked and inclusive of other social issues, like human rights and democracy. The policy arena thus expanded, transnational linkages formed and included several nongovernmental and governmental actors, Canadian actors became involved because the Canadian government opted to join the negotiations, and the spillover effects from different policy areas became evident. The agenda setting stage offered a window of opportunity for border environmental concerns to be heard at a national level, altering the relative power arrangement of environmental advocates by joining forces with labor interests positioned in NGOs and the U.S. Congress. It also gave national environmental organizations the opportunity to link environment and trade issues, and business interests a chance to address environmental concerns. The overall effect is that new actors are incorporated in the traditional BECR. The institutional context thus changes, playing a role that would affect the power balance of the previous regime by formally incorporating the U.S. Congress as an actor and also imposing deadlines on the policy process through the fast track authorization rules. The U.S. government, to gain NAFTA's approval, decided to give access to some environmental groups amenable to a free trade discourse and break the labor/environmental opposition in two major strands, creating potential allies from the environmental side. As a consequence, the traditional BECR was exposed to new influences, and nongovernmental environmental actors were able to influence the traditional trade regime.

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<sup>175</sup> It can be argued that the presidents were major actors of the BECR, but initiating the negotiations was not intended to affect the BECR, thus supporting my argument of unintended consequences in the

The new ideas incorporated in the BECR through this process were sustainable development, new investment in bilateral cooperation, including resources to clean up the border, the compatibility of free trade and environment, the incorporation of nongovernmental and local actors' participation, and the adoption of new protocols of openness and transparency in binational institutional cooperation. Counterarguments also emerged and competed during the different stages of the policy cycle.

### **The Punctuated Equilibrium Perspective**

Three notions concerning the punctuated equilibrium (PE) approach should be reviewed here. First, it is an analytical framework that simultaneously looks at change and stability to identify the forces that preclude change or create change when most of the time stability or equilibrium dominates policy arenas. As such, it is a methodology that studies policy over long periods of time. The goal of the method is to understand patterns of variation, not just specific punctuations. Second, it subscribes to the notion of small disturbances having large consequences at particular tipping points; this is explained through the interactions of positive and negative feedback processes. Third, it assumes the existence of exogenous disturbances that create critical opportunities to tip the political process (Repetto 2006; Baumgartner 2006).

These notions apply to our particular case. In this case, PE helps to analyze the nature of the policy change over time in a policy area that has witnessed extended periods of stability, from 1944 to 1973, in particular, and after 1973 followed by changes occurring approximately every 10 years. Data presented by Baumgartner (2006)

regarding punctuations on the number of congressional hearings on the environment and federal spending on pollution control clearly supports the emergence of the new environmental paradigm in the 1970's. As considered earlier on the HI section, the congressional hearings show increments at the beginning of the 1970's, 1980's and 1990's, that may be related to the ten year cycles described previously using the HI perspective.

The notion of small disturbances having large consequences becomes very useful for describing the last minute decision to negotiate BECC and NADB due to the pressure applied by Congressman Esteban Torres. The San Antonio meeting to discuss border infrastructure, in July 1993, opened the possibility for some sort of financial mechanism to address border infrastructure, but no specific commitment was made either by the Mexican or American governments. Most of the environmental support for the NAFTA vote was acquired by the Clinton administration by means of the NAAEC and CEC side agreement completed in August. By mid-September, the environmental organizations were publicly committed to NAFTA, but the BECC and NADB negotiation was not completed until October 1993, prompted by the intervention of Congressman Torres with Treasury Secretary Bentsen over the need for a border bank. Certainly, environmental, Hispanic and labor organizations never ceased to lobby for the border institutions. But after the long process that led to the inclusion of NAFTA text concessions, the adjustment of environmental enforcement policy and institutions by the Mexican government, and the environmental side agreement for NAAEC and CEC, the governments of Mexico and the United States expected to follow through with a simple



adjustment of the BECR by revising the IBEP. The implementation and development of BECC and NADB after a speedy negotiation, catalyzed by a minor disturbance that tipped the balance, allowed the possibility for a major departure from the BECR status quo.

The notion of exogenous disturbances creating the opportunity for change is basic to the PRF approach and also supported by the ACF. The particular exogenous disturbances at the end of the process can be attributed to the opposition campaign led by Perot, labor and environmental activists opposing NAFTA that shifted the balance of public opinion polls, with a majority of Americans opposing the NAFTA in August-September 1993. This gave more leverage to an undecided Democratic congressman. Mr. Torres, coming from a strong labor and Hispanic constituency, consolidated the window of opportunity that was opened. The environmental institutions were finally obtained by shifting institutional venues, from the EPA to the Treasury Department, with an emphasis on supporting Hispanic and labor constituencies with the community adjustment program (CAP), and resources for border infrastructure. In the end, the strong environmental framing of border images, challenges to the BECR, and steady border lobbying through the implementation and evaluation stages, insured that CAP projects would use only ten percent of the total resources allocated for the NADB, in effect favoring an emphasis on the border environment. Indeed, the consequences of the institutions departed from Mr. Torres original motivation (Torres 2007).

Other distinctive features of the PE approach are its focus on how complex policies develop heuristic identities called ‘policy images’ (elsewhere known as issue definitions, frames, or causal stories), its attention to institutional venues as potentially variable, its focus on positive feedback effects leading to ‘dramatic policy punctuations’ often stemming from the rapid interactions of shifting images and changing venues of policy action’, and its assumption that stability will derive from ‘status quo defenders’ protecting both elements from being challenged. Images and venues often interact, so when one changes the other becomes unstable, when one is stable it reinforces the stability of the other (Baumgartner 2006).

As seen in the earlier discussion of how HI supports the PE argument in this case, the policy images altered at every juncture of policy change. Initially, the border cooperation issues were about water works to manage treaty appropriations, addressing transboundary sanitation problems in a limited way. In the 1960’s and 1970’s the policy image shifted to water quality problems, but existing institutions remained in place. During the 1970’s, with the change in paradigm and the governments’ beginning to pay attention to environmental issues, transboundary pollution issues were placed on the agenda, with minor but steady efforts strengthening cooperation throughout the decade. But a significant change in 1983 shifted venues from the IBWC/CILA to the federal environmental agencies, and formally expanded the policy image to explicitly deal with border environmental problems in defining the BECR.

Baumgartner (2006) acknowledges that policy images can occur in the absence of public opinion or media attention, as long as the actors defining the policy change the policy image. Apparently this was the case during the 1983 La Paz Agreement negotiation. At the beginning of the 1990's, the policy image and institutional regime changed as discussed earlier. Once the policy image changed—in response to depictions of the border as an environmental disaster—it challenged the BECR's legitimacy. The changing venues of policy reinforced policy image change with the inclusion of labor sector activists, national environmental organizations, attentive U.S. congressmen, and media highlighting the environmental aspects of the high saliency trade negotiation. PE uses indicators of media attention and examination of the tone of the coverage to explore changes in policy images (Baumgartner 2006). In this case, for example, the media's role in promoting the border's deleterious images as a challenge to the BECR's institutional status quo is evident; even specific tours to the borderlands were arranged by activists to help shift elite opinion regarding government and industry's border environmental record.

Baumgartner (2006) concludes that the policy process is highly interactive, with no single actor's behavior determining the outcome. Rather 'social cascades' can be put into action by the reactions and interactions of different actors. On this basis, he advocates detailed case studies to show when policy change succeeded where it may have previously failed. The clearest explanation for both marginal and substantial policy changes comes from 'the interaction of multilevel political institutions and behavioral decision-making' (True et al. 2007). The discussion in the preceding PRF section

illustrated the strategic decisions of actors constrained by institutional and ideational contexts, fighting to advance their interests within this complex process.

The PE perspective focuses on the ‘interplay of institutions, interests, and attentiveness’, and identifies the serial and parallel information processing of issues. From this perspective, different policy subsystems may process several issues simultaneously. This parallel processing helps to explain policy stability on the basis of complex equilibrium and incremental change. But the institutions of the American presidency and the Congress are serial processors, which means that they tend to treat issues one or a few at a time. Usually an issue moves up on the political agenda, depending upon its saliency, because new actors get involved in the debate ‘in an environment of changing issue definitions and heightened attentiveness by the media and broader publics’. This allows the possibility of abrupt, or punctuated, change. Subsystem politics is the politics of equilibrium, while macropolitics is the politics of punctuation (True et al. 2007).

In this case, the trade negotiation brought issues of trade and environment interactions to the debate, and the border environmental situation was elevated to the national agenda and used by the different parties involved in the debate. Several new actors and institutions were involved in the process, creating the possibility of policy change. Negative government feedback sought to minimize any changes in the established regime, but the new actors kept the pressure on until policy change occurred. The interaction of changing images and policy venues determines the possibility of

positive feedback according to PE (True et al. 2007). The evidence in our case study is consistent with this description.

The parallel and serial processing explanation fits nicely with the American institutional system; the question is does the PE approach explain this process on the Mexican side? The low saliency of border issues enlarged by the centralist features of the Mexican system was overcome by international pressure once the issue made it to the U.S. national agenda, side stepping, in effect, the normal agenda building process through domestic Mexican institutions. The serial processing features of the Mexican presidency embraced environmental issues as a way to advance the government's main priority, the trade negotiation. The impact of international events on the Mexican environmental agenda has been discussed, (Gil 2007) and is supported by this case study, with the tuna/dolphin GATT dispute, the UNCED Rio talks, and the U.S. government and NGOs pressure, affecting the Mexican environmental policy change.

Another important notion of PE that helps explain change comes from the understanding that punctuations might be caused by 'the slow and steady buildup of very small changes' or a mighty blow that cannot be ignored (True et al. 2007). In our case the trade negotiation decision may be viewed as a mighty blow, but the deteriorated conditions of the border environment can be aptly described as 'relatively minor events that add up over longer periods of time' (True et al 2007). The BIP and other factors, including the appropriation of water for production along the border and increased migration, initiated the growth and industrialization of the border decades earlier. This

reality, coupled with protracted negligence and limited investment in environmental protection, was suddenly presented to audiences throughout North America via media coverage of the NAFTA debate.

The purported impact of the ideational context is an interesting point of argument in comparing the PRF approach with PE and ACF theory. PRF treats the ideational context as an element of the policy regime throughout the stages of the policy cycle, one that is not tied necessarily to particular actors. ACF, on the other hand, considers the belief structures of the actors as bounded and downplays the importance of the policy cycle stages on the ideational situation. Wilson's (2000, 2006) policy paradigm considers policy images and ideas as a dimension of the policy regime and as key factors explaining policy regime change. The PE description of policy images is more associated with issue definition and agenda setting, as ways to simplify concepts and ideas in broad strokes or 'heuristics' (Baumgartner 2006).

These subtleties may sometimes lead to confusion. Caution should be used when using different theoretical perspectives and their underlying assumptions to interpret particular cases such as the one examined in this study. The use of policy images in the first stages of the policy cycle can be later associated as an element of the policy paradigm and, once consolidated, as an element of the policy regime, or policy image can be used at any time as a strategic heuristic associated with competing belief systems. The PE approach, predicated on the assumption of bounded rationality, explains preference disjuncture on the basis of shifting attention to issues, because despite the capacity to

process parallel issues, attention makes you focus in one or a few, considering only fragmented elements of the complex reality in the decision-making process. Thus the association of shifting attention and serial processing of information would explain certain aspects of decision-making in this case, lending support to my argument that the BECC and NADB emerged as an unintended consequence of the NAFTA negotiations.

### **The Advocacy Coalition Perspective**

Despite the fact that the ACF was not the overarching framework guiding this study, certain ACF assumptions are embedded in the PRF and were thus considered during the analysis. In this section, the ACF notion of policy-oriented learning is discussed as a potential tool for understanding the policy adjustments of the BECC and NADB, especially considering that the ACF emerged from experience with the implementation literature (Sabatier and Weible 2007).

Policy-oriented learning is defined as alterations of thought or intentions resulting from experience and/or new information that are concerned with the attainment or revision of policy objectives (Sabatier and Jenkins-Smith 1999). The hypothesis is that secondary beliefs will be more susceptible to policy-oriented learning because 'the relatively narrow scope requires less evidence and belief change among fewer individuals' (Sabatier and Weible 2007).

The adjustments and learning that BECC and NADB experienced during their first few years of implementation and evaluation may be explained as a policy-oriented

learning process. This is particularly evident with respect to efforts to reinforce a professional culture of binationality on BECC personnel after the first General Manager and Adjunct general manager left the agency. This process implied more than a decade of adjustments after the second set of managers explicitly barred the maintenance of national boundaries among BECC personnel. The NADB did not have to go through this process, since it did not have the problem to begin with. The agencies' experience of adjusting policies on subsidies, grants and technical capacity also fits the description of policy-oriented learning, with the boards of the institutions finally acknowledging the need to address asymmetries. Another process that can be explained with this perspective is the public participation processes with distinct features on both sides of the border, particularly the changes in political culture on the Mexican side. On the other hand, cultural differences complicate the operationalization of core beliefs with coalitions composed of binational actors, thus, the concept of policy-oriented learning arguably applies just to the secondary beliefs of BECC/NABD administrators and stakeholders. Finally, the need for decentralizing adjustments by local governments in order to fully advantage themselves of BECC and NADB's new policy opportunities along the border presents a policy-oriented learning challenge.

### **Multi-level Governance and the Border Environment**

This theoretical lens is particularly valuable for highlighting the role of nongovernmental actors in shaping the BECR and examining the multiplicity of interaction levels that the BECC and NADB now have. The MLG framework identifies the increasingly complex nested character of border environmental governance (Bache



2008). Understanding these relationships allows us to assess the structure of the regime and identify policy changes in border environmental governance and binational governance in general.

The final design and implementation of BECC and NADB was a radical departure from the previous BECR by the inclusion of local actors, both governmental and nongovernmental as part of their decision-making processes. The binationality elements also constitute not only a departure from the old regime, but an unprecedented institutional arrangement in the U.S.-Mexico relationship. This new institutional arrangement is consistent with recent international trends in environmental governance (Hass et al. 2004) and also with the international trend toward decentralization of government and governance (Chema and Rondinelli 2007).

The mood towards modernization and decentralization, both in the Mexican and United States governments at the time of the creation of BECC and NADB, was reflected in their institutional design promoting local involvement and definition of the projects. This design, however, encountered implementation problems, particularly on the Mexican side, arising from subnational authorities' resistance to adapting their institutional settings to the new project development procedures required by BECC and the NADB. According to Cheema and Rondinelli (2007) the lack of commitment of leaders is one of the main reasons for decentralization failure. Mexican resistance to the new opportunities and procedures associated with BECC and NADB may be partly explained by on the basis of political opposition to the modernizing reforms pushed by

President Salinas (Cabrera 2007). The more decentralized form of federalism existing in the United States minimized the adjustments that the American sub-national authorities had to make to use the institutions, revealing the greater capacity of U.S. border communities to develop projects for certification by comparison to Mexican communities. U.S. communities also counted with many more trained water utilities personnel. Drawing on a MLG perspective helps to visualize the complexity of the institutions' interactions and the need for differential institutional adjustments to produce better results, particularly in the face of local resistance to federal government decentralizing initiatives.

The different political systems in Mexico and the United States constrain the outcomes of the binational institutions and evince the importance of the Type II characteristics of the institutions for border environmental governance. The MLG approach also helps the analyst to differentiate governance elements on both sides of the border, integrated by the processes of the BECC and NADB. Examples of this are seen in the differentiated formats for public participation on both sides of the border, as well as the way that project proposals are limited by asymmetrical technical and economic capacity.

The classification developed by Hooghe and Marks (2003) highlights some of the MLG characteristics of the BECC/NADB institutions that might be elements of further institutional change. The flexibility of their design provides room for adjustments to changing contextual realities. Several examples support this argument. One is the case of

the policy adjustment of grants and subsidies from EPA and CNA after the economic conditions in Mexico improved. Another is the continuous development of technical assistance programs targeting specific needs by both institutions. The most dramatic case of flexible adjustment is the role that the BECC and NADB played during the water conflict over the waters of the Rio Grande between Mexico and the United States.

It will be interesting to see if the institutional flexibility built into the BECC/NADB policy design leads to an expansion of their mandate and encroachment into other institutional responsibilities and roles—as seen in the case of the IBWC/CILA’s diminished role in border water infrastructure construction—and increasing cooperation on the part of BECC with the Border 2012 program. Such developments may stimulate partnerships with other local development efforts on both sides of the border.

Another possibility for policy change would be that new border environmental challenges be addressed by yet another new institutional arrangement. The nested and incremental institutional build-up that characterizes the history of U.S.-Mexico binational environmental cooperation may direct further change through a new institutional formation. However, and notwithstanding the challenges that have been identified for the institutions like coordinating a comprehensive or regional planning effort that reinforces environmental governance, or extending the scope of their project auditing, such reforms are more likely to be addressed through adjustments to the existing framework.

Another important discussion entails the prospects of border institutional development, where governance would evolve to transnational governance, co-management, or integration (Pena 2007). This topic is very sensitive given the historical differences and conflict and distrust that still permeate the U.S.-Mexico relationship. A regional integration of border states or border cities, as found in Europe (Blatter 2001), apparently is not possible in the near future along the border. Nevertheless, some efforts to help subnational authorities and border residents overcome marginalization and negligence from the central powers, may evolve in a build-up of regional governance institutions that would gain border political leverage. In this regard the BECC/NADB arrangement constitutes the best model towards border institutional strengthening. The difference in perspectives regarding priorities or problems, whether at the level of border residents and authorities or authorities in the federal capitals, creates a dysfunctional approach to border issues (Pena 2007) that calls for a review of current approaches. The binational characteristics of the BECC and NADB provide evidence of co-management or transnational governance without impinging upon the sovereignty of the nations, and may serve as a model that can spillover to other areas of potential regional cooperation. It is important to note that an MLG arrangement as seen in the new BECR does not imply a subtraction of power from states, but does imply more participation by non-state actors that may well result in a better exercise of sovereignty. In this respect, a multi-level governance approach provides a better framework for understanding state transformation and the adjustment of institutional accountability (Bache 2008).

Finally, the MLG perspective highlights characteristics of the BECC and NADB that are very well suited to address environmental problems. Their flexible territorial jurisdiction is well configured to serve constituencies, organizations, and governmental units in two countries and should be considered when approaching analysis and proposals to solve environmental problems across boundaries (Bressers and Kuks 2003). This characteristic of the BECC and NADB can be considered when addressing other problems that also have transnational implications. On the other hand, the BECC/NADB institutional emphasis on project development rather than law enforcement may constitute an important limitation on their relevance as a model for other bilateral cooperative efforts.

The final chapter of this study summarizes the findings developed in this chapter and provides a general evaluation of merits of these complementary approaches for understanding this particular case of policy change and transboundary environmental governance. The next chapter also summarizes the conclusions of this research and advances some practical recommendations for the improvement of border environmental governance that follow from this review.

## **Chapter 8**

### **Conclusions and Recommendations**

At the onset of this investigation several guiding questions were asked, questions aimed at explaining the process of policy change in the binational environmental cooperation regime (BECR) and the institutional development of the BECC and NADB that could be used later to propose further changes of those institutions. These inquiries were also directed at understanding the role that the institutions themselves play in the environmental governance along the US-Mexico border, their implications and challenges. Derived from these academic questions, the main practical objective was using this understanding of policy change and governance in the area of U.S.-Mexico border environmental management to identify opportunities and provide useful lessons for enhancing bi-national cooperation and governance, and leaving open the possibility of identifying useful lessons for other areas of binational cooperation as well.

The mixture of theoretical instruments to carry out the research was developed and tested through this case study, as a potential theoretical approach to conducting research on policy change and governance in transboundary settings. This multi-theoretical approach responded well to several considerations of the problem studied: time constraints, level of detail, binational complexity and innovative institutional characteristics. In this concluding chapter a summary of the theoretical lessons and the

benefits of this multi-theoretical approach to understanding environmental policy change at the border are included.

The managers and stakeholders in these and other border environment institutions and programs should also benefit from this long-term historically based review of policy change for environmental improvement along the Mexico-U.S. border. With this in mind, this chapter also includes policy recommendations for the consolidation and improvement of environmental governance along the border that are drawn from the overall perspective of the research and from the insights that the different theoretical perspectives provide. These recommendations center on but are not limited to the role of the BECC and NADB in Mexico-U.S. environmental management. This chapter also extrapolates from these patterns of policy change to reflect on BECC/NADB's current political and administrative challenges and the need for further reforms that would strengthen its role and mandate in border environmental governance.

The chapter concludes with a few general reflections and observations on potential lessons for the management of Mexico-U.S. binational relations that follow from this review of environmental policy development and change at the border.

### **The multi-theoretical approach and lessons**

The theoretical frameworks utilized in this study provide different but complementary perspectives and emphases for understanding policy development and change in the BECR. As we compare the value of these theoretical approaches applied to

this case, it is clear that the overall patterns and sequences of periods of stability and policy change can be better studied using HI and PE.

Within this larger history of environmental cooperation and policy change along the U.S.-Mexican border, the PRF, supported with insights from PE theory, makes important contributions by using policy cycle stages to analyze the background conditions and complex interactions that existed during the creation and evolution of the BECC and NADB. The importance of some of the policy cycle stages in influencing further components of the cycle, or as feedback modifying conditions established in earlier stages of the cycle, is a key to understanding the entire policy change process, highlighting changes in decision-making outcomes that carry through the implementation and evaluation phases of the new institutions in a highly consequential manner. The PRF provides a strong tool for analyzing a policy regime that involves policy elements arising from two countries simultaneously. The understanding of three separate policy processes interacting with each other; the trade negotiation, the consideration of the environmental implications of trade, and the border environmental infrastructure was properly analyzed using the PRF. The strategic maneuvering of actors within the ideational and institutional context confirmed that this approach offered a better perspective than the ACF.

The ACF makes important contributions to the PRF and at the same time benefits from PRF modifications of ACF theory, particularly on the importance of endogenous shocks and their interaction with exogenous factors, also recognizing differences in



power resources of governmental actors.<sup>176</sup> Based on the evidence found through this investigation, the differences in political culture and values among Mexican and American actors complicate an explanation of the complexity and variability of alliances based on belief systems. Therefore, ACF may have limited value for applications in transboundary settings. Another important consideration is that despite ACF proponents' criticism of the stages approach to the policy cycle, these stages provide well defined analytical segments to understand policy subsystem interactions that enrich the analysis of the influences on policy change.

The concepts advanced by PE of cumulative processes functioning as exogenous disturbances to the policy regime, and the idea of small disturbances having large consequences in an otherwise stable process where negative and positive feedback mechanisms compete, have proven very useful in understanding policy change throughout this study.

Finally, the use of MLG to highlight the institutional characteristics of the bank and the commission, and as a way to assess their possibilities for further change, proved to be very useful and complementary to the other perspectives by focusing on the outcomes and consequences of policy change.

The hypothesis that policy change in bilateral environmental cooperation emerged in good measure as unintended consequences is certainly vindicated by the evidence seen in this investigation. This fact suggests that policy change in this policy area does not

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<sup>176</sup> The PRF was proposed in 2001, the updated version of the ACF was published in 2007.

necessarily require that the environment be a priority in federal bilateral relations. The evidence also points to several processes that are almost always found as conjunctures, background conditions, or stressors that provide opportunities for policy change. The accumulation of a particular border environmental problem or problems over time that influences border actors is a regular variable, for example. Presidential meetings are another consistent element of these conjunctures; so too is the presence of adverse economic conditions affecting the countries when policy changes take place. The linkage between international environmental events and institutional changes in Mexico also appears to be correlated and contribute to the conjunctures. At this point the intriguing pattern of ten year periods separating policy changes cannot be clearly explained, but it is noted for further research. Regarding the economic crisis conjuncture found in the 1973,<sup>177</sup> 1983, 1993, and 2002-2004 policy changes, the leading decision-makers certainly had strategic reasons for advancing environmental interests despite the unfavorable economic conditions. These decisions are evidence that business interests are not inimical to environmental cooperation and that poor economic conditions do not necessarily adversely affect environmental policy as PRF claims it should (Hoberg 2001). Other stressors or background conditions that were involved during the 1993 policy change but did not appear consistently are electoral changes in 1982 and in 1994 for Mexico, in 1992 for the U.S., and in 2000 for both countries. Despite not appearing at every conjuncture analyzed, the 1992 and 1994 elections in the United States, and Mexico respectively were critical factors in the creation and implementation of BECC

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<sup>177</sup> The 1973 oil embargo affected both economies with different consequences, and also affected the overall bilateral relation between Mexico and the United States.

and NADB. Additional stressors affecting particular cases were discussed in detail as part of chapter 7.

With respect to the elements needed to capitalize on the opportunities for change presented during the various policy change conjunctures, particular sets of strategic actors and interactions were found to be critical at every juncture. Indeed, the nested character of the BECR has developed through expansion of the types of actors engaged in the policy regime, with some of the new actors participating at every juncture becoming permanently incorporated into the regime. This was the case in 1983, when environmental officials joined the BECR, after being involved in the negotiation of the LPA. In 1993, nongovernmental actors challenging the BECR were incorporated through the new institutional design of BECC and NADB. At every policy change new institutions were also involved in defining the new regime—environmental agencies in 1983 with the LPA, and a broader range of NGOs, and economic agencies<sup>178</sup> with the BECC/NADB Agreement in 1993. These new actors are directly involved in defining and consolidating the policy changes at these junctures. Expressed in terms of interactions, new power arrangements and policy paradigms were in place with different enablers providing the opportunity for change. Therefore we can argue that policy change in the BECR proceeds incrementally towards an increasingly complex pattern of nested institutional governance.

## **Challenges and Policy Recommendations for BECR/BECC/NADB change**

In the course of this investigation five challenges were identified in chapter six for binational environmental management. Attending to any one of the challenges has implications for all the others, since all of them are interrelated. They are discussed here separately mentioning the points of interaction among them.

1. A comprehensive coordination and leadership for environmental projects along the border;
2. Enhancing overall performance to achieve promised results;
3. Strengthening local representation and interaction while gaining greater federal administrative recognition;
4. Managing the implementation policies arising from the Mexico-US differences; and
5. Institutional survival in the face of interest in eliminating these institutions.

*Comprehensive coordination and leadership.* The project by project focus of the institutions has benefits for the environment allowing for specific technical, economic and sustainability definitions. Nevertheless it represents also a limitation in addressing environmental problems, which often have complex multi-disciplinary consequences, which are not properly considered by projects not inserted within larger planning efforts. The need to insert the projects within larger environmental planning contexts with regional considerations that might be watersheds, ecosystems or conurbations presents a challenge for the BECC and NADB. The current lack of border plans that provide some sense of direction towards sustainability, instead of being reactive to existing needs and

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<sup>178</sup> The agencies were: USTR, U.S. Treasury, SECOFI, and SHCP.

deficits, or only addressing the isolated initiatives of border communities, highlights the need for comprehensive coordination and leadership in developing border environmental projects. These plans should be inclusive of state, local and community actors, presenting a huge challenge for any institution. Nevertheless, in the extant institutional environment, BECC and NADB are best equipped to take on that task. Their nested relationship with other agencies and the representativeness of the federal members of the consolidated Board should be persuasive enough for both governments to launch such an initiative. Currently, the federal agencies represented in the Board have not made the decision to use the institution's Type II MLG characteristics to coordinate such a comprehensive effort. The recent involvement of BECC in managing some projects of Border 2012 for EPA represents a promising trend in that direction, as well as the initiative between BECC, PROFEPA, state and municipal governments in Mexico promoting clean watersheds.

*Enhancing overall performance.* Increasing institutional performance to fulfill expectations relates to the institutions' potential to make a difference in advancing sustainable development for the region. A starting point would be to use sustainability indicators to assess the impact that the institutions are having along the border. Until now, the indicators used are related to deficit abatement of infrastructure. Not even health impacts are presently measured in association with the infrastructure developed. Other indicators are associated with available funding for infrastructure needs; currently and regardless of having spent unprecedented amounts of money along the border, the impacts are still considered minor, supporting the conclusion is that more resources are

needed. Therefore, the lack of comprehensive planning for regions or watersheds adversely affects public expectations of the institutions since it is hard to evaluate the benefits derived from the BECC and NADB's certified and financed projects.

When the institutions were created the border infrastructure deficit of water, sewer systems, wastewater treatment facilities and solid waste treatment facilities was evident and demanded urgent attention. Fifteen years later, the environmental challenges along the border point to water scarcity, and cost-efficient clean energy. Therefore, transportation projects aimed to reduce emissions, the use of alternative sources of energy, and water conservation projects represent an opportunity to benefit the environment beyond simply dealing with deficits. These areas are more directly related with the sustainability of the region, and could be a change in pace and focus of the institutions, from a passive role attending the needs of the communities currently oriented to deficits in solid waste, water, sewer and water treatment, to a more forward looking and sustainable development trend, by tackling carbon emissions, advocating and helping to transform transportation and energy consumption schemes promoting alternative energy projects. Even though the institutions have these as potential new sectors to cover, the number of projects are not significant at this point.<sup>179</sup>

*Strengthening local representation and greater federal recognition.* The representativeness of local actors was discussed earlier, and constitutes one of the biggest challenges for the two institutions. It is not the same when the federal government assigns

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<sup>179</sup> The WCIF appears to be a one time deal and no further projects or grant money are considered to keep working these types of projects, a few alternative energy projects are currently under consideration.

a seat for border governors, then the border governors elect one individual to the Board to represent all the states, with some mechanism of accountability. The same goes for the citizens residing along the border. The involvement of local authorities and actors with a different representative position and role on the Board, perhaps one linked to the Border States Governors' Association, or the development and strengthening of border local government coordinating mechanisms, would help generate the political clout necessary to avoid the central governments' lack of attention to the region. At the same time the rank of federal officials managing the institutions should be increased to gain greater influence in shaping the governments' priorities, this situation should be particularly attended on the Mexican side because of the imbalance of follow up compared to the attention given by EPA's regional offices. A couple of recommendations can be made regarding the potential strengthening of these institutions using their existing structure.

The existence of the Coordinating Committee (CC)<sup>180</sup> represents a practical adjustment acknowledging the importance of those actors for the institutions. The unified Board of Directors can be slightly modified to incorporate both IBWC/CILA commissioners as the representatives of the Mexican Foreign Relations Ministry and State Department representatives. This modification does not require a mandate change, only a delegation of representation from the responsible federal authorities. In this way, the experience and need for coordination can be accomplished within the formal design of the institutions. The CNA representative can be included as an observer to the Board, as it was the case with the U.S. State department representative on the previous BECC's

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<sup>180</sup> The CC includes besides the BECC and NADB directors, representatives of EPA, CNA, IBWC, CILA and state officials when the project requires so.

board. The importance of CNA for water management on the Mexican side is not matched by a single federal representative on the U.S., where the border states have greater jurisdiction over water issues. The option of substituting the SEMARNAT representative with a CNA official,<sup>181</sup> is not really feasible as this would unbalance the broad environmental focus that the Board needs to keep, resulting instead in a more limited emphasis on water issues that might well constrain BECC and NADB involvement in other types of environmental projects on the Mexican side of the border and weaken the nested character of the general scheme of binational environmental governance.

Another way to improve the institutions is that SEMARNAT could raise the priority level of representation on the Board, as well as consider the institutions useful instruments for domestic policy along the Mexican side of the border. The EPA has been consistently represented and maintained an influential policy voice in these institutions from the negotiation period until now. This approach helps them to further their institutional goals and strengthen these institutions. The attitude of the Mexican authorities towards the institutions was molded by the imposition of the commission and the bank through the NAFTA negotiation, also by the change of actors involved during the negotiation after the 1994 presidential campaign and election, and finally by the bureaucratic power struggle that defined the differentiated representation on the BECC and NADB Boards. The more decentralized structure of EPA with two regional offices<sup>182</sup>

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<sup>181</sup> CNA is a deconcentrated organism of SEMARNAT, therefore a mandate change would not be necessary, only a different representative designation from SEMARNAT. The observer position would also enhance SEMARNAT's institutional balance along the border with EPA.

<sup>182</sup> Region 6 covers New Mexico and Texas, and Region 9 works in California and Arizona.



directly involved with border issues sharpens the asymmetry. Therefore, SEMARNAT has a serious challenge. It needs to maintain its focus and accord these agencies sufficient priority. In so doing it will strengthen its own institutional capacity as well that of the BECC and NADB, and improve the quality of border environmental governance in general.

*Managing the Mexico-US differences.* The challenge of managing asymmetries along the border is overlooked by a political discourse that still pretends that the U.S. and Mexico should contribute equally to addressing border problems. Various forms of compensating for the economic asymmetries affecting binational environmental management have been proposed since the NAFTA debate, considering, for instance, an equal allocation of decision making power but allocating financial support based on GDP or any other indicator that clearly accounts for national differences. Other differences that are related to political and cultural practices and traditions can be openly discussed, and adjustments proposed based on the past experience and institutional learning accrued by the BECC/NADB institutions. One such example is the possibility of promoting certification standards for Mexican water utilities staff, along the lines of accreditations existing on the U.S. side. The UMI's efforts to prepare personnel in the past can be directed towards this larger goal. This too involves a constructive and sensitive coordination of linkages and governance that BECC and NADB are ideally suited to conduct. Their experience in promoting public participation and advancing public oversight and accountability in development of border environmental infrastructure

projects is also a reservoir of knowledge that can be tapped in strengthening governance along the border.

Despite the binational approach and the will to design an equal partner approach for the institutions, national differences along the border persist and pose very different challenges for the institutions on both sides of the border. Other examples of challenges that need to be addressed with different emphasis are: a fiscal policy that constrains local and state resources on the Mexican side; the unequal technical capacity for development of projects, operation, and management of environmental infrastructure; differentials in accountability, transparency, and public participation mechanisms and processes; the level of decentralization of both federal systems; and the different economic resources available to each country at all levels of government. These asymmetries need not only be addressed by BECC and NADB. In fact, matters of broad fiscal policy, economic resources, and the level of decentralization needed for effective environmental governance at the border correspond more to the jurisdictional capacities of external actors. BECC and NADB, on the other hand, bring to bear a unique experience in accommodating different political and administrative cultures and addressing the environmental infrastructure needs of local communities along the border.

The asymmetry in economic resources of the countries poses an ever present challenge. One possible response would be to revisit the original proposals for the NADB, which were derived from the European development banks. At the time of the negotiation, the Mexican government was not interested in the institutions and its main

goal was to win enough votes to approve NAFTA. Reconsidering years later, the last two Mexican presidents advanced proposals for augmenting NADB capacity and jurisdiction to become a traditional development bank that could finance projects in poor Mexican communities. In view of this change of heart, one possibility could be to refurbish the Community Assistance Program (CAP)<sup>183</sup> making it binational and endowed with enough capital to address the economic limitations on the Mexican side of the border. This could be developed on a pilot project basis for a few years to assess the results. After this trial period, the initiative could revert to the status quo ante, maintained, or enlarged to include projects outside the border throughout Mexico.

*Institutional survival.* Finally, there is the challenge of institutional survival. The two main reasons advanced for eliminating the institutions in early 2006 were—from the Mexican perspective—the small number of projects financed until then, and from the American point of view, the institutions' low impact on the overall institutional apparatus of the governments and the bureaucratic burden. The mobilization of local actors by U.S. congressmen and border state governors raised the potential political cost for the U.S. Treasury and Hacienda (Garces 2007; Dominguez 2007) but the main opposition came from the Office of the US Trade Representative (USTR), which considered the dismissal of BECC and NADB a bad precedent for other free trade agreements being negotiated by the United States government (Roberts 2007). In the previous effort to eliminate BECC, reduce it, or merge it with the NADB, several NGOs, and border state governments voiced their opposition, contributing to the final decision to support the institutions and strengthen them with the 2004 reform. Institutional constraints were thus sufficient to

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<sup>183</sup> Currently is not a binational program, and the Mexican monies are managed by Banobras.

keep the institutions going—path dependency mechanism may be seen in this decision, but no warranty for institutional resilience exists. Strengthening the institutions by responding to the identified challenges may be the best way to consolidate them and overcome threats to terminate them.

The other possibility the institutions face is the lack of grant money needed to make its financing mechanisms viable. If the BEIF is reduced or eliminated, the CNA matching funds will very likely be diverted away from border projects. This scenario would leave the commission and the bank devoid of resources to fulfill their mission—organizationally extant but useless for practical purposes. For the last two years the BECC and NADB have been threatened by this situation, and no assurance of future funding exists. These experiences reveal the apparent institutional weakness of BECC and NADB. According to PE, fiscal stress is a source of endogenous change (True et al. 2007). In the case of BECC and NADB, after the 2001 events and the launching of the wars in Afghanistan and Iraq, the resources were reallocated, and consequentially EPA has reduced the amounts available through BEIF. A change in the status of war and U.S. military funding may restore some financing to pre-war levels. New initiatives to restore financing for border infrastructure projects may well focus on projects from the new sectors, transportation, alternative sources of energy and water conservation; all of these sectors have direct implications in the border economy as well as for the environment. Currently the energy agencies are not using the potential of BECC and NADB to promote large projects.

## Prospects for Policy Change

The sources of policy change: exogenous and endogenous factors and its interactions with the policy regime elements provide clues about what may be happening in the future of the BECC and NADB. A forward-looking analysis of the processes and the conditions existing at the time of policy changes provides insights concerning the 'most effective forms and points of intervention as well as the most promising times and opportunities for intervention' (Repetto 2006). Complex processes in the social sciences are very unlikely to repeat themselves, but the observation of some processes over long periods of time at least can provide us with heightened awareness to strategically assess potential opportunities that otherwise might pass unnoticed. Some of the flexible characteristics of the institutions allow them internal changes or adjustments, and major changes could be derived from the interactions of the policy regime and background conditions.

Most of the conditions that created conjunctures in the past for policy change are present, like bad economic conditions, but some other are missing, like the saliency of accumulated environmental border problems or a presidential meeting. Nevertheless some elements that can be accumulating over a long period and conditions that cannot be foreseen at this point may bring adjustments later on.<sup>184</sup>

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<sup>184</sup> Likely candidates of accumulating environmental problems are the protests and potential impacts of the Border Wall construction, the contested All American Canal project, the opposition to reopening Asarco at El Paso, TX, flooding along border cities by lack of storm drainage and/or excessive rainfall, a drought period or exacerbation of drought conditions, and the existing deficits of water, sewer, wastewater treatment and solid waste infrastructure.

Another enabler that may be influential in the near future is the U.S. presidential campaign. Presidential campaigns usually provide a good forum for issues otherwise absent from the national debate. Also, presidential meetings are usually arranged after elections as a way to assess the future of the relationship, therefore the 2008 U.S. presidential election may generate such a presidential meeting in the near future.

Policy change on the binational environmental cooperation regime usually comes as an unintended consequence of a high profile non-environmental bilateral shared interest, or a situation involving some binational conflict. Conflicts over issues such as the border wall, the war on drugs, drug and crime related violence along the border, the increasing deaths of Mexican immigrants along the border, the strengthening of immigrants' raids and criminalization of Mexican workers in the United States, worsening economic conditions, or energy related issues are possible harbingers of change and likely topics on a U.S.-Mexico presidential meeting agenda.

The possibility exists of endogenous incremental policy changes in the institutions or the BECR. Some of the possibilities include an official decision strengthening public participation, accountability and transparency through project oversight and auditing; enabling the institutions to initiate comprehensive inclusive border wide planning; establishing BECC/NADB as a technical secretariat for managing Border 2012 and subsequent cooperation efforts; strengthening capacity building and monitoring efforts by networking border academic resources for sustainable development; expanding BECC's project certification for border infrastructure projects of different federal agencies on both

countries—for instance, CNA or border states funded projects that would homogenize standards for sustainable development; and a renewed regional focus on energy, water conservation and water supply requirements for sustainable development.

Considering the nested, but incremental institutional build-up of border environmental governance, other options for modifying the BECR are available. These include a transformation of the BECC/NADB institutions or the creation of another institution that shifts the balance of border states and local actors as the dominant decision-makers in border region environmental management. In this manner the economic resources needed along the border might be pursued and utilized more effectively. The creation of distinctive regions allowing for watershed level or even more focused political jurisdictions with consequent representation reflected in the decision-making of the institutions and better representation of a diverse range of interests and stakeholders along the border is also a policy option. Lastly, the two countries may wish to explore the possibility of shared regional law enforcement capability for environmental enforcement along the border.

### **The BECC, NADB, and the Border Environment Cooperation Regime:**

#### **Implications for the Bilateral Relationship**

This analysis of the historic development of the BECC and NADB in the context of the BECR not only sheds light on useful methods of studying and understanding the development of the BECR and its institutional components but also illuminates aspects of the larger binational relationship. Not only does it lend support to certain theoretical

perspectives on the overall relationship between the two countries, Mexico and the United States, it also affords an opportunity to reflect on that relationship and point to certain practices that could profitably be extended to other areas of binational affairs to strengthen bilateral relations.

As seen in chapter 1, two sets of scholarly views inform thinking on the bilateral relationship, those centered on the regional dimension of bilateral relations at the border and those analysts focusing on the macro- or global character of Mexico-U.S. affairs. The studies reviewed in this study analyzing the bilateral relations from a regional perspective tend to concur in noting that cooperation is achieved at the border despite of conflicts in other areas of the bilateral relation. They also agree in noting the interaction of regional and national agendas in shaping the relationship (Rosenthal-Urey 1986; Flawn 1979; Peña 2007). These concepts were found to hold true for this case study.

This study also supports scholars arguing for the importance of global conditions affecting the binational relationship (Navarrete 2002; Bremer 2007), as well as supporting the importance of domestic politics as stressed by Green and Smith (1989). Uquidi's (1979) characterization of the U.S.-Mexican relationship in terms of asymmetric interdependence, for example, is a very useful way to depict the current relationship along the border. Fagen's (1983) four hypotheses<sup>185</sup> about the driving forces of the

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<sup>185</sup> First, global and regional factors will play a significant role on how the United States policy towards Mexico will change. Second, crisis and semi-crisis due to the many interrelationships existing among the two countries will define moments of attention from U.S. to Mexico that may affect the larger agenda of the relationship. A third hypothesis is that the multi-venue characteristics of the American system provide for conflicting policy positions towards Mexico. And finally, his fourth hypotheses centers on the fact that Mexico can take a more focused approach towards the bilateral relation.



relationship were validated, as well as the role of non-state actors in the particular case of the creation and implementation of BECC and NADB. The use of different perspectives analyzing the relationship also proved very useful in this particular case (Dominguez 1997; Green and Smith 1989).

The hypothesis that the analysis of domestic governance and its extensions to the binational arena is vital to an understanding of the formal foreign policy of the two countries is strongly supported by this case study. The development of binational cooperation in border environmental management when compared with other areas of conflict in the relationship supports our hypothesis that the border is the area with more potential for cooperation and conflict at the same time. However, more research is needed in different issue-areas to determine the elements that lead to cooperation or conflict.

The nested character of border environmental governance that has slowly evolved through several phases of cooperation initiatives and institutional development is a pattern that not only reflects political realities in Mexico-U.S. relations but shows how a strengthened structure of governance for environmental protection can and has emerged in spite of numerous institutional and political barriers to binational cooperation. This pattern of institutional development is well worth considering when addressing non-environmental bilateral problems. In the case of the BECR, solid and enduring commitments through an international treaty on shared water resources provided the foundations for such evolution. While this structural element may not be achievable in other sectors of bilateral affairs, the BECR experience does suggest that different types of

binational collaboration would benefit from strongly embedded binational agreements even if these are relatively narrow in functional scope. The first step towards enhancing different types of collaboration needs to start from such basis, or alternatively build upon existing cooperation structures. In this respect, it is important to highlight the process that the current nested approach of the BECR followed. First a border problem—territorial limits, and water allocation later—compelled the governments to define a treaty.<sup>186</sup> Later, the enlargement of the environmental agenda, the creation of administrative agencies in both countries, and the growing environmental problems along the border led to a cooperation agreement.<sup>187</sup> Finally, local interests exploited a unique conjuncture to elevate their concerns within larger national processes to establish federal binational institutions located at the border.<sup>188</sup>

A key factor contributing to binational cooperation in this issue-area is that two of the institutions created by the federal governments are located on the border.<sup>189</sup> The management of other issues that populate the binational agenda may benefit from a similar approach. At the beginning, the IBWC/CILA represented a form of decentralized federal governance but one lacking sufficient autonomy and local involvement. The creation of BECC and NADB granted certain autonomy, resources, and decentralization, with an invitation to incorporate local actors strengthening the local-federal character of the institutions. These institutional characteristics have not been explored or adopted in dealing with other issues on the bilateral agenda, issues such as interdiction and control

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<sup>186</sup> The 1944 Water Treaty

<sup>187</sup> The La Paz Agreement

<sup>188</sup> The agreement to create BECC and NADB

<sup>189</sup> IBWC/CILA and BECC/NADB

of narcotics trafficking, the management of border security, or even immigration policy where considerable opportunity exists for taking a concerted regional management approach.<sup>190</sup> Further research that draws on the experiences of the BECR for insights on crafting more decentralized binational institutions and approaches for other issue-areas is certainly warranted. Such research should take a careful look at certain structural and design features of BECC and NADB today, to include binationality in management, territorial jurisdiction, resources, personnel, language, settings, and internal procedures; their relative autonomy, capacity building capabilities, decentralization potential and public participation mechanisms.

These institutional innovations may have potential for strengthening cooperation across the binational relationship. In the area of security and law enforcement, for instance, where sovereignty issues are assumed to prevail, the model offers possibilities for monitoring and some intelligence gathering along the border, capacity building of law enforcement officers, equipment and installations. Current mechanisms like the Merida initiative include financing for some of these actions but without a regional or decentralized emphasis, despite the fact that violence and organized crime along the border represent a transboundary security crisis.<sup>191</sup> Some options for public participation developed by the experience of BECC and NADB may be tested through preventive programs for security related issues. The continuing deaths of immigrants crossing the border at high risk points is another issue that might be better addressed through bilateral cooperation, including public participation of local activists and humanitarian

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<sup>190</sup> The U.S. government has an intelligence center for drug traffic at El Paso, TX.

organizations. In this issue-area, there are antecedents of immigration agreements during the second war period and until the early sixties through the *bracero* program. After the program was cancelled and the issue was managed unilaterally, the success stories ended, creating cyclical patterns of unilateral immigration reform and a long legacy of U.S. policies that have failed to address the immigration issue.<sup>192</sup>

An interesting question for further research is offered by the fact that the Mexican government changed its approach to the bilateral relationship during the 1993 negotiation, engaging the domestic politics of the U.S., rather than only the federal/foreign policy aspect. The experience was successful and was welcomed by the U.S. executive government. This raises an intriguing question: why didn't the Mexican government continue to approach bilateral issues by engaging domestic and foreign politics in the U.S.? Over the history of the U.S.-Mexico relations, several disagreements and various instances of failed cooperation may be attributed to the Mexican assumption that the American federal system functioned similar to the Mexican federal system, that dealing directly with the executive would suffice. Clearly that is not the case with the American separation of powers, and even in Mexico the old hierarchical system no longer functions in a manner that would justify an executive to executive based relationship. The lack of agreement on various bilateral issues and the uneven importance that the relationship has for both countries provide ample justification for Mexico to consider different approaches to the relationship—in this respect Mexico's success with the 1993

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<sup>191</sup> See U.S. Department of State declaration of November 2007, available at <http://www.state.gov/r/pa/prs/ps/2007/oct/93800.htm>

NAFTA negotiations experience is certainly suggestive as a potential strategy for engaging the United States.

In sum, when we reflect on the history of Mexico-U.S. relations it is true that the U.S.-Mexico border region has seen limited advances in binational cooperation for prolonged periods of time in the past and may develop slowly in the future, but the level of binational interactions are ever increasing and new challenges are continuously emerging that require better binational approaches for responding and adjusting to those changes. This study provides insights about policy change and governance on the U.S.-Mexico border. I hope that some of the results presented here will be useful in creating new policies and governance arrangements for the benefit of the inhabitants of the region.

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<sup>192</sup> In the U.S., the 1990 report of the bipartisan Presidential Commission on Immigration Reform chaired by Texas congresswoman Barbara Jordan famously recommended that the two countries establish a binational commission on immigration, a suggestion that was never heeded.

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## **List of Acronyms and Abbreviations**

ACF	Advocacy Coalition Framework
ACTPN	Advisory Committee on Trade Policy and Negotiation
ATI	Arizona Toxics Information
BD	Board of Directors
BECC	Border Environment Cooperation Commission
BECR	Binational Environmental Cooperation Regime
BEFF	Border Environmental Finance Facility
BEIF	Border Environment Infrastructure Fund
BEP	Border Ecology Project
BIP	Border Industrialization Program
CAA	Clean Air Act
CAP	Community Adjustment Program
CC	Coordinating Committee
CEC	Commission for Environmental Cooperation
CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act
CI	Conservation International
CIEL	Center for International Environmental Law
CILA	Comisión Internacional de Límites y Aguas
CNA	Comisión Nacional del Agua
CSG	Carlos Salinas de Gortari
CTC	Citizens Trade Campaign
CWA	Clean Water Act
DOI	United States Department of the Interior
DW	Defenders of Wildlife
ED	Environmental Defense
EDAP	Economic Distress Assistance Program
EDF	Environmental Defense Fund
EIA	Economic Initiative for the Americas
EPA	Environmental Protection Agency
ESA	Endangered Species Act
EU	European Union
FLPCEP	Federal Law to Prevent and Control Environmental Pollution
FoE	Friends of the Earth
FT	Free Trade
FTA	Free Trade Agreement
GAO	General Accounting Office
GATT	General Agreement on Tariffs and Trade
GNEB	Good Neighbor Environmental Board



HI	Historical Institutionalism
HUD	United States Department of Housing and Urban Development
HUD	Housing and Urban Development
IBC	International Boundary Commission
IBEC	International Border Environmental Commission
IBEP	Integrated Border Environmental Plan
IBWC	International Border and Water Commission
IDP	Institutional Development Cooperation Program
ILRERF	International Labor Rights Education and Research Fund
IMTA	Instituto Mexicano de Tecnología del Agua
INE	Instituto Nacional de Ecología
JAC	Joint Advisory Committee
JCP	Joint Contingency Plan
JRT	Joint Response Team
LPA	La Paz Agreement
MLG	Multi-Level Governance
MODTLE	Mobilization on Development, Trade, Labor, and the Environment
MOU	Memorandum of Understanding
NAAEC	North American Agreement on Environmental Cooperation
NACE	North American Commission for the Environment
NADB	North American Development Bank
NAFTA	North America Free Trade Agreement
NAIDC	North American Integration and Development Center
NAS	National Audubon Society
NC	Natural Conservancy
NEPA	National Environmental protection Act
NRDC	Natural Resources Defense Council
NWF	National Wildlife Federation
OIA	Office of International Activities
OMB	Office of Management and Budget
PAFN	Programa Ambiental de la Frontera Norte
PAHO	Pan-American Health Organization
PC	Public Citizen
PDAP	Project Development Assistance Program
PDP	Project Development Program
PE	Punctuated Equilibrium
PET	Punctuated Equilibrium Theory
PRD	Partido de la Revolución Democrática
PRF	Policy Regime Framework
PRI	Partido Revolucionario Institucional
PROFEPA	Procuraduría Federal de Protección al Ambiente
RCRA	Resource Conservation and Recovery Act
RMALC	Red Mexicana de Acción Frente al Libre Comercio
SAHOP	Secretary of Human Settlements and Public Works
SC	Sierra Club
SDWA	Safe Drinking Water Act

SECOFI	Secretaría de Comercio y Fomento Industrial
SEDESOL	Secretaría de Desarrollo Social
SEDUE	Urban Development and Ecology
SEMARNAP	Secretaría de Medio Ambiente Recursos Naturales y Pesca
SEMARNAT	Secretaría de Medio Ambiente Recursos Naturales
SHCP	Secretaría de Hacienda y Crédito Público
SMA	Subsecretaría para el Mejoramiento del Ambiente
SSA	Secretaría de Salubridad y Asistencia
SWEP	Solid Waste Environmental Program
TAA	Trade Adjustment Assistance
TCPS	Texas Center for Policy Studies
UCSD	University of California at San Diego
UMI	Utility Management Institute
UNCHE	United Nations Conference for the Human Environment
USMBHC	U.S.-Mexico Border Health Commission
USTR	United States Trade Representative
UTEP	The University of Texas at El Paso
WB	World Bank
WCIF	Water Conservation Infrastructure Fund
WSJ	Wall Street Journal
WTO	World Trade Organization
WVI	William C. Velasquez Institute
WWF	World Wildlife Fund