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## Book Review: Assessing the CEC's Impact on NAFTA

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## Book Review: Assessing the CEC's Impact on NAFTA

### Cover Page Footnote

David L. Markell is the Steven M. Goldstein Professor at Florida State University College of Law. John H. Knox is an associate professor of law at Pennsylvania State University. Robert C. Hale is a 2004 J.D. candidate at The Florida State University College of Law. Mr. Hale is a member of the Journal of Transnational Law and Policy. He wishes to thank his wife for her help and support.

## BOOK REVIEW

### ASSESSING THE CEC'S IMPACT ON NAFTA

*Greening NAFTA: The North American Commission for Environmental Cooperation.* Edited by David L. Markell<sup>†</sup> & John H. Knox.<sup>††</sup> Stanford, California: Stanford University Press, 2003, Pp. xv, 324. \$45.00

ROBERT C. HALE\*

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#### I. INTRODUCTION

With the North American Free Trade Agreement (NAFTA) recently celebrating its tenth birthday,<sup>1</sup> and talks currently ongoing to create a Free Trade Area for the Americas,<sup>2</sup> free trade is a hot topic in many academic circles. However, these discussions are incomplete without also considering the impact NAFTA and other like trade agreements have on the environment. To that end, *Greening NAFTA* is very timely in its assessment of the North American Agreement on Environmental Cooperation's (NAAEC)

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1. Lisa J. Adams, *NAFTA Marks Not-So-Happy 10th Birthday*, TAMPA TRIBUNE, Dec. 31, 2003, at MONEYSENSE 8.

2. Edith Brown Weiss, *Foreword to GREENING NAFTA: THE NORTH AMERICAN COMMISSION FOR ENVIRONMENTAL COOPERATION*, at xiii (David L. Markell & John H. Knox eds., 2003) [hereinafter *GREENING NAFTA*]

impact on NAFTA.<sup>3</sup> In this paper, I will offer a brief history of NAFTA, the NAAEC, and the North American Commission for Environmental Cooperation (CEC).<sup>4</sup> This history is crucial to understanding the critiques the book makes of the CEC. Next, I will lay out the book's basic structure and list chapter headings. The third section of the paper will address my overall impressions of the book, first addressing the book's structural aspect, and then some substantive issues of note. Finally, I will offer my conclusions and close by addressing the editors' concluding chapter.

## II. HISTORY OF NAFTA, NAAEC, & CEC

It has been a decade since Canada, Mexico, and the United States entered into NAFTA.<sup>5</sup> While NAFTA dealt primarily with trade liberalization throughout the North American continent, the agreement also had an environmental component: the NAAEC.<sup>6</sup> The NAAEC established an organization, the CEC,<sup>7</sup> to address the environmental concerns involved in economic integration between the three countries.<sup>8</sup> *Greening NAFTA* assesses the CEC's impact on NAFTA over the last decade.<sup>9</sup> The book addresses some of the successes and failures of the CEC, and also suggests several areas where the Commission could be more aggressive.<sup>10</sup> Lastly, Professor Markell notes that the CEC Council has arguably acted *ultra vires* in the use of NAFTA Articles 14 and 15 dealing with the citizen submissions process by overstepping its bounds and infringing on the power of both the NAAEC Secretariat and the role of society as a whole.<sup>11</sup>

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3. *Id.*

4. For the purposes of this paper, North American Commission for Environmental Cooperation will be referred to as the CEC. However, it is also frequently abbreviated as the NAAEC.

5. North American Free Trade Agreement, Dec. 8, 11, 14, & 17, 1992, Can.-Mex.-U.S., 32 I.L.M. 289 [hereinafter NAFTA]. NAFTA went into effect on January 1, 1994. See also Adams, *supra* note 1, at 8.

6. North American Agreement on Environmental Cooperation, Sept. 8, 9, 12, & 14, 1993, Can.-Mex.-U.S., 32 I.L.M. 1480 [hereinafter NAAEC].

7. Greg Block, *Trade and Environment in the Western Hemisphere: Expanding the North American Agreement on Environmental Cooperation into the Americas*, 33 ENVTL. L. 501, 508 (2003).

8. Weiss, *Foreword to GREENING NAFTA*, *supra* note 2, at xiii.

9. *GREENING NAFTA*, *supra* note 2.

10. *Id.*

11. David L. Markell, *The CEC Citizen Submissions Process: On or Off Course?*, in *GREENING NAFTA*, *supra* note 2, at 275-98.

## A. NAFTA

NAFTA's origin dates back to the 1989 Canada-United States Free Trade Agreement (FTA).<sup>12</sup> This pact dealt exclusively with trade between the two countries and did not address any of the environmental issues raised by the agreement.<sup>13</sup> The following year, Carlos Salinas and George Bush, the Presidents of Mexico and the United States, began negotiating a free trade agreement between their two respective countries based, in large part, on the example provided for by the 1989 Canada-United States FTA.<sup>14</sup> NAFTA, as it became known after Canada joined the Mexico-United States talks, would not be able to follow the 1989 Canada-United States FTA as precedent.<sup>15</sup>

In the early 1990s, while the NAFTA negotiations were still ongoing, there was an increased recognition of the connections between increased economic development and protection of the environment.<sup>16</sup> In fact, in the summer of 1992, at the Earth Summit in Rio de Janeiro, Brazil, the United Nations Conference on Environment and Development pushed for sustainable development.<sup>17</sup> As the Conference noted, "to achieve sustainable development, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it."<sup>18</sup> As the *Greening NAFTA's* editors note, many came to "[see] NAFTA as an opportunity to improve international environmental cooperation among the North American nations."<sup>19</sup>

A 1991 ruling by a General Agreement on Tariff and Trade (GATT) dispute panel mobilized environmental groups in all three countries to oppose NAFTA by arguing that trade liberalization without adequately protecting the environment would further harm the environment.<sup>20</sup> The panel report stated that an American tuna

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12. Canada-U.S. Free Trade Agreement, Jan. 1, 1989, Can.-U.S., 27 I.L.M. 281 [hereinafter FTA].

13. GREENING NAFTA, *supra* note 2, at 1.

14. Matthew Goldstein, *Canada: Economic Development under NAFTA, Dominant Economic Player Under FTAA*, 7 LAW. & BUS. REV. AM. 183, 188 (2001).

15. GREENING NAFTA, *supra* note 2, at 1.

16. Paul Stanton Kibel, *The Paper Tiger Awakens: North American Environmental Law After the Cozumel Reef Case*, 39 COLUM. J. TRANSNAT'L L. 395, 405 (2001).

17. Symposium, *The Road from Johannesburg*, 15 GEO. INT'L. ENVTL. L. REV. 809, 811 (2003).

18. Rio Declaration on Environment and Development, June 14, 1992, principle 4, 31 I.L.M. 874, *quoted in* GREENING NAFTA, *supra* note 2, at 1-2.

19. GREENING NAFTA, *supra* note 2, at 2.

20. General Agreement on Tariffs and Trade Dispute Settlement Panel Report on United States Restrictions on Imports of Tuna, Aug. 16, 1991, 30 I.L.M. 1594 (1991). This ruling held that, under current international trade rules, nations cannot adopt laws that relate to natural resources located outside its national boundaries. *Id.*

law protecting dolphins violated international trade laws.<sup>21</sup> Several prominent environmental groups including the National Wildlife Federation (NWF)<sup>22</sup> jointly issued a statement identifying two concerns: that (1) NAFTA's passage would further degrade the environment along the United States-Mexico border, and (2) NAFTA would lead to foreign investment throughout Mexico that would be particularly harmful to the environment.<sup>23</sup> These organizations were concerned that Mexico would become a "pollution haven" as American and Canadian businesses left their respective countries' stricter environmental laws behind in exchange for Mexico's much more lax environmental regulation.<sup>24</sup>

The *maquiladora* program served as the primary basis of this concern.<sup>25</sup> *Maquiladoras* "are foreign-owned assembly and manufacturing facilities producing goods for export, which have proliferated on the Mexican side of the border."<sup>26</sup> This Mexican governmental program had attracted investment and created jobs within the Mexican economy.<sup>27</sup> However, this did not come without a price. Mexico's border communities were overwhelmed in their efforts to treat waste and provide clean water.<sup>28</sup> Environmental groups feared that similar problems would spread throughout Mexico once NAFTA was implemented.<sup>29</sup>

The editors briefly summarize the Environmental Community's six chief objections with NAFTA.<sup>30</sup> These objections were: (1) the need for cleanup along the United States-Mexico border; (2) the aforementioned fear that Mexico would become a "pollution haven;" (3) a possible threat to U.S. domestic environmental laws; (4) a similar threat to international environmental agreements; (5) the need for less secrecy and more public participation; and (6) the need

21. Kibel, *supra* note 16, at 405-06.

22. Chris Tollefson, *Games Without Frontiers: Investor Claims and Citizen Submissions Under the NAFTA Regime*, 27 YALE J. INT'L L. 141, 185 n.242 (2002). These organizations included the "American Lands Alliance, the Center for International Environmental Law, the Consumer's Choice Council, the Defenders of Wildlife, Earthjustice Legal Defense Fund, Friends of the Earth, the Institute for Agriculture and Trade Policy, [ ], Natural Resources Defense Council, Pacific Environment, Sierra Club and World Wildlife Fund." *Id.*

23. GREENING NAFTA, *supra* note 2, at 3.

24. Kibel, *supra* note 16, at 408; James A. Funt, *The North American Free Trade Agreement and the Integrated Environmental Border Plan: Feasible Solutions to U.S.-Mexico Border Pollution?*, 12 TEMP. ENVTL. L. & TECH. J. 77, 80 (1993).

25. GREENING NAFTA, *supra* note 2, at 3.

26. Sanford E. Gaines, *NAFTA as a Symbol on the Border*, 51 UCLA L. REV. 143, 162 (2003).

27. GREENING NAFTA, *supra* note 2, at 3; Jesus Silva & Richard K. Dunn, *A Free Trade Agreement Between the United States and Mexico: The Right Choice?*, 27 SAN DIEGO L. REV. 937, 955-58 (1990).

28. Funt, *supra* note 24, at 86.

29. GREENING NAFTA, *supra* note 2, at 3.

30. *Id.* at 4-7.

for some kind of environmental assessment as is required for federal actions under the National Environmental Policy Act of 1969 (NEPA).<sup>31</sup> Congress also shared some of these concerns and demanded that the administration address environmental issues.<sup>32</sup> As the editors note, President Bush promised “to develop and implement an expanded program of environmental cooperation in parallel with the free trade talks.”<sup>33</sup>

### B. NAAEC & CEC

After William Clinton was sworn in as President, he indicated that he would not sign off on NAFTA until similar environmental agreements were signed to compliment the trade agreement.<sup>34</sup> In response to the groups’ demands and President Clinton’s threats, the three governments were able to produce a supplemental agreement to NAFTA called the NAAEC.<sup>35</sup> This side agreement created the CEC to address the environmental concerns associated with North American economic integration.<sup>36</sup> The NAAEC requires each State to “ensure that its laws and regulations provide for high levels of environmental protection and shall strive to continue to improve those laws and regulations.”<sup>37</sup> The agreement also requires the States to “effectively enforce its environmental laws and regulations through appropriate governmental action.”<sup>38</sup>

Knox and Markell begin discussion of the NAAEC and CEC by laying out the NAAEC’s structure.<sup>39</sup> The CEC is “composed of a Council of the Parties’ environmental ministers, a permanent Secretariat, and an independent advisory committee.”<sup>40</sup> The editors then examine how the NAAEC addressed, or in other cases failed to address, some of the initial concerns shared by the environmental groups.<sup>41</sup> Knox and Markell conclude this section by examining the Secretariat’s and Council’s mandates.<sup>42</sup>

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31. *Id.*; National Environmental Policy Act of 1969 § 102, 42 U.S.C. § 4332 (2000).

32. GREENING NAFTA, *supra* note 2, at 4.

33. *Id.* (quoting President George Bush to Lloyd Bentsen, chairman of the Senate Finance Committee; Richard A. Gephardt, House majority leader; and Dan Rostenkowski, chairman of the House Ways and Means Committee, 27 *Weekly Compilation of Presidential Documents* 536 (May 1, 1991)).

34. Kibel, *supra* note 16, at 407.

35. GREENING NAFTA, *supra* note 2, at 7-9; NAAEC, *supra* note 5.

36. Block, *supra* note 7, at 508-09.

37. NAAEC, *supra* note 6, at art. 3.

38. *Id.* at art. 5.

39. GREENING NAFTA, *supra* note 2, at 9.

40. *Id.*

41. *Id.* at 9-11.

42. *Id.* at 11-12.

### III. STRUCTURE

With this brief history complete, the article now turns to examining the book in earnest. *Greening NAFTA* begins with a foreword by Edith Brown Weiss, a Professor of International Law at the Georgetown University Law Center.<sup>43</sup> After a brief introduction, the book is arranged into three sections. These sections correspond to the three roles the CEC was envisioned to play. Part one analyzes the CEC as a regional organization solving regional problems.<sup>44</sup> Part two analyzes the CEC as an institution for dealing with the trade and environmental nexus existing in North America.<sup>45</sup> Part three assesses the CEC's role as a forum for public participation and government accountability.<sup>46</sup> Each section contains a number of articles written by various collaborators. These articles are:

#### PART 1: Regional Solutions to Regional Problems?

The CEC Cooperative Program of Work: A North American Agenda for Action<sup>47</sup>

North American Pollutant Release and Transfer Registries: A Case Study in Environmental Policy Convergence<sup>48</sup>

The CEC's Biodiversity Conservation Agenda<sup>49</sup>

The CEC and Transboundary Pollution<sup>50</sup>

#### PART 2: Trade and Environment in North America

The CEC's Trade and Environment Program: Cutting-Edge Analysis but Untapped Potential<sup>51</sup>

43. Weiss, *Foreword* to GREENING NAFTA, *supra* note 2, at xiii.

44. GREENING NAFTA, *supra* note 2, at 14.

45. *Id.* at 15.

46. *Id.* at 16.

47. Greg Block, *The CEC Cooperative Program of Work: A North American Agenda for Action*, in GREENING NAFTA, *supra* note 2, at ch. 2.

48. Mark S. Winfield, *North American Pollutant Release and Transfer Registries: A Case Study in Environmental Policy Convergence*, in GREENING NAFTA, *supra* note 2, at ch. 3.

49. Robert L. Glicksman, *The CEC's Biodiversity Conservation Agenda*, in GREENING NAFTA, *supra* note 2, at ch. 4.

50. John H. Knox, *The CEC and Transboundary Pollution*, in GREENING NAFTA, *supra* note 2, at ch. 5.

51. Mary E. Kelly & Cyrus Reed, *The CEC's Trade and Environment Program: Cutting-*



The CEC and Environmental Quality: Assessing the Mexican Experience<sup>52</sup>

The Environmental Impact of Mexican Manufacturing Exports under NAFTA<sup>53</sup>

Corn in NAFTA Eight Years After: Effects on Mexican Biodiversity<sup>54</sup>

Protecting Investors, Protecting the Environment: The Unexpected Story of NAFTA Chapter 11<sup>55</sup>

### PART 3: Toward and International Civil Society.

Perspectives on the Joint Public Advisory Committee<sup>56</sup>

Coordinating Land and Water Use in the San Pedro River Basin: What Role for the CEC?<sup>57</sup>

Trade and the Environment: The Issue of Transparency<sup>58</sup>

Citizen Submissions and Treaty Review in the NAAEC<sup>59</sup> and

The CEC Citizen Submissions Process: On or Off Course?<sup>60</sup>

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*Edge Analysis but Untapped Potential*, in GREENING NAFTA, *supra* note 2, at ch. 6.

52. Kevin P. Gallagher, *The CEC and Environmental Quality: Assessing the Mexican Experience*, in GREENING NAFTA, *supra* note 2, at ch. 7.

53. Claudia Schatan, *The Environmental Impact of Mexican Manufacturing Exports under NAFTA*, in GREENING NAFTA, *supra* note 2, at ch. 8.

54. Alejandro Nadal, *Corn in NAFTA Eight Years After: Effects of Mexican Biodiversity*, in GREENING NAFTA, *supra* note 2, at ch. 9.

55. Sanford E. Gaines, *Protecting Investors, Protecting the Environment: The Unexpected Story of NAFTA*, in GREENING NAFTA, *supra* note 2, at ch. 10.

56. John D. Wirth, *Perspectives on the Joint Public Advisory Committee*, in GREENING NAFTA, *supra* note 2, at ch. 11.

57. A. Dan Tarlock & John E. Thorson, *Coordinating Land and Water Use in the San Pedro River Basin: What Role for the CEC?*, in GREENING NAFTA, *supra* note 2, at ch. 12.

58. Donald McRae, *Trade and the Environment: The Issue of Transparency*, in GREENING NAFTA, *supra* note 2, at ch. 13.

59. Kal Raustiala, *Citizen Submissions and Treaty Review in the NAAEC*, in GREENING NAFTA, *supra* note 2, at ch. 13.

60. David L. Markell, *The CEC Citizen Submissions Process: On or Off Course?*, in

The book closes with a conclusion written by the editors.<sup>61</sup> In addition to recapping the fourteen preceding articles, Knox and Markell offer some general observations on the CEC, including whether or not the CEC model could be used in other trade agreement contexts.<sup>62</sup>

#### IV. OVERALL IMPRESSIONS

##### A. *Structural Aspects*

One of the first things I found remarkable about the text was its readability. After noting the distinguished scholars who contributed chapters to the book, I initially thought that it would have all the earmarks of a law school text or law treatise. In other words, I believed that the book would be almost impossible to read cover to cover. In fact, that initial impression could not have been further from the truth. This book has appeal for everyone. Although written for members of the CEC, professors, scholars, and students alike can take something from this book. For the most part, the contributors avoid legalese, and aside from the numerous acronyms, readers will readily understand what the CEC has accomplished, what it has failed to accomplish, and most importantly, what the future holds for the organization.

On an individual level, every contribution is structured in a manner that assists the reader in understanding the facts and observations that each author is relating to his or her audience. The chapters are highly structured, which aids a layperson in understanding the topic. Take Winfield's chapter on Pollutant Release and Transfer Registries (PRTR) as an example.<sup>63</sup> Winfield sets up his chapter with a couple of introductory paragraphs,<sup>64</sup> then provides a roadmap for his chapter.<sup>65</sup> The roadmap provides definitions and overviews of the PRTR concept, identifies the key uses and audiences for PRTRs,<sup>66</sup> and demonstrates the development of PRTR systems in Canada, Mexico, and the United States.<sup>67</sup> Winfield then assesses the CEC's role and impact on the evolution of the PRTR concept in North America.<sup>68</sup> Finally, Winfield

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GREENING NAFTA, *supra* note 2, at ch. 14.

61. GREENING NAFTA, *supra* note 2, at 299-311.

62. *Id.* at 300-11.

63. Winfield, *supra* note 48, at 38.

64. *Id.*

65. *Id.* at 38-39.

66. *Id.* at 39-40.

67. *Id.* at 40-46.

68. *Id.* at 46-50.

concludes with his opinion that the PRTR experience shows that the CEC can be successful as a regional environmental organization.<sup>69</sup>

Nadal's chapter focusing on NAFTA's effects on Mexican biodiversity in corn production is another example of this highly structured approach.<sup>70</sup> Nadal informs the reader that he will first describe the implementation of NAFTA's corn regime, then examine the potential impact of U.S. transgenic corn on Mexican corn genetic resources, and finally offer up several relevant policy recommendations.<sup>71</sup> He concludes that "the original NAFTA tariff rate quota (TRQ) system" must be implemented, that social welfare infrastructure must be improved along with structural infrastructure, and a price mechanism must be introduced to assist the poorer Mexican corn producers.<sup>72</sup>

Another positive aspect of the book is that it is replete with illustrative examples that aid the reader in grasping the material. In Gaines' chapter on the investment provisions of NAFTA, Chapter 11,<sup>73</sup> he describes several different environmental issues that have arisen in Chapter 11 arbitrations.<sup>74</sup> For the most part, these arbitrations have taken place in two scenarios: waste disposal services cases and regulation of products on public health grounds.<sup>75</sup> Rather than merely describing the types of arbitrations, Gaines offers detailed analysis of seminal cases.<sup>76</sup>

Schatan's chapter assessing the environmental impact of Mexican exports under NAFTA<sup>77</sup> contains several visual aids, including charts, that graphically illustrate difficult concepts such as how different export sectors have affected overall Mexican pollution, the dynamism of Mexican exports, how Mexican exports compare in the pollution context to Canadian exports, and how Mexican sectors importing into the United States have changed in ranking over the last nine years.<sup>78</sup> These aids are crucial to the laymen's understanding of sometimes hard to conceptualize differences between "scale effect" and "composition effect."<sup>79</sup>

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69. *Id.* at 51.

70. Nadal, *supra* note 53.

71. *Id.* at 154.

72. *Id.* at 168-69.

73. Gaines, *supra* note 54.

74. *Id.* at 178.

75. *Id.* at 178.

76. The Nafta claim site provides visitors with a number of these cases including: *Azinian v. Mexico*, *Metalclad v. Mexico*, *S.D. Myers, Inc. v. Canada*, *Ethyl Corp. v. Canada*, and *Methanex v. United States*. Available at <http://www.naftaclaims.com>.

77. Schatan, *supra* note 52.

78. *Id.* at 134, 140-42, 144-46.

79. *Id.* at 137.

### B. Substantive Issues

While the book's structure is extremely beneficial to the reader, it only seems to make *Greening NAFTA's* true strength — its substance — attainable to a variety of readers. One of the book's highlights is the third section's examination of the CEC as a forum for international civil society.<sup>80</sup> I found McRae's chapter comparing transparency within the WTO, NAFTA, and the CEC particularly useful.<sup>81</sup> McRae compares each of the three organizations' mechanisms for dealing with environmental issues and then includes a short section that examines five types of public participation.<sup>82</sup> He implies that the WTO and NAFTA offer almost no opportunity for public participation while the CEC offers significant public participation by allowing the public to initiate the complaint process, and obtain and provide valuable information.<sup>83</sup> McRae leaves open questions regarding the proper "level of public participation within the CEC process" and whether the "CEC process [is] appropriate for the WTO and NAFTA dispute settlement processes."<sup>84</sup> I would have liked McRae to be more explicit in his approval or disapproval of the current level of public participation in each forum. McRae concludes by cautioning that perhaps high levels of public participation are not always desirable, but he stops short of truly taking a stand on where the CEC falls on the continuum.<sup>85</sup>

One of my favorite aspects of the book is the expression of views and opinions of these eminent scholars in each respective chapter. For example, Tarlock and Thorson examine the possibility of the CEC playing a role in settling land and water usage in the San Pedro River Basin.<sup>86</sup> The authors' assessment is that the CEC has been largely successful regarding its NAAEC Article 13 studies in the river basin.<sup>87</sup> This assessment is supported by a showing that the CEC's efforts have helped focus the discussion of sustainability to a more manageable level by using a tri-part process that allows for refinement of some of the more promising options.<sup>88</sup> Tarlock and Thorson highlight the CEC's successes, but they do point out that

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80. McRae, *supra* note 58.

81. *Id.*

82. *Id.* at 249-52. The five types of public participation were: "[1] initiating the process; [2] gaining access to information; [3] providing information; [4] having access to oral proceedings; and [5] being involved in actually making the decision." *Id.* at 249.

83. *Id.* at 252.

84. *Id.*

85. *Id.*

86. Tarlock & Thorson, *supra* note 56. The San Pedro River Basin begins in Sonora, Mexico, and flows northward into Arizona. *Id.* at 219.

87. *Id.* at 229-32.

88. *Id.*

the CEC process has resulted in very few real improvements to the San Pedro River Basin.<sup>89</sup> Tarlock and Thorson conclude that the CEC is best left to information gathering and dissemination, and that perhaps legislation such as the Endangered Species Act would be a better candidate to curtail and control development in the river basin.<sup>90</sup> Finally, the authors suggest that “ecosystem-wide solutions that involve the [area’s] major stakeholders are the best long-run hope for effective biodiversity conservation.”<sup>91</sup> This kind of discussion is readily applicable to a host of environmental issues, as most of these issues affect more than one locale. Take the seemingly local Apalachicola-Chattahoochee-Flint River System problem as a prime example. Protecting oysters in the Apalachicola Bay, one of the most biodiverse “hotspots” in the world,<sup>92</sup> is not as simple as focusing solely on how to protect the bay’s oyster industry.<sup>93</sup> Rather, it involves assessing and balancing several additional competing interests including: the city of Atlanta’s drinking and industrial water supply, hydroelectric dams on the Chattahoochee and Flint Rivers, the river system’s small shipping industry, rural Georgia farm irrigation, and the Lake Lanier recreational economy.<sup>94</sup>

Markell’s chapter on the citizen submissions process contained within NAFTA’s Articles 14 and 15 is another highlight of the book<sup>95</sup> Markell assesses the process by examining the scope of the authority of the CEC Council, the Secretariat, and interested citizens. Markell does not hide the fact that, in his opinion, the CEC Council has acted *ultra vires* by usurping some of the Secretariat’s authority.<sup>96</sup> Markell suggests that the CEC Council does not have the authority to change the Secretariat’s recommendation as it did in four of five CEC resolutions.<sup>97</sup> Markell takes a look at each submission in turn, describing the initial citizen submission, the Secretariat’s recommendation and the Council’s ultimate resolution in each case.<sup>98</sup> For those readers who don’t need the wealth of information and detail Markell includes about each submission in the text, he offers

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89. *Id.*

90. *Id.* at 230.

91. *Id.* at 232

92. JOHN COPELAND NAGLE & J.B. RUHL, *THE LAW OF BIODIVERSITY AND ECOSYSTEM MANAGEMENT* 623 (Foundation Press 2002). This casebook provides an introduction into the recently established field of ecosystem management law. *Id.*

93. *Id.* at 627.

94. *Id.* at 625-26.

95. David L. Markell, *supra* note 60.

96. *Id.* at 284-85.

97. *Id.* at 277-80. The four resolutions in which the Council changed the Secretariat’s recommendation for a factual record were: Oldman River II, BC Mining, BC Logging, and Migratory Birds.

98. *Id.*

an appendix that summarizes the information in a quick-reference manner.<sup>99</sup> Markell concludes the chapter by noting several possible consequences of the CEC Council's arguably ultra vires actions.<sup>100</sup> Markell aptly points to the February 2002 submission regarding logging operations in Ontario, Canada, as an example of the problems with the citizen submission process.<sup>101</sup> Markell argues that this particular submission allows the Council to adjust its role and pursue broad-based allegations,<sup>102</sup> but, Markell notes that "it is too early to tell...whether or not the [Council] resolutions represent a temporary bump in the road" or whether they represent a larger threat to the citizen submissions process.<sup>103</sup> A conclusion on this issue will have to wait until more submissions reach a stage where the CEC Council takes action on a final factual record. Only then will a pattern be detectable. At that time, the citizen submissions process' status can be assessed.

## V. CONCLUSIONS

While the technical aspects of *Greening NAFTA* are outstanding, I was not fond of the overall structure of the book. While this book is neither a history book that must be organized in chronological order, nor a book that merely describes how a single process works, a structure similar to that used by the editors in their conclusion would have been more valuable to the reader, because it explains how each topic interrelates. In its current state, the book reads like a law review symposium issue devoted to the assessment of the CEC. Aside from being arranged loosely in three sections corresponding to the roles the CEC is designed to play, few of the articles seem to build on one another or flow together.

Many of the articles are also repetitious — especially with respect to introductory information. The first chapter, an introduction written by the editors, begins with a brief history that leads the reader from the early origins of NAFTA to the inclusion of the NAAEC, and finally the CEC.<sup>104</sup> Several of the subsequent chapters rehash this information. It would have been far more

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99. *Id.* at 289-93.

100. *Id.* at 286-88. One of these consequences is that over a hundred NGOs, members of the public, and various actions have suggested that the governments were "working together to undermine' the process." GREENING NAFTA, *supra* note 2, at 286. Markell lists two articles to bolster this point: Elizabeth Malkin, *Taking the Green out of NAFTA*, BUSINESS WEEK, May 29, 2000, available at [http://www.businessweek.com/2000/00\\_22/b3683221.htm](http://www.businessweek.com/2000/00_22/b3683221.htm).; *How to Wreck Trade*, WASHINGTON POST (Editorial), June 10, 2000.

101. *Id.* at 288.

102. *Id.*

103. *Id.*

104. *Id.* at 1-17.

effective to confine the introductory material to the first chapter, and only restate information in later chapters when absolutely necessary. This would leave the authors free to devote the entirety of their respective articles to the specific topic in each article.

With this minor critique said, this book is remarkable in the breadth of experience each contributor brings to the collaborative effort.<sup>105</sup> Over half of the contributors have legal backgrounds. Most authors either worked directly for the CEC (as legal advisors or directors of individual CEC units) or served the CEC in some other capacity (as a Joint Public Advisory Committee member or a member of a CEC consultant group).<sup>106</sup> Two of the authors played critical roles in the negotiation of NAFTA and the NAAEC.<sup>107</sup> The book features articles from non-CEC related authors as well. These authors include professors (both legal and non-legal) and NGO members who have written extensively on environmental protection. With this broad range of experience, the book avoids the pitfall of appearing biased, and provides the reader with both an insider and outsider view of the CEC.

Knox and Markell close the book with a conclusion that summarizes the previous chapters.<sup>108</sup> The two editors also take this opportunity to offer their own thoughts on the progress and future prospects for the CEC. For the lay reader, this is without question the most useful part of the book. The editors mimic the overall structure of the book, dividing their conclusions into the CEC's three roles. Unlike the individual chapters themselves however, the editors demonstrate how each chapter compliments and interrelates with the other chapters in the book. Their conclusion applauds the CEC's efforts at sponsoring "innovative and important studies assessing NAFTA's environmental effects," but recognizes that the CEC has failed in its attempt to be an environmental presence within NAFTA's infrastructure.<sup>109</sup> The conclusion recognizes that the CEC has certain limitations (budgetary limitations being the most glaring), but still is an effective model for a regional environmental organization and as a forum for civil society.<sup>110</sup> The editors imply that the lessons learned thus far from the CEC experience have been and will continue to be of tremendous value to

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105. *Id.* at 313-18.

106. GREENING NAFTA, *supra* note 2, at 2-3.

107. Sanford Gaines served as Deputy Assistant U.S. Trade Representative. In this capacity, Gaines had responsibility for environmental issues during the NAFTA negotiations. *Id.* at 314. John Knox served as an adviser to the Department of State. In this position, he participated in the negotiation of the NAAEC. *Id.* at 315.

108. *Id.* at 299-311.

109. *Id.* at 310.

110. *Id.* at 310-11.

those countries and regions trying to balance environmental protection and economic integration.<sup>111</sup> The editors conclude by quoting John Wirth, who described the CEC's record as follows: "[s]till a young organization, the CEC has made extraordinary progress in addressing environmental issues that until recently had little or no resonance across all three countries."<sup>112</sup> As Wirth concludes, this is "[n]o small achievement."<sup>113</sup>

This book was a joy to read. The book provides a thorough informative analysis of the CEC's experience within NAFTA over the last ten years. It is an invaluable resource, especially with the current call for a Free Trade Area of the Americas. As Weiss concluded in her foreword, "[t]he book is well informed and highly relevant for all those interested in reconciling environment and trade and in promoting environmentally responsible development not only in North America but throughout the Americas and the world."<sup>114</sup> I concur with Weiss' assessment, and would add that this book has appeal beyond scholars. I would recommend this book to politicians, policy-makers and environmental law and business students alike, as well as anyone interested in the movement towards free trade in the Americas.

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111. *Id.* at 311.

112. *Id.*

113. *Id.*

114. Weiss, *Foreword to GREENING NAFTA, supra* note 2, at xv.