

March 2, 2023

Report to ACOEL President and ACOEL Foundation on ACOEL-FANJ Joint Symposium
February 9 & 10, 2023, Havana Cuba

-- David B. Farer, co-chair, ACOEL Inter'l Pro Bono Committee; chair, Cuba Working Group

On February 9 & 10, 2023, seven ACOEL Fellows participated in a symposium, in Havana, Cuba, jointly presented by ACOEL and the Foundation Antonio Nunez Jimenez of Nature and Humanity (FANJ), the Cuban NGO with which ACOEL entered an MOU in February 2019. The topic and title was: *USA-Cuba Key Environmental Issues: Lessons Learned – Lessons Shared*.

Background

This was the fourth delegation of ACOEL Fellows to Cuba since efforts commenced in 2016, under the auspices of the College's International Pro Bono Committee and its Cuba Working Group, to seek opportunities for College Fellows to engage in pro bono projects in aid of the Cuban people. As the MOU recites, the goals of ACOEL and FANJ are to explore the contributions that each organization's Fellows and representatives can make to the other, including development of training on specific topics of environmental law, participation in events and advice on capacity building, and in sharing the knowledge and experience of the representatives and Fellows of the two organizations.

The initial delegation in September 2016 led to an invitation to submit a paper for consideration in preparation for the XI International Convention on Environment & Development in Havana. Mary Ellen Ternes and I submitted a paper, *Lessons Learned: Effective Environmental Regulation of Critical Infrastructure Development & Operation*. It was accepted, and Mary Ellen and I presented it at the July 2017 convention in Havana. Our paper on the topic was also published in the proceedings of the convention.

Subsequent communications and meetings then led to the development of the ACOEL-FANJ MOU and its signing in Havana in 2019. After that, we engaged in discussions to target the issues deemed by FANJ representatives as most timely and significant to our Cuban counterparts. A joint symposium was then planned for presentation by ACOEL and FANJ on those key topics, and was scheduled for Havana in March 2020. Just days before the planned event, it had to be postponed in the midst of the quickly accelerating Covid shutdowns.

Notwithstanding the long Covid pause, ACOEL and FANJ continued to work together, including our participation in a February 2021 webinar, co-sponsored by Columbia

University, ACOEL, FANJ and the Environmental Defense Fund, on the topic of reinvigorating and expanding U.S./Cuba environmental cooperation.

The February 2023 Joint Symposium in Havana

As Covid restrictions lifted, ACOEL and FANJ reset our plans for the joint symposium, resulting in the February 2023 event, the culmination of the seven years we have been engaged in this project, and the major kickoff to targeting specific opportunities to work together pursuant to the MOU.

In discussions with FANJ, it was determined that the Foundation wished us to focus on the same topics they had targeted for the postponed 2020 event.

I was joined on the ACOEL faculty group by Elizabeth Andrews, Bessie Daschbach, Lee DeHihns, Lewis Jones, Rob Kirsch and Marla Wieder.

The Cuban participants were:

-- From the Law Faculty of the University of Havana:

Dagniselys Toledano Cordero, Full Professor of Environmental Law
Ahmed Ramírez Sánchez, Full Professor Administrative Law

-- From the Cuban Ministry of Science, Technology and Environment:

Daimar Canovas Fernández, Environment Directorate and Professor of Environmental Law

Teresa Cruz Sardiñas, Environment Directorate
Orlando Rey Santos, Environment Directorate

-- From the Cuban Ministry of Agriculture:

Orlando Díaz, International Relations Director
Mayra Cruz Legón, Legal Director

-- From the Foundation Antonio Nunez Jimenez of Nature and Humanity:

Liliana Nuñez Jimenez, President
Yociel Marrero Baez, Program Director

-- Jordanka Castillo Porras, US-Cuba Regulatory Consultant and FANJ Collaborator; former General Counsel of FANJ (who ACOEL sponsored while she was studying for her LLM at Penn State Law, and who joined us at the 2019 Annual Meeting in Williamsburg, VA).

Also attending were representatives of MINREX, which is the Cuban Ministry of Foreign Affairs, the National Organization of Collective Law Firms (the organization of Cuban lawyers), as well as additional representatives of the Ministry of Agriculture and FANJ.

FANJ purposefully kept attendance at the event limited to no more than twenty-five people to foster open exchange. We had a translator with us throughout the two days of the symposium, translating all presentations, Spanish to English and visa versa, and all dialogue among us.

Day One commenced with a Cuban panel on the current structure of environmental laws and regulations, including Constitutional Amendments in 2019 that establishes every individual the right to a healthy environment, further changes in environmental law in 2020, and a brief history of Cuban environmental laws starting in 1981.

That was followed by an ACOEL panel (Lee DeHihns, Rob Kirsch and me) on addressing environmental issues as a central element in negotiations between Cuban and foreign companies contemplating joint ventures in Cuba.

Third panel of the day was also an ACOEL panel (Elizabeth Andrews, Bessie Daschbach and Lee DeHihns) on various methods and approaches on community enforcement of environmental laws, and how this is addressed in the U.S.

Day Two opened with a Cuban panel on agricultural law and its relationship to environmental law, including aspects particular to the U.S.-Cuba food market.

That was followed by another Cuban panel, this on a recap on how environmental liability has developed in Cuba.

The final panel was an ACOEL presentation (Elizabeth Andrews, Lewis Jones and Marla Wieder) focusing on urban trees, with examples of different approaches on a municipal and regional basis.

Next Steps

In closing discussions, we engaged on determining next steps. The consensus was that with all of the panels having been intense and engaging, we should arrange for a follow-up discussion to start to focus on particular priorities so that we can move toward creating specific opportunities for working together; not to repeat or recap what we set out for each other during the two days of panels, but to set an action agenda. It was left to Yociel Marrero of FANJ and me to coordinate on topics for that discussion, and to that end I will be engaging with the ACOEL group to organize for the discussion, and Yociel will be doing the same on his end. The discussion will be by way of video-conference.

Among the topics that the Cuban group appeared to wish to take further were the following:

- From the ACOEL Urban Trees session: How to empower or use municipalities to create tree protection and propagation models in Cuba.
- From the ACOEL Community Enforcement session: There was particular interest in learning more about ESG. There was also interest expressed as to U.S. models for handling the recycling of plastics including microplastics.
- From the Cuba panels on current structure of environmental law and environmental liabilities: Can U.S. federal and state environmental schemes be a model for harmonizing the different levels of Cuban laws.
- From the ACOEL Transactions/Negotiations session: In the open discussion following the panel, our Cuban counterparts noted a conundrum they are now facing in this regard; namely, that while joint ventures have been the primary means for foreign investors to proceed (as the minority partner) with development in Cuba, the government has recently begun to allow foreign investors to proceed without Cuban partners. This led to two themes:

- If there is not a Cuban joint venture entity to negotiate environmental standards and requirements for a project, can the government permitting system be used or expanded to encompass establishment of project-specific standards and requirements.
- Could an environmental screening process be developed to vet foreign investors seeking to develop in Cuba.

The panelists from both countries came well-prepared, and all acquitted themselves with grace, erudition and comradery. The ACOEL contingent has returned energized and excited to proceed further.

As we had hoped, we also had productive interactions with our Cuban counterparts outside of the sessions themselves, including in social settings.

The ACOEL panelists hope that we can arrange to post all of the materials from the symposium (PowerPoints and the like from both the ACOEL and Cuban panelists) on the ACOEL website, and will work with Jim Bruen and Ginny Robbins on that to determine the proper method to proceed.

I will also prepare a shorter variation of this report as an ACOEL blog, as I have done following each of the first three delegations. I will include a number of photos from the event.

As has been case with all of the ACOEL delegations to Cuba, each participating ACOEL Fellow paid all of her/his own expenses for this delegation.

I should conclude by noting that 6 of our 7 Fellows brought spouses/significant others with them, so that we were group of 13 in total, and that a wonderful time was had by all. We encourage everyone to visit Cuba.
