

IN DEFENCE OF LEGITIMATE DISSENT 1980-1999

By DR. JOAN RUSSOW

(PART ONE)

“Yet all experience is an arch where-through gleams that untraveled world..” (Tennyson)











INTRODUCTION

In 1997, I discovered that I had been placed on a 1997 RCMP threat assessment list prepared by police and intelligence officials for the gathering of APEC leaders at the University of British Columbia. Since that time, I have been trying to discern why that action was taken.

Here is my affidavit documenting my actions from Part I, 1982 -1999 and Part II, 2000- until 2005,when I gave a presentation to the Canadian Senate and when I was in court in 2005 and submitting an earlier version of “In defence of legitimate Dissent for the judge to determine whether I was a threat and if so, for whom I was a threat.

The following is the copy of the RCMP Threat Assessment image I have blocked out the names of the others on the list:

OTHER ACTIVISTS

 <p>DOB: 1953-09-19 Potential to be Violent HIV Positive AIDS Activist, White male, 175cm, 64kg, brown hair, brown eyes</p>	 <p>DOB: 1961-11-21 AIDS Activist</p>	 <p>DOB: 1963-06-23 Lesbian activist / marching White, female, 180cm, 95.5kg, brown hair, very masculine</p>	 <p>DOB: 1966-11-21 Anarchist / activist</p>	 <p>DOB: 1971-04-3 Activist</p>
 <p>DOB: 1973-01-27 Activist - Threw blood on security cont.</p>	 <p>RUSSOW, Joan DOB: 1938-11-01 Media Person UBC protest sympathizer</p>	 <p>DOB: 1976-07-17 Media Person UBC protest sympathizer</p>	 <p>DOB: 1966-03-27 Activist</p>	 <p>DOB: 1963-12-17 Activist</p>


THIS IS EXHIBIT E
 REFERRED TO IN THE AFFIDAVIT OF
Joan Elizabeth Russow
 SWORN BEFORE ME THIS 9 DAY
 OF September, 2005
[Signature]
 A Commissioner for Taking Affidavits
 Within British Columbia

No dissemination without approval from NCO VC APEC Threat Assessment Joint Intelligence Group

EXHIBIT F

(13)

Secretariat Sept 23

THIS IS EXHIBIT F
 REFERRED TO IN THE AFFIDAVIT OF
Joan Elizabeth Russow
 SWORN BEFORE ME THIS 9 DAY
 OF September, 2000

 A Commissioner for Taking Affidavits
 Within British Columbia



Analyst
Dr. Joan RUSSOW
 1938/11/01, Hair: Brown
 Eyes: Blue, Ht: 161, Wt:
 114

5. Two members of the media attending UBC last night as invited observers were noted to be overly sympathetic to the APEC Alert protestors. Both subjects have had their accreditation seized.

The first subject is Dr. Joan RUSSOW federal leader of the Green Party. Second subject

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EXHIBIT

The above RCMP Threat Assessment list was faxed to me *anonymously* by a participant at the APEC inquiry.

() Here is a copy of a letter written by MP Murray Rankin

EXHIBIT

2016 The Honourable Ralph Goodale, M.P.
Minister of Public Safety
House of Commons
Ottawa, ON, Canada
K1A 0A6

Dear Minister Goodale,

I write to you on behalf of my constituent, Dr. Joan Russow. She is an academic, an environmentalist and former leader of the Green Party of Canada.

In 1997, Dr. Russow discovered she had been placed on an RCMP threat assessment list prepared by police and intelligence officials for the gathering of APEC leaders at the University of British Columbia. Since that time, she has been trying to discern why that action was taken.

Over the years, Dr. Russow has filed official complaints with the Commission for Public Complaints Against the RCMP, CSIS, and SIRC and she has submitted over fifty access to information and privacy requests. Unfortunately, these documents have been unhelpful because pertinent sections are always redacted. Despite years of exhaustive inquiries, Dr. Russow still does not know why she was placed on a threat list.

Her situation has been covered in the media in the past by journalists concerned with dissent in Canada. It is certainly troubling to consider that citizens who engage in perfectly lawful advocacy protest and dissent — which are supposed to be protected in the CSIS Act— may be being placed on a threat assessment list.

Dr. Russow believes she was discriminated against for political reasons which would be a violation of her rights. Pursuant to Article 2 of the United Nations' International Covenant on Civil and Political Rights:

“Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

I ask that you provide an explanation as to why Dr. Russow was added to this threat list in the first instance. Dr. Russow feels she and her family have been burdened by the stigma associated with her unnecessary inclusion on this list for years. She has my full support in her pursuit of a satisfactory explanation.

We eagerly await your reply.

Sincerely,



Member of Parliament
Victoria, BC

In 2020, I still have not found out. Was it because, in the 1960s, I was asked by the RCMP, to spy on the Czechoslovakian Military and deputy Military Attache who were my English students; the latter was described as one of the most dangerous spies when he was in Cuba, and I refused? Or even further back, I was going out with the Italian Communist who organized the Agrarian Reform Protest, with oxen, marching from Perugia to Rome singing “mai due senza tre”, after two cardinals had died? Or was it my years of engaging in Legitimate Dissent? Will I ever know?

In April 2022, I contacted Murray Rankin to find out if he ever received a response and I just found out that he never did. Today , April 4 2022, he responded that he would resend the letter.

PART I 1982-1999

By Joan Russow, PhD

I found out that in 1997 I was placed on an RCMP Threat Assessment list

EXHIBIT

I have set it up as an affidavit for readers to discern for whom was I a Threat; was the RCMP justified in placing me on an RCMP Threat Assessment List, and in causing me to live until the present with the stigma of being on the list.

() THAT, in the year and/or month,

LEGEND:

~ YEAR

MONTH EG JANUARY 1990

() THAT, in YEAR or year plus month

EXHIBIT: INCLUSION OF DOCUMENTS

COMMENT:

In 1997, I found out that I was placed on an RCMP Threat Assessment list

EXHIBIT

Photo of list; See above

I have set it up as an affidavit for readers to discern for whom was I a threat; was the RCMP justified in placing me on an RCMP Threat Assessment List, and in causing me to live until the present with the stigma of being on the list.

DEDICATION: TO THE RCMP WITHOUT WHOM I WOULD NEVER HAVE FILED THIS AFFIDAVIT

WITH THANKS TO Jim Bronskill who continually published updates on my struggle to find out the reason for my being put on the list; including his article in 2001 on the Criminalization of dissent which is referred to in Part II: In Defence of Legitimate Dissent 2000-2005

The content of this affidavit is based on what has been stored in my desktop and is based on long tedious documents.

In order to peruse the content quickly , do a search through () WHICH I INSERTED AT THE START OF EACH ITEM

CAVEAT-SPELLING

The spelling is set for American spelling: all the references to international law and to the United Nations are in British English. Many documents are written in Canadian English with international references in British English. Because of the length of the document, [7000 pages], the spell check. Some words may be found in either language setting. I gave up trying to edit all sections to make things more contiguous.

BACKGROUND INFORMATION-

() **THAT** I am Joan Russow of 1230 St. Patrick St. Victoria, BC

() **THAT** I have brought up four children, I have seven granddaughters and I am now a senior citizen

() **THAT** I have studied art and architecture for three years in Paris, Rome and Seville, and one year of Common Law at the university of Ottawa

() **THAT** I have a BA in Pre-Colombian Mexican art and I have a Master's degree in Curriculum Development and innovated Principle-based education: a method of teaching human rights linked to peace environment social justice issues within a framework of international principles

() **THAT** I have a doctorate in Interdisciplinary Studies and in my Dissertation, I examined the problem of expressing and communicating complexity and the implication of imposing of simplistic models on the complexity of thought.

() **THAT** I became concerned about the failure of governments to implement international obligations beginning , in 1946 when my father, who was the Asst Auditor General of Canada, worked at the UN in New York, and told me that all the UN delegates were housed in the Lido Beach hotel because the black and colored delegates could not find non-discriminatory accommodation in long island where the UN was located in 1946 in Lake Success.

() **THAT** I have been mostly a non-remunerated policy analyst examining the complexity and interdependence of peace, environment, social justice and human rights issues

() **THAT** I was a former sessional lecturer in global issues, environmental studies program university of Victoria 1992-1996

() **THAT** I was the former leader of the Green party of Canada from April 1997 to March 2001 and that I ran in two Federal elections in 1997 and 2000 in the riding of Victoria, and in a by-election in 2000 in the Okanagan

() **THAT** I am A Member of the IUCN (World Conservation Union) Commission on Education and Communication

() **THAT** I Founded the Global Compliance Research Project: a project involved with ethical governance based on principles extracted from International instruments related to the furtherance of the "public trust": guaranteeing human rights, including women's rights, indigenous rights, and minority rights and including economic, social and cultural rights, and civil and political rights; protecting the environment and respecting ecology ; preventing war and conflict, and ensuring social justice. The purpose of the project is:

- to educate citizens about government obligations incurred through treaties, conventions and covenants; government commitments made through declarations and conference action plans, and government expectations created through General Assembly Resolutions.
- to publish documents and report cards based on previous obligations, commitments and expectations
- to introduce public trust principles into presumably reluctant fora
For example, there was a considerable amount of discussion in the session on regulations about the Triple Bottom line at the 2000 Globe [Trade] Conference. I proposed the quadruple bottom line -- under the international public trust United Nations regime: (i) guaranteeing human rights, including labour rights, women's rights, Indigenous rights; (ii) protecting the environment and ecology; (iii) preventing war and conflict and (iv) promoting socially equitable and environmentally sound employment.
- to determine what would constitute compliance with international principles enunciated through the United Nations system
- to develop principle-based educational material within a framework of international law.
- to lobby governments to sign what they have not signed, to ratify what they have not yet ratified, and to enact the necessary legislation to ensure compliance. In this context, the Global Compliance Research project circulated a petition at the Beijing +5 conference in New York calling upon all governments to sign and ratify, and comply with all human rights conventions and covenants.

() **THAT** in 1982, I attended the Vancouver first Peace Walk 168 groups We gathered in Kits beach groups where there were not that

many, but then it swelled to 35 000 The size reflected the concern about the escalating nuclear arms race,

PERSONAL BACKGROUND

() **THAT** from 1968, I was bringing up four children and working on my BA, M Ed, and PhD

() **THAT** in 1986, I completed my M Ed in curriculum development, by developing a method of teaching human rights linked to peace, social justice and the environment within a framework of international law; and that I became aware of the range and extent of obligations incurred through Conventions, Treaties, and Covenants, of commitments made through Conference Action Plans, and of expectations created through UN General Assembly resolutions, and Declarations

() **THAT** for over 30 YEARS, I participated an academic, as member of an NGO or as a reporter in international conferences:

- 1976 *Habitat i in Vancouver*; *Prepcom for UNCED 1992 in New York*; 1987 Stein Valley
- 1990 Learneds in Victoria
- 1991 Learneds in Kingston *UNCED 1992, in Rio*

ECO-ED 1992, in Toronto; [1992 National Research in Science Teaching \(NARST\) PAPER ON THE DELUSION OF CERTAINTY IN SCIENCE](#): 1993 part of an international research programme, on a 8 country study on climate change at the Kennedy School of Government at Harvard; 1994, IUCN 1994 resolution on Canadian forests passed at the International (IUCN) AGM **1993 World Conference on Human Rights ideagraph for this conference displaying the range of applicable international instruments 1994 Conference on Population and Development**: 1995 PREP-COM for Conference on Women: Equality, Development and Peace 1995 in New York, AT; 50th anniversary of the signing of the Charter of the United Nations , in San Francisco, conference, 1995, in Beijing; Habitat II 1996 in Istanbul; the Hague Peace conference in 1999, in den Hague; Beijing +5 2000 in New York; Habitat II.+5, 2001 in New York; WSSD 2002, in Johannesburg; Uniting for Peace Women say no to war in 27 different languages March 3 2003 in New York;; Uniting for Peace upholding the Charter and international law September 2003 in New York against the invasion of Iraq; . CSD12 2004 not further unraveling of UNCED obligations and commitments in New York; September 11 2004: UNESCO meeting in Halifax in 2005 and worked on a resolution related to granting more power to the UN General Assembly; Beijing +10 2005 in New York; May in the Hague attended a conference of 50 women mostly from the US and Netherlands, but also from other countries to address the issue of post conflict resolution. Gave a presentation, to the Dutch military on the importance of prevention of war, of the International Court of Justice, of need to reallocate the military budget; DPI session on climate change, 2007 in New York; COP15 2009 in Copenhagen; COP 16. 2010 in Cancun; Rio +20 2012 in Rio; High-level Meeting of the 68th Session

of the General Assembly, 2013 in New York; United Nations Sustainable Development Summit 2015 in New York; COP 21, 2015 in Paris, *United Nations Conference to Negotiate a legally Binding Instrument to Prohibit Nuclear Weapons*, Leading Towards Their Total Elimination June 2017 in New York.

Also I participated in several other UNGA AGMS; most CSW from 1994 – 2016; many CSDs, and a number of NPTs, and as a member of IUCN Commission on Education and Communication, conferences 1994 in Buenos Aires; 1996 in Montreal; and 2016, in Hawaii. A litigant in court case to end 'bible trading in the school and in a court case to set aside an injunction against protesters in Clayoquot sound where 1000 activist were arrested. submitted in court, a leave to appeal to set aside the injunction issued against protesters against logging in Clayoquot Sound

AN ENDLESS LIST OF LEGITIMATE DISSENT OR THREATS

~1980

() **THAT**, in 1980 I walked in an Anti-Racism March in Vancouver

~1982

() **THAT** In April 24, 1982: the Walk for Peace, organized by End the Arms Race, attracted 35,000 citizens.

COMMENT ,

I had participated in peace walks in Vancouver before 1982; but in 1982 I went to Kits beach and there were not that many people there, we marched and suddenly we saw a large contingent coming towards us; there ended up being eventually 35,000)

() **THAT** in 1982 I attended a Symposium "a Canadian Perspective," organized by the UBC students of Peace and Mutual Disarmament. I heard Michael Wallace, a political science professor at UBC, speak about Canada's role in the arms race: "Canadians should not act so self-righteous when they talk about disarmament. We are as much to blame as any other nation," he said. Wallace denounced Canada's sale of CANDU nuclear reactors to countries with unstable governments. "What do we do if some government violates our 'strict' safeguard?" "Send in the Mounties?" It is well known that, in the 60's, Canada sold nuclear reactors to both India and Pakistan and they developed nuclear weapons with Canadian technology. Also, Dr Fred Kennelman always asserted that, "There is a little bit of Canadian uranium in all US nuclear weapons.: to support this claim, he cites the fungibility Principle

COMMENT;

At that conference, a demonstration was described where the protesters were able to get to create a facade, in a store front, with apparently Canadian Defence paraphernalia giving the impression that it was a Canadian government information centre; but inside there was only anti-nuclear weapons material

~1983

() THAT in 1983, I addressed the intrusion of American fundamentalism into promoting nuclear weapons

COMMENT

I saw (surprisingly) on public television, a program featuring the Christian Round Table. Macateer from the Christian Round table described Nuclear weapons as being part of "God's design" I became increasingly concerned about Christian Fundamentalism

() THAT in ,1983, I became concerned about US Christian fundamentalist's intrusion into Canadian politics

COMMENT

Increasingly I became concerned about the intrusion of American styled fundamentalism into the Conservative party of Canada. I contacted the secretary of the BC Conservative party. She told me that she was equally concerned and that Jerry Falwell through youth representatives was attempting through stacking the youth conservative meeting to take over in B.C. She also mentioned that she had been called by a group about immigration about a meeting at the Empress and at the meeting the first statement was "I see that all of you are of European Origin and this is the way we want Canada to be.

() THAT, I wanted to expose a religious program that posed as a public affairs program: club 700
Club 700.

COMMENT

I wanted to find about more about the intrusion of fundamentalism. I contacted the 700 club--the religious program that gives the illusion of a public affairs program, and mentioned that I had just arrived in Victoria from Kelowna and I was interested in becoming involved in politics. I was asked by the women who answered the phone if "I was born again": sensing that this was a password. I meekly said yes anticipating interesting consequences. She said there is a group in BC called "Prayer BC" and this group has access to the legislature, and that I should call XX at Midland Doherty to find out how I could participate. I called XX and was asked again if I was born again, Again I responded yes. XX told me that I should not tell the other churches about this but we have access to the legislature through the Speaker of the house , Shrader was a born again Christian.
again Christian (Gracie was one too)

() THAT I supported Bob Moore Stewart's Case; eventually this practice was stopped as a result of a wide range of "religions" including sun worship wanted access as well. was involved in the case.

() THAT I was involved with Operation Solidarity

In 1983 on the advice presumably of the Fraser Institute, the Social Credit government embarked on major cutbacks in social programs, on revision of the Human Rights legislation. For a period of time community groups and unions were meeting about the impact and consequences of the Fraser-institute driven government policy. I attended a meeting of the Vancouver Human Rights Coalition about whether the Human Rights Coalition should endorse Operation Solidarity. A representative of the BC Human Rights Commission

She said that we would lose credibility if we joined in. Hanny and I argued forcefully that we would lose credibility if we did not support Operation Solidarity. We persuaded the Coalition to support Operation Solidarity. .

Rod Dobell wrote an excellent paper on the influence of the Fraser Institute in developing Government restraint program.

Incredible operation Solidarity rally, at the Leg, there were an estimated 25000 there.

() THAT in 1983, I was the co-founder of the Vancouver Island Human Rights Coalition.

() THAT in 1983 I was a member of Operation Solidarity



The largest protest in the history of Victoria

COMMENT

In 1983, all the local Victoria activists were supporting Operation Solidarity. We had a meeting of the Vancouver Island Human Rights Coalition to decide if we would support Operation Solidarity. All the representatives in the Coalition except one voted yes. The negative vote was from a member who was representing the BC Human Rights Commission; she said that if we did support Operation Solidarity we would lose credibility. Hanny Panaker and I said that we would lose credibility if we did not support Operation Solidarity. Our motion passed.

~1985

() THAT in 1985, I worked with the Vancouver Human Rights Coalition to organize a conference with First Nations on the impact (upon First Nations) of Residential schools

COMMENT

~1986 bible reading

I had been working with the Vancouver Jewish Community on a campaign to end the reading of the Lord's prayer
Initially, we were working with a lawyer in Vancouver and we waited for the case to go to court. We were eventually told a year later that she had had an ultimatum from her firm that she could take on the case or stay with the firm.

I was now living in Victoria and was doing research on how the reading of the lord's prayer violated the Charter of Rights and Freedoms. I contacted a lawyer in Victoria and he agreed to take on the case. Eventually, the BC Civil Liberties agreed to take on the I was asked by the group in Vancouver to be the litigant in the case because they did not want it to be perceived as a conflict between the Christian and Jewish communities: I am an Atheist. When the Royal yacht arrived with Charles and Diana for the opening of Transpo; on the front page of the Times Colonist was a picture of their arrival with my picture below along with an article about the lord's prayer case.

~1988

Ideagraph- a large mind map

() **THAT in** 1988, I helped UVic Professor Larry Yore organize a symposium on Critical Thinking for NARST: National Association of Research in Science Teaching "Towards a Unified Conception of Thinking".

;

I co-authored, with Larry Yore, a paper entitled on Moving Beyond Simplistic Models of Critical Thinking.

~1988

COMMENT

I Prepared an ideagraph of processes of thinking. During the summer, I was involved with a project determining means of stimulating critical thinking, and organizing a symposium on Critical thinking. I worked, with Uvic Professor, Larry Yore, on reviewing critical thinking models that have been imposed on thought. We looked at IDEAL (Identify, Describe, Evaluate Alternative). In the Ideagraph, I displayed the range of models that we had examined; each one suggesting that it was a definitive mode. I extracted arbitrarily a set of processes that were no more definitive than any of the other models. The reason that I proposed an alternative was to illustrate the arbitrariness of the selection of processes as being essential to stimulate thinking. In addition, often the processes in the models were placed in a predetermined sequence.

Larry Yore Presented our paper and I presented my ideagraph.

1989

THAT in 1989, I received - Award University Fellowship - Award University of Victoria (Interdisciplinary Studies)

() THAT, in August 1987, I participated in Stein Valley Festival in Mount Currie

I Went to the Stein Valley festival with Joanne, Susanne in the SNAG group. We took my old army tent made out of parachute silk.

COMMENT

I was hesitant about going because my adviser, Peter Evans had arranged for me to be a Member of a Policy Committee that was commissioned by the Ministry of Education to submit a position paper on "Thinking across the Curriculum" and to have input into the ministry of education project on stimulating thinking in the language arts and my input was due on Monday. However, I had already attended so many sessions where the First Nations were speaking out; especially during the all night Pow Wow. I became more and more aware of how powerful their oral communication was and how much it was out of sync with what was demanded in the school system. In contrast to the organized structure for example stating or writing; "I will be making four points etc." they just plunged into communication; each comment generating a new one. I stayed up all night for the incredible POW WOW; listening to various first Nations speak.

About 16,000 people attended this year's Stein Valley Festival.

() On Monday I Wrote the section on the importance to stimulate thinking through different forms of "ideation": visualization, verbalization, auralization as means of stimulating, communicating and expressing thought".

() THAT, in September 1989, on labour day weekend I went with my son Soren to Sulfur Pass. Got a ride up with a man who had previously been injured in a car accident. We were billeted. The next day we were taken by boat to Sulfur Pass. We were dropped off and then we had to walk for over 2 kilometers through a recently burned clear cut. It was devastating. There was no water anywhere and Soren and I had forgotten to bring water. We thought that eventually we would arrive at a beautiful site for the rally. But no, the ceremony by the chiefs was held in the middle of a clearcut; there was no better way to experience the devastation of a clear-cut. For Soren's 16 birthday (given that he had never been on a plane), we decided that we would go on a plane ride up to the hot springs. Then we tried to hitchhike back and got a ride with a couple who work at the peace house in Nanoose. Unfortunately their car broke down and we had to hitchhike again. This time with an American couple who actually work at the Nanoose base.

() THAT, in 1989 I received a summer grant, with UVic history professor Larry Croisier to do a content analysis on World History courses at universities

COMMENT:

I investigated the degree of prejudice related to what was designated as “World History” and worked on computer design for the artificial intelligence course related to documenting world history.

~1990

() THAT in January 1990, I attended a conference in Clearwater Florida

Noriega surrendered on January 3, 1990. He was detained as a prisoner of war, and later taken to the United States.

COMMENT

The perils of Clearwater and Noriega

I was traveling Servas and stayed with a family. I had to take a bus back and forth from the Hotel. One night when I was standing for the bus. A man came over and said that when my wife travels alone on the bus, she always carries a gun and stands under the light. There, traveling by bus is a stigma. When the bus came, I asked driver to let me know when we arrived at my street. She responded how would I know is it near Denny's, McDonalds etc. I had no idea and went passed my stop. I stayed on the bus and returned and finally saw something that looked familiar.

The next day I got on the bus- at that time in the morning there were only blacks on the bus. One of them called out that there was a cockroach and asked the driver to spray the bus. I said “please no spray”, “catch it and I will take it into the Sheraton” where the conference was. They all laughed. But the cockroach was not caught but when it heard it might have to go into the Sheraton it seemed to leave on its own. I was standing waiting for the bus on Sunday finally a man came out from a cafe and gave me a coffee and told me that the bus hardly goes on Sundays. Another time There was an interesting black preacher driving the bus who told me about how unfair it was that people without a car have little access to town on Sunday. On the last day I took a taxi home and got into an argument with the driver when I criticized the Republican party. He drove past my house so I shut up and said nothing and he turned around and dropped me off.

COMMENT Encounter with the CIA agent

In 1990, on a flight from Florida to Seattle, I was sitting next to a CIA agent who had been part of the CIA force taking Noriega back to Orlando to be tried in the US [I only found out after we had landed].

For some reason, perhaps due to his investigative curiosity, he opened a conversation by saying I would describe myself as a right wing conservative; I interrupted him and said and you would probably describe me as a “dirty liberal--the right wing definition for the extreme opposition”. I continued and said but “Liberal” and “Conservative” are just labels: we are on a four-hour flight let's see where we stand on different issues. What is more meaningful is to examine what are the policy divisions, and principles and application of

principles. I think that a more valid distinction would be between parties that promote the public trust and those that promote vested economic interest.

I Began to think we had something in common. We were both concerned about forests. In his case it was not about a public forest but his seven acre forest outside of Washington. After the flight, we concluded that the only thing we had in common was that we were both punctual.

When I saw him walking way with two men (one of whom was in hand cuffs), The CIA agent glanced at me but refused to acknowledge me. I guessed being punctual was not enough to be kindred spirits.

As a result of our encounter, I came up with a new term Ego-ecologist.- one who is only concerned with the ecology of his or her own private property.

1990-1992 Co-developed a program for Interdisciplinary studies and for integration of issues within the High School Curriculum and submitted this to the Ministry of Education, British Columbia Input- Sullivan report.

() THAT In March 1990, I Carried out research and assisted in preparation of a document on the preservation of old growth forests and environmentally sound forest practices.

() THAT in 1990, I drafted a petition calling upon the Governor General to intervene as the "court of last resort," and prevent the Canadian government from supporting the 1991 Gulf War invasion of Iraq.

EXHIBIT

Comment

I stood in the Mall and collected over 1000 signatures within a short period of time. There was a note in the Times Colonist about my standing alone in the Mall collecting over 1000 signatures within a short period of time.

Raging Grannie, Mary Rose and I decided to present the Petition to the Lieutenant Governor who was the Governor General's representative in BC. Just as we were going into the Lieutenant Governor's residence, we decided that we should present it on behalf of a group. In the petition we had used the phrase that many Canadians were in a state of disbelief because of the new militant role that Canada was playing. So we coined the acronym CIASOD (Canadians in a state of disbelief). We sent out press releases. I contacted Amnesty International; Canada moving away from its traditional peace keeping role. And was shocked by the fact that Amnesty International supported the invasion.

() On August 3 1990, the UN Security Council passed Resolution 660 condemning the Iraqi invasion of Kuwait and demanding that Iraq unconditionally withdraw all forces deployed in Kuwait. ... During the Iraqi occupation, about 1,000 Kuwaiti civilians were killed and more than 300,000 residents fled the country.

On 29 November 1990, the Security Council passed Resolution 678 which gave Iraq until 15 January 1991 to withdraw from Kuwait and empowered states to use "all necessary means" to force Iraq out of Kuwait after the

deadline. The Resolution requested Member States to keep the Council informed on their decisions. This was incorrectly deemed to be the legal authorization for the Council but it was not!

Cuba's position was nuanced as it had voted to abstain on previous resolutions relating to the Iraqi invasion, but did not support Resolution 678 because of its authorization of "all necessary means."² Iraq accused the United States and Israel of deliberately weakening Iraq by encouraging Kuwait to reduce oil prices. When Iraq began to threaten Kuwait early in July 1990, the United States staged maneuvers in the Gulf to warn Iraq against taking military action against the United Arab Emirates and Kuwait.

UNSC Resolution 678 was adopted by 12 votes with two opposing ([Cuba](#) and [Yemen](#)) and one [abstention](#) from the [People's Republic of China](#).~

A member of the U.S. delegation candidly told the Yemeni ambassador that it was "the most expensive vote you have ever cast," and indeed it was, and might even play a part in the chaos there today. Not only did Washington cut off its \$70 million foreign aid program, but the Saudis also abandoned their long-standing treaty with Yemen which allowed its nationals preferential treatment as immigrant workers.

() **THAT** in 1990, I participated Middle East Coalition

As a result of the article in the Times Colonist, I was called by Mary June Pettyfer, President of the World federalist and invited to a meeting of a newly formed group called the Middle East Coalition. As a member of the Middle East Peace Coalition, I helped organize a town hall meeting on Iraq

() THAT in 1990, We decided that we would write a letter to Prime Minister Mulroney: Bill Pearce (who worked in the Attorney General's office), drafted a letter which was endorsed by the member groups in the Middle East Coalition and put down all the groups whose members were there. Hilda, a raging Grannie, undertook to call as many people as she could think of.

() THAT in 1991, **We decided to form a publicity committee to put together a full page ad in Monday Magazine With the letter along with the list of groups to which members in the Coalition belonged**

() **THAT** in 1991, I offered to design the ad

COMMENT

I went to the Greater Victoria Disarmament Group in 620 View Street to look for photographs. I found two that I thought would be interesting : (i) a 1939 poster " mothers do not raise sons to kill sons of other mothers' (ii) a little boy and a girl from a clip in "if you love this planet."

Initially, I designed an ad for Monday Magazine with a 1939 poster showing a mother with a bared breast saying "Women do not give birth to sons to kill sons of other women." The group thought it was too risqué so I used the image of a little girl and little boy walking through a path towards an uncertain future - with an image from the film "if you love this planet".

() in 1991, I wrote a letter to the Secretary General of the United Nations. About the UN violating its own charter

() in 1991, my Oped, "The UN may be in violation of its own Charter." was published in the Times Colonist

COMMENT

I received a letter of support from right wing militia group, which opposed the UN

() I prepared a questionnaire about Canada's involvement in the bombing of Iraq

() THAT in 1990 I was active in the NDP Green Caucus and assisted in the presentation of environmental resolutions as a Delegate at the NDP Convention (1990)

At the 1990 NDP Convention, the Green Caucus delegates, through resolutions related to sustainability, unanimously decried the Social Credit Government for "destroying irreplaceable landscapes, disrupting wildlife, ruining watersheds and damaging fisheries" (1990, p. 11, "Towards a sustainable Future.")

The culprit was identified as the sanctioning of non-ecologically sound logging practices; the victim, the public's present and future ecological rights.

Non-ecologically sound logging practices, prevalent during the Social Credit administration, are currently allowed to persist in the NDP administration and may continue while the newly formed Commission deliberates.

Four months ago, members of the ERA Ecological Rights Association (including Andrew Gage) filed a complaint with the Ombudsman's office about the violation of ecological rights brought about by the Ministry of Forest's non-compliance with the Forest Act. The ombudsman's office is currently investigating how the non-compliance or unfair compliance by the Ministry of Forests has compromised ecological rights.

For years dedicated environmentalists and concerned foresters in different regions of B.C have been compiling data on specific instances of non-compliance to the Forest Act. For this complaint, we are gathering evidence from throughout the province to demonstrate the continual destruction through non-ecologically sound logging practices of the natural environment, and to demonstrate examples of misrepresentation which may have been used to support the granting of permission to use non-ecologically sound logging practices.

Non-ecologically sound logging practices have destroyed and continue to destroy the natural environment.

Yet, the Minister of forests has failed and continues to fail to invoke section 60 of the Forest Act which allows for suspension of licenses.

"Where the holder has failed to perform an obligation to be performed by him under the agreement or has failed to comply with this Act or the regulations, and that the failure of performance or compliance is causing or may imminently cause serious damage to the natural environment." (Section 60 Suspension by officer, Forest Act, 1988).

Non- ecologically sound logging practices have been condoned even though permission to engage in non-ecologically sound logging practices may have been obtained through misrepresentation of information to the public. During the public viewings, often companies give the impression through visual displays which are more accessible to the public than the actual display of the Management and working plans; that the companies will be engaging in ecologically sound practices. In the visual displays there is often "the-protected-fawn-in-the-forest," "the-single-logger-in-a-fully-treed-forest," and the "the-simulation-of-a-small-clear-cut." The public is left with the impression that ecologically sound logging practices will be engaged in.

Yet, the Ministry of Forest fails to invoke section 59 which allows the district manager" to suspend, in whole or in part, rights in an agreement where its holder a) made a material misrepresentation...."(Section 59, Suspension and Cancellation, Forest Act.

One of the outcomes of the investigation by the ombudsman's office hopefully will affect the compensation to companies when sections of the TFL are permanently set aside for wilderness.

Joan Russow
Ecological Rights Association

() THAT in 1900 I helped David White organize visits of citizens to the Walbran to get interest in the campaign to save the Walbran

() THAT in March, 1990, I prepared a brief and made a presentation to BC parks board on the need to declare the "Sooke Potholes" structure and surrounding property as an International Ecological Centre

() THAT in June 1990, I made a presentation at the Learned in Victoria 1990 June I presented a paper on "The expression and communication of complexity through epistemological editorial symbols" to the Canadian Society for Studies in Education", at the Learned Societies Conference, University of Victoria.

COMMENT

THAT I went to literary criticism sessions, and philosophy I was surprised when women who claimed that they were interested in feminist criticism were engaging in the same practice of citing sources rather than coming up with good arguments to support each principle or theory.

In his session which was in French, Karl Popper's said :proceed as though you can make a difference while recognizing that you cannot. [My translation from French]

() THAT in 1990, I, reviewed Forest Act and made a submission to the Peal Forest Resources Commission on the failure to implement various sections of the Forest Act

() THAT in September 1990, at the Unitarian Church, I helped organize a rally at the legislature

COMMENT

At the Unitarian Church, I attended a meeting to organize a rally on Saturday. I noticed that there were about 90 people in the room so I said, "we might not get more than 90 at the rally on Saturday, why don't we go over to the legislature now and protest"; it was agreed to go over there and we walked back and forth and eventually about 300 people showed up there.

I have never seen such a biased photo as the one below; an image of an innocent soldier facing a masked activist.



~1991

() THAT in 1991, David White and I formed the Ecological Rights Association to make a proposal to enshrine "Ecological Rights" in the Canadian Constitution [Charlottetown Accord].

In 1991 A new group has recently been formed for the purpose of lobbying for the enshrinement of ecological rights in the Canadian Charter of Rights and Freedoms, (and in other national charters or constitutions); for the establishment of an institutional framework to ensure that these ecological rights are protected; for a U.N. Covenant for the protection of Ecological Rights; for the criminalization of acts causing ecological damage; for access to the courts for individuals and community groups wishing to prevent the destruction of their ecological heritage; and for documenting and compiling definitions and descriptions of what would constitute ecological rights.

One of the more controversial proposals in the Federal Government's constitutional package is the proposed enshrining of "property rights" in the Canadian Charter of Rights and Freedoms. The legal system already functions as though property rights were sacred and inviolable. The main outcome of enshrining property rights in the Charter, would be to further limit the possibility of progress being made towards expanding the application of environmental law.

The purpose of the Charter of Rights and Freedoms is to enable individuals to apply to the courts to seek remedies if they believe that their rights or freedoms, as guaranteed by the Charter, have been infringed or denied. The Charter must protect rights that may not be already protected through common law remedies. Individuals must have a "standing" in order to bring a case to court. Standing is usually synonymous with property rights or financial interest, and damages are awarded according to losses of these interests. Although the courts have proceeded to continually address any

infringement or denial of property rights, they have failed to address the serious ecological damage that continues to be done by industry and government alike. There is no redress for individuals, and community groups who object to ecological damage on the basis not of economic interest but of community ecological rights. It is only through the Charter that individuals and community groups might be able to have standing and thus be able to launch suits against governments on behalf of the community's ecological rights.

Many industry supporters will contend that statute law is in place to protect ecological rights. In many cases, statute law may even contribute to the infringement and denial of ecological rights by creating the illusion that ecological rights are being protected when there is no institutional framework in place for protecting these rights. Although the Charter of Rights and Freedoms solely applies to the rights and freedoms of individuals vis-a-vis governments. It provides moral suasion and gives guidance to the courts where there are conflicts among individuals, community groups, industries and non-governmental institutions. Through articulating values, the Charter indicates to individuals, community groups, industries and non-governmental institutions the nature and extent of rights and duties and of moral and civil responsibility.

Significant changes to international law, charters and criminal law have often been initiated and justified when there is a convergence of international, national and local concerns about the rightness and necessity for the changes. This convergence now exists for the protection of ecological rights.

The Ecological Rights Association urges international bodies and national governments to consider the following proposed ecological rights -- the right to a safe environment and the right to an ecological heritage, and the right to not have present activities compromise the needs of future generations. The 'right to a safe environment' could lead to stringent regulations on the introduction of potentially harmful factors or substances into the economic sphere. The onus of proof could then shift from the present situation whereby citizens, consumer advocates and environmental groups have to demonstrate that the introduction of a factor or substance will have deleterious consequences. Instead the manufacturers, industry and governmental institutions would have to demonstrate that the introduction of such factors or substances would not have deleterious consequences.

The 'right to an ecological heritage' could lead to the protection and preservation of ecosystems and biodiversity. The Charter should reflect concern for the protection of this right. International documents such as the Report of the 1972 United Nations Commission on the Environment (Stockholm Conference) established principles related to environmental heritage. At Stockholm, the international community established the principles that human rights exist "in an environment of a quality that permits a life of dignity and well-being and that man bears a solemn responsibility to protect and improve the environment for present and future generations

The Ecological Rights Association will work a) towards enshrining the right to a safe environment and the right to ecological heritage in the Canadian Charter of Rights and Freedoms (and in other National Charters or constitutions); b) towards the establishment of an institutional framework to ensure that these ecological rights are protected c) towards lobbying for the enshrinement of ecological rights in a UN Covenant for the Protection of Ecological Rights d) towards encouraging the Criminal Law reform Commission to proceed on their proposal to have the causing of serious ecological damage deemed to be a crime; e) towards ensuring that individuals and community groups will have some form of recourse through the legal system, such as injunctions, to address the infringement and denial of their ecological rights by industry and institutions; and f) towards compiling and categorizing definitions and descriptions of what would constitute ecological rights

Ecological rights must be enshrined and protected even if economic interests may need to be sacrificed.

() THAT in 1991, I wrote "United Nations may be in contravention of its own Charter" it was published Association in the Times Colonist.

EXHIBIT I have not found the op-ed ; perhaps it is in the times Colonist Archives

Until I find out what I wrote, I will hazard a guess. One thing I might have said is that the US bypassed chapter VI – the peaceful resolution of disputes and went straight to Chapter VII which is the one that is used by the US to claim legitimacy for a military invasion which the US did using November 29 1990 UNSC Resolution 678.

Canada became involved in The **Canadian** Armed Forces participation in the military efforts there would be code-named Operation Friction. **Canada's first** military contributions came at sea in August 1990, when three of our warships sailed to the **Persian Gulf** to be part of a Coalition fleet. The invasion happened on January 16 1991.

() 1991 February 16, 1991, I Helped organize Emergency Peace Walk in Victoria ; It became very difficult because Canada was now involved in the war and people resented our having a rally when Canada's military was involved. I seem to remember that about 3000 people showed up I was walking along Douglas street and handing out leaflets and asking if people could attend the rally and I remember that a man spat at me.

() THAT in 1991, I helped the Sierra Club (Victoria Group) organize a tour of the Carmanah Valley for Jup Weber Green party Parliamentarian from Luxembourg who was elected to the European Parliament

COMMENT

He was taken to inspect the research station that was set up by the Western Wilderness Committee in the Carmanah Valley. Jup Weber climbed up a Sitka Spruce and hoisted us up to the first platform in the Canopy. This platform was large enough for several people; the next

platform was only a couple of feet. I began to feel agoraphobia, and froze. People walked by me to the third platform. I was told that I could only fly with the crows while the others could fly with the eagles. David sent out a press release about his visit and about the low percentage of old growth left.

() THAT in 1991 drafted a submission on the need to include the right to a safe environment and to ecological heritage into the UN Convention on the Rights of the Child

() THAT in 1991, I Submitted a formal request to the Ombudsman's office to investigate the Ministry of Forest's violation of section 59 and 60 of the Forest Act

() THAT in 1991, I Presented a paper on the "Epistemic mode of expression and interaction: the use of epistemological editorial symbols" to the Canadian Society for Studies in Education at the Learned Societies Conference, Kingston, Ont.

() That I attended Dr Ken Hewlett's presentation, which inspired me to coin the term ""Systemic Constraints" and its application to preventing change; (the guaranteeing of human rights; the ensuring of social justice; the protecting of the environment; the preventing of war and conflict) [a book which is still in progress].

DOCUMENT:

() THAT in 1991, at the Learneds , I intervened at a session on Development

COMMENT

NEED TO REDEFINE WHAT CONSTITUTES DEVELOPMENT Presented the concept at one of the sessions at the Learneds. I proposed that either the term "development" should not be used or the term needs to be redefined in terms of ethics, ecology, equity. Without a positive definition of "development" the US and Canada could conceivably be the least developed countries.

() THAT in 1991, I worked on a draft proposal for an Alternative Earth Charter or submission to UNCED and submitted the proposal to the Royal Society as part of their 1991 "Global Change" Conference proceedings.

Anecdote. Alastair Taylor

(..) THAT, in June 1991 attended the Global Change Conference organized by the Royal Society, at the Kingston, Learneds and undertook to draft a proposal for a Charter for the upcoming conference in Rio by preparing and proposing a UN Charter to "Address Potential Environmental Irreversibility" using the summary recommendations of the Royal Society Conference on the Global Environment(1991)

COMMENT

I decided to attend the Royal Society Conference on Global Change. The president, Digby McLaren spoke and affirmed that what is needed is synthesis of existing research;. Inaction is negligence. After he completed his introduction, I intervened and made a comment that was: Is UNCED going to be yet another conference that deludes citizens into thinking that there would be fundamental change? Could we propose a Charter addressing the issues of Ecological irreversibility, and propose

that for UNCED? After I asked the question, someone behind me caught my attention and commented on my question. There were about 400 people in the room, and there was dead silence because Digby McLaren had responded to my question by saying, "would you like to draft such a document for the Royal Society?" Never having been asked to do anything for the Royal society before, I immediately said yes.

I met with he and Alastair Taylor to discuss the project. Alastair Taylor, professor Emeritus, [he said he was in his "anecdoteage"; something I then adopted]. When he was 21, he wrote a text on world History which is still being used in first year history classes.

I told them that I had taken extensive notes at the Royal Society conference and that I thought many of the comments by the scientists could be a beginning for a preamble to a Charter.

I needed a ride to Toronto and asked if there was anyone driving to Toronto. I was told that Michael Ignatieff who had spoken at the conference would be driving in a limousine to Toronto and I could get a ride with him . I had never met him, but his family lived across the street from my family in .Ottawa. We took off in a long white limousine and I was dropped off looking like a bag lady on Bloor and Bathurst. I had to go to a meeting of the Canadian Voice of Women in Toronto.

() THAT in 1991 at one of the sessions at the Learned's: a session on Women's issues related to Menopause, I met a women who invited me to go to Montreal after Toronto . When I was in Montreal I went to the archives to find out about the Perraults. When I mentioned to the archivist that I was related to Maurice Perrault the architect of the Hotel de Ville, he asked me initially if I was the mysterious woman from the Perrault family who had appeared with Maurice Perrault senior plans of Montreal for a special exhibition on the Perraults. He mentioned that it was a coincidence because two weeks ago, someone had handed him a monograph on the Perraults; and that there was always an architect in the Perrault family. I responded that I had studied architecture for three years in Europe and that I had never met any of my French relatives and would like to go through the records to see where that side of my family came from in France.

() THAT S1991 August 17, 24, 31

; • Helped Conservation Chair, David White, for Victoria Group of the Sierra Club to organize trips of Community leaders up to the Walbran (1991)

We compiled a long list of community groups and invited each group to send one representative. WE had a full bus each time.

• Helped organize tours of community leaders to visit the old growth forest in the Walbran

First trip

2nd trip . David Turner, Heifflefinger wandered off. Held up the bus. David stayed behind to look. Went on to report to the police.

third trip NDP MLAs: Andrew Petter, Rick Caspar, Elisabeth Cull, We went in a mini bus.

Moe Sihota was supposed to come but he missed the ferry from Vancouver.

Andrew Petter and Rick Caspar condemned the current forest practices

- 1991. Assisted the Sierra Club (Victoria Group) in organizing tours of community leaders and elected officials up to the old growth forest in the Walbran

September 21 1991 - Fletcher Challenge petition

September 20, 1991

- 1991-92 Co-organized. with David White, Community meetings at Spectrum Community school on the I wrote a draft following issues Indigenous issues, Forestry, Sewage, transportation, Nuclear powered and nuclear capable vessels, Todd inlet, transportation, sewage

Press clipping about David in the paper

() THAT 1992, I wrote a draft of the UN COVENANT FOR THE PROTECTION OF ECOLOGICAL RIGHTS

EXHIBIT

(U.N. CHARTER OF MUTUAL INTERDEPENDENCE : DECLARATION FOR THE PREVENTION OF THE STATE OF ECOLOGICAL IRREVERSIBILITY. UNIVERSAL DECLARATION OF HUMAN RESPONSIBILITY AND ECOLOGICAL RIGHTS.)

Preamble:

- Whereas researchers from the international community recognize that there is enough scientific information available to indicate that the world is moving towards a state of ecological irreversibility.
- Whereas researchers from the international community recognize that "multiple effects resulting from empirical observations are sufficient to justify and demand immediate action".
- Whereas researchers from the international community deem that society has enough information about the pending ecological disasters now that failure to act to address the pending disasters could be construed as [criminal] negligence.
- Whereas researchers from the international community recognize that never have so many potential and actual ecological disasters been converging. The ecological disasters are of "synergy complicity" synergistic proportions.
- Whereas researchers from the international community recognize that not only the actual and potential impact of independent ecological disasters warrants urgent attention but also the potential accumulative and synergistic impact of the converging of these independent ecological disasters requires urgent action The potential accumulative and synergistic impact is unpredictable, indeterminate and uncertain. In the face of this unpredictability, indeterminacy and uncertainty, caution is deemed to be the

only prudent action. " We are into fields where some of us as experts are all groping" "no one can prove that we have not had significant warning. Caution is of the essence".

- Whereas a significant segment of the international community acknowledges that because of the state of urgency new principles related to ecologically sound human behaviour must be established.
- Whereas the international community has enough information about the pending state of ecological irreversibility and about the full complexity and interdependence of the deterioration of the ecosystem that failure to act could be construed as criminal negligence.
- Whereas the international community recognizes the interdependence of a wide range of aspects that contribute to the state of ecological reversibility.
 - The refusal of "independent states" to accept the jurisdiction of international law
 - The escalation of arms production
 - The reluctance to arms reduction
 - The violation of human rights
 - The perpetuation of intolerance under the guise of the right to freedom
 - The irresponsible contribution to world population
 - The disregard for inequitable distribution of resources
 - The lack of political will to make unpopular but necessary decisions
 - The fragmentation of the decision making process
 - The perpetuation of systemic constraints preventing ecologically sound practices
 - The promulgation of non-ecological notions of what constitutes development (according to non-ecological notions of "progress')
 - The justification and rationalization of non-ecological practices
- Whereas the international community that does not have a vested interest in the economic benefits of continued development "recognize that the planet is disastrously over-developed".
- Whereas the purported resiliency of the planet within geological time should not be used to support the notion that the continued abuse of the ecosystem should be permitted.
- Whereas the researchers and concerned members of the international community recognize that the state of irreversibility will affect the quality of life of future generations.
- Whereas the researchers and concerned members of the international community recognized the importance of "linking research to policy".

Urge the interdependent international community to adhere to the following ecological principles (Suggested principles that could be enshrined in a U.N. Charter to prevent the state of ecological irreversibility).

- to acknowledge the interdependence of principles that need to be in place if there is to be a solution (unacceptability of "short term" solutions based on fragmentation of the problem)
- to change values and "to recognize that we are all part of the problem" •to recognize and enshrine the right to a safe ecosystem
- to encourage the moral and ethical responsibilities concomitant on the protection of the right to a safe ecosystem
- to disallow acts contributing to ecological irreversibility
- "to limit human impact on the living world to carrying capacity" preserve biodiversity; equitable distribution of resources; cut back on use of resources
- to decrease population of fauna to keep within carrying capacity of the ecosystem
- to reduce the accelerative destruction of the habitat by reducing the use of fossil fuels
- to place restrictions on aesthetic or medicinal uses of fauna that could lead to species impoverishment
- to reexamine the practice of genetic engineering
- to redefine the notion of state autonomy in international law: No state can claim state sovereignty as a means of absolving them from being tried condemned and convicted of contributing to ecological irreversibility
- to empower the U.N. and its agencies) to prevent environmental degradation. This empowerment implies a substantial rethinking of the concept of sovereignty of nation states. Multinational Corporations must also be regulated by international agencies to prevent environmental degradation through ecologically unsound practices.
- to institute international control over the safety of products and over international standards related to ecologically sound practices
- to condemn the exporting of products or services that are deemed to be unsafe in the countries with high restrictions or regulation to other countries with more relaxed regulations (because of their inability to test these products and because of their economic need prevents them from paying for more expensive and safer substitutes)
- to demand that "caution should be exercised when there is doubt about the impact of development
- to ensure that ecologically sound principles are driving industry not industry driving principles
- to advocate the shift in onus of proof from those opposing the intervention "having to demonstrate that the intervention will cause harm" to those advocating the intervention "having to demonstrate that their intervention will not cause harm.
- to relax the traditional requirement for conclusive evidence of the potentially irreversible nature of an intervention
- to reassess what constitutes "intention" in international, national, and local offenses related to the contribution to deleterious ecological effects

- to establish a new criterion for demonstrating intention " if evidence (not necessarily conclusive) indicates doubt about the ecological safety of the intervention, and if the advocate of intervention intervenes in the environment, knowing that there is some doubt about the effects of the intervention, then the intervener could be construed as intending the effects of the intervention
 - to ensure that remuneration should only be paid for work that is ethical (i.e. that it does not contribute to ecological irreversibility or ecological privation)
 - to require 'participant" science and technology to assess the full impact of introducing an intervention (new products etc.) into the ecosystem
 - to recognize that simply the possibility of creating new technology should not justify the creation of the technology. (restraint)
 - to resist the temptation to accept non-ecologically sound projects because funds from these projects could be allocated for humanitarian projects
 - to ensure that the public is fully aware of the ecological consequences of an intervention
 - to ensure that the public is not presented with alternatives that do not address the ecological implications of the decisions
 - to disallow the rationalizing away of potentially harmful impact on the ecosystem through the guise of altruism or necessity
 - to prevent the perpetuation of systemic constraints (institutional and attitudinal) that prevent ecologically sound practices
- to recognize, "unmask" name and identify constraints that are preventing ecological sound practices in the international, national and local communities
 - to unmask systemic constraints preventing ecological change.
 - Collusive public process (government agencies are working with industry)
 - Delusion of public process (the public hearing, not a listening or an attending to)
 - Counter-argument retrieval device (the public hearing where the decision maker have the opportunity to collect data from the interveners for future rebuttals)
 - Ineffectual time of intervention for interveners
 - Premature terms of reference
 - Feigned alternatives
 - Visual misrepresentation
 - Misplaced onus of proof
 - Altruistic concerns misconstrued and categorized as interest groups
 - Presumption and perpetuation of the remedial technological fix
 - Presumption that the system that generated harm is the only one capable of addressing and redressing the harm
 - "Now we know better but what can we do " device (We recognize that we have destroyed a large segment of the "old growth forest but if we no longer log the old growth forest , the forest industry will shut down)
 - Assumption that methodology that worked in the past will still be effective today

- Failure to recognize that situation has changed so substantially that new modes are required to bring about change
- "Seductive posture" "sustainable development- prescription for continuous rape" (K.H.)
- Unwillingness to redefine progress as being integration and interdependence not imposition and exploitation
- Confusion between tenability and non-tenability
- Confusion between fairness and "objectivity" in research
- Avoidance of obvious but unpopular inconsistencies
- Influential use of violation of principle(compromise) couched in euphemistic terms
- Presume rigour of fragmented studies
- Unwillingness to confront complexity
- Media segmentation of issues without reinserting them into the continuous interacting and interdependent plane of outstanding unresolved and resolved issues
- Absence equated with presumed resolution "out of mind"
- Appeasement of international conferences
- Complacency through authority
- Ineffectiveness of international organizations
- Susceptibility of international organizations to being usurped by dominant states
- Illusive substantive change (token change)
- Perception superseding substance
- Dire consequences strategy
- Euphemistic designations ("share the forests" --loggers and industry)
- Disguised concerns expressed in palatable altruistic terms (jobs)
- Legitimized rationalization. Rationalization and justification as inhibitors of change.
- Feigned altruism
- Condoned myopia (unwillingness to link development and disasters , K.H.))
- Addiction to consumption (S.)
- Collective forgetfulness (K.H.)
- Justification of unethical acts because revenue can be used for
- Beneficial purposes
- System inertia (S.W)
- Endemic inertia
- Syndrome of expedient omission
- Calculated diversion (While the ecological community is protesting the destruction of one old growth valley, the forest industry continues to destroy many others)
- Cult of the model
- Laughter of squeamishness (When criticized the perpetrators of the problem laugh as though they were exempt from the criticism and then continue to perpetuate the problem)
- Rationalized non-involvement
- Tenacity of convenience

(Systemic constraints derived from a paper in progress by White (ecologist and educator) and Russow, doctoral candidate in interdisciplinary studies) with contributions from Scott Wakeman (graduate in Philosophy), and Ken Hewitt (Professor of Geography)

- to reassess what is or is not acknowledged, enshrined and guaranteed as rights and to extend the "rights" to include a set of rights related to the ecosystem
 - to enshrine the right to a safe ecosystem
 - to enshrine the right of future generation to their ecological heritage
 - to enshrine the right of future generation to biodiversity
 - to acknowledge that the ecosystem itself has inherent rights beyond those serving the human purpose
 - to enshrine positive rights, such as right to ecological sound work, right to housing, right to food, right to an equitable distribution of resources...

- to prohibit the production of weapons of mass destruction and work towards the control over other weapons and towards eventual disarmament.

- to ensure that models, distinctions and categories are not presumed to reflect reality or determine or predetermine "human reality" (Eurocentric perspectives)
- to encourage the responsible use of the land: reduction of use of harmful pesticides and excessive use of natural resources
- to disallow acts contributing to ecological irreversibility in lands over which there are current disputes of ownership

NOTICE OF MOTION

() THAT On July 18, 1991, I filed a notice of Motion Re: Injunction issued to Fletcher Challenge

July 18, 1991

EXHIBIT: NOTICE

We applied for leave to respond to the order of Mr Justice Errico on the above named matter. We would like to appear on the grounds that the Mr Justice Errico may have based his decision on misleading information appearing in the information provided in the affidavit accompanying Fletcher Challenges' application for an injunction.

APPLICATION OF MOTION

We apply for leave to request an interlocutory injunction pending the consideration of a permanent injunction against the logging of the remaining unfragmented old growth forests in B.C. and against the ecologically unsound logging of the fragmented old growth forests in B.C.. We also request that the court order the chief forester to make an inventory of the existing forests as is required in the Forestry Act, and do an assessment for the public of the status of regeneration of the second growth forests.

We request this injunction for the following reasons:

1. There is evidence that the Ministry of Forests may have been misled by the forestry Companies. when the forestry companies applied for and reapplied for tree farm licenses.
2. There is evidence that the public has been misled by the public viewings of the development and management plans of the tree farm licensees.
3. There is evidence that continuing to engage in extensive road building and clearcut logging in these old growth areas could cause irreparable harm and that, if it can be shown that the companies obtained the privilege of logging in crown land as a result of submitting misleading information, then the potential irreparable harm should cease until the question about misleading information can be addressed.
4. In the August 1991 updated of "the conduct of Civil Litigation in B.C. the following principle related to injunctions is put forth:

"The remedy [of injunction] of course, is an equitable one. ' The exercise of the equitable jurisdiction is not to be restricted by the straitjacket of rigid rules but is to be based on broad principles of justice and convenience, equity regarding the substance and not merely the facade or the shadow. It moves with time and

circumstances. (Norris, J.A.) Equity is not to be presumed to be of an age past childbearing.' (Haman, J) " (Conduct of Civil Litigation in B.C., Chapter 42, August, 1991).

If a remedy of an injunction is an equitable remedy that should move with time and circumstances, there is evidence that time and circumstances have changed:

- 4.1. evidence from the international and national scientific community of the necessity of preserving intact ecosystems and representative samples of natural ecosystems.
- 4.2 evidence from the international, national and provincial legal community of the need to recognize "ecological rights"
- 4.3. evidence that 'ecological rights' have been protected in international charters and covenants that have been ratified by Canada
- 4.4. evidence from the international community that violation of ecological rights should be considered under either international law or under National Charters
- 4.5. evidence from the international community that in cases involving ecological rights decisions must be made on the basis of principle not political and economic expediency
see enclosed affidavits
 1. related to the way forest companies have misled the government the courts and the public
 2. related to the way the Ministry of Forestry has misled the public
 3. related to nature of ecological rights and of the need to recognize and protect ecological rights

() THAT in July 1991, I drafted and circulated U.N. **Charter of Mutual Interdependence: Declaration for the Prevention of the State of Ecological irreversibility.**

Universal Declaration of Human Responsibility and Ecological Rights.

This Charter was made into an ideagraph and passed on to Noel Black, Director of the United Nations Environment Programme (UNEP) at the 1992 Globe Conference in Vancouver, and circulated at lead-up conferences to UNCED, the Prep Com and at UNCED.

EXHIBIT

() **THAT** from 1991-1994, I was on the Board of Directors of the Vancouver Island Peace Society - the Society that launched a case against the circulating in ports and the berthing of nuclear powered and nuclear-arms capable vessels in the Greater Victoria harbour. The Federal government issued an Order in Council to bypass its statutory law, EARP guidelines, Eventually the Court concurred with the Federal Government that it was legitimate for the government to use Royal Prerogative to bypass statutory law.

() **THAT** in 1991, I was on the committee that organized an Emergency Peace Walk; I designed the flyer and my son Lorick wrote a song.

COMMENT

There was a wide range of opposition to the emergency Peace walk: Especially because Canada was already in the war and there was a resurgence of nationalism. I would walk along Government Street and ask people if they are going to be going to the emergency Peace walk. There was also opposition from the Peace Walk committee; one person said there would not be time for all the accoutrements, such as face painting of the annual Peace Walk.

() THAT in 1991, I had written a paper that was accepted at the Learned in Kingston
kingston1991 Presented a paper on the "Epistemic mode of expression and interaction: the use of epistemological editorial symbols" to the Canadian Society for Studies in Education
kingston1991 Presented a paper on the "Epistemic mode of expression and interaction: the use of epistemological editorial symbols" to the Canadian Society for Studies in Kingston.

() **THAT** in 1991 at the Learned's, I attended an international Conference organized by the Royal Society of Canada's forum at the Learned Societies Annual General meeting, I intervened and proposed that the Royal Society draft a Charter to address ecological irreversibility.
There is a strong indication from statements from international documents, and from experts that there is an urgency to address the global environmental situation, and that "inaction is negligence" (Digby McLaren, Past President of the Royal Society of Canada, Keynote address, Global Issues Conference, 1991).

In 1991, attend the Royal Society Conference on Global Change. The president Digby McLaren spoke and affirmed that what is needed is synthesis of existing research. Inaction is negligence. After he completed his introduction, I intervened and made a comment that "was this going to be yet another conference that deluded citizens into thinking that there would be fundamental change: Could we propose a Charter addressing the issues of Ecological irreversibility, and propose a charter for UNCED?" After I asked the question, someone behind me caught my attention and commented on my question. There were about 400 people in the room, and there was dead silence because Digby McLaren had responded to my question by saying would you like to draft such a document for the Royal Society. Never having been asked to do anything for the Royal society, I immediately said yes, and spent the Summer of 1991 drafting a Charter
At the conference, one speaker after another addressed the urgency:

Exponential growth

- *Increased depletion of the ozone layer exceeds all predictions*
- *increased species impoverishment*

- *extinction which is a natural process. cannot use as an excuse for what we are doing to diversity*
- *Increased loss of species habitat*
- *Fragmentation of habitats*
- *Decreasing biodiversity*
- *Increased species impoverishment*
- *Increased deforestation*
- *Increased loss of temperate and tropical rain forests*
- *Increased loss of carbon sink*
- *Increased desertification*
- *Increase in population beyond the carrying capacity*
- *Increase in inequitable distribution of resources*
- *Increased technological malfunctioning*
- *Increased dependency on fossil fuels*
- *Increased energy production and consumption*
- *Increased expenditure of resources and human ingenuity on short term solutions*
- *Increased susceptibility to ecological disasters as development increases*
- *Increased susceptibility to ecological disasters as terrorism increases*
- *Increased production of waste*
- *Increased difficulty of waste disposal*
- *Reduction of capacity to defend itself*
- *Increased "global imbalance" re. hydroxide*
- *Increased "concentration of carbon dioxide*
- *Long residue time of chemicals re. cfc*
- *Increased potential of global warming*
- *Increase in greenhouse effect*
- *Increased destruction through acid rain*
- *Increased extraction of chemicals*
- *Increased transportation of chemicals*
- *Increased refinement of chemicals*
- *Increased disposal of chemicals*
- *Increased persistence of chemicals*
- *Increased bioaccumulation of chemicals*
- *Increased biomagnification of chemicals*
- *Increased dispersal of toxic and hazardous chemicals into the ecosystem*
- *increased exposure to chemicals*
- *Increased entry into the food chain of deleterious chemicals*
- *Increased impact of environmentally induced toxins*

(From my notes: "Identification of urgency of global situation at "Global Change Conference,"

sponsored by the Royal Society of Canada, at Learned's, Kingston 1991)
 When I returned to Victoria and spent the summer working on collaboration with Allister Tayler, a member of the Royal society on a draft charter.

() THAT in 1991, I submitted a Draft :UN Charter of Mutual Interdependence: Declaration for the Prevention of the State of Ecological Irreversibility. Universal Declaration of Human Responsibility and Ecological rights.

By Joan Russow, Doctoral Candidate at the University of Victoria and co-founder of the Ecological Rights Association

Preamble:

- Whereas researchers from the international community recognize that there is enough scientific information available to indicate that the world is moving towards a state of ecological irreversibility
- Whereas researchers from the international community recognize that "multiple effects resulting from empirical observations are sufficient to justify and demand immediate action"
- Whereas researchers from the international community deem that society has enough information about the pending ecological disasters now that failure to act to address the pending disasters could be construed as [criminal] negligence
- Whereas researchers from the international community recognize that never have so many potential and actual ecological disasters been converging. The ecological disasters are of "synergy complicity" synergistic proportions.
- Whereas researchers from the international community recognize that not only the actual and potential impact of independent ecological disasters warrants urgent attention but also the potential accumulative and synergistic impact of the converging of these independent ecological disasters requires urgent action The potential accumulative and synergistic impact is unpredictable, indeterminate and uncertain. In the face of this unpredictability, indeterminacy and uncertainty, caution is deemed to be the only prudent action. " We are into fields where some of us as experts are all groping" "no one can prove that we have not had significant warning. Caution is of the essence".
- Whereas a significant segment of the international community acknowledges that because of the state of urgency new principles related to ecologically sound human behaviour must be established.
- Whereas the international community has enough information about the pending state of ecological irreversibility and about the full complexity and interdependence of the deterioration of the ecosystem that failure to act could be construed as criminal negligence.
- Whereas the international community recognizes the interdependence of a wide range of aspects that contribute to the state of ecological reversibility.
 - The refusal of "independent states" to accept the jurisdiction of international law
 - The escalation of arms production
 - The reluctance to arms reduction
 - The violation of human rights
 - The perpetuation of intolerance under the guise of the right to freedom
 - The irresponsible contribution to world population
 - The disregard for inequitable distribution of resources
 - The lack of political will to make unpopular but necessary decisions

- The fragmentation of the decision making process
- The perpetuation of systemic constraints preventing ecologically unsound practices
- The promulgation of non-ecological notions of what constitutes development
(according to non-ecological notions of "progress')
- The justification and rationalization of non-ecological practices

- Whereas the international community that does not have a vested interest in the economic benefits of continued development "recognize that the planet is disastrously over-developed".
- Whereas the purported resiliency of the planet within geological time should not be used to support the notion that the continued abuse of the ecosystem should be permitted.
- Whereas the researchers and concerned members of the international community recognize that the state of irreversibility will affect the quality of life of future generations.
- Whereas the researchers and concerned members of the international community recognized the importance of "linking research to policy".

Urge the interdependent international community to adhere to the following ecological principles (Suggested principles that could be enshrined in a U.N. Charter to prevent the state of ecological irreversibility).

- to acknowledge the interdependence of principles that need to be in place if there is to be a solution (unacceptability of "short term" solutions based on fragmentation of the problem)
- to change values and "to recognize that we are all part of the problem" •to recognize and enshrine the right to a safe ecosystem
- to encourage the moral and ethical responsibilities concomitant on the protection of the right to a safe ecosystem
- to disallow acts contributing to ecological irreversibility
- "to limit human impact on the living world to carrying capacity"
- preserve biodiversity; equitable distribution of resources; cut back on use of resources
- to decrease population of fauna to keep within carrying capacity of the ecosystem
- to reduce the accelerative destruction of the habitat by reducing the use of fossil fuels
- to place restrictions on aesthetic or medicinal uses of fauna that could lead to species impoverishment
- to re-examine the practice of genetic engineering

- to redefine the notion of state autonomy in international law: No state can claim state sovereignty as a means of absolving them from being tried, condemned and convicted of contributing to ecological irreversibility
- to empower the U.N. and its agencies) to prevent environmental degradation. This empowerment implies a substantial rethinking of the concept of sovereignty of nation states. Multinational Corporations must also be regulated by international agencies to prevent environmental degradation through ecologically unsound practices.
- to institute international control over the safety of products and over international standards related to ecologically sound practices
- to condemn the exporting of products or services that are deemed to be unsafe in the countries with high restrictions or regulation to other countries with more relaxed regulations (because of their inability to test these products and because of their economic need prevents them from paying for more expensive and safer substitutes)
- to demand that "caution should be exercised when there is doubt about the impact of development
- to ensure that ecologically sound principles are driving industry not industry driving principles
- to advocate the shift in onus of proof from those opposing the intervention "having to demonstrate that the intervention will cause harm" to those advocating the intervention "having to demonstrate that their intervention will not cause harm.
- to relax the traditional requirement for conclusive evidence of the potentially irreversible nature of an intervention
- to reassess what constitutes "intention" in international, national, and local offenses related to the contribution to deleterious ecological effects
- to establish a new criterion for demonstrating intention " if evidence (not necessarily conclusive) indicates doubt about the ecological safety of the intervention, and if the advocate of intervention intervenes in the environment, knowing that there is some doubt about the effects of the intervention, then the intervener could be construed as intending the effects of the intervention
- to ensure that remuneration should only be paid for work that is ethical (i.e. that it does not contribute to ecological irreversibility or ecological privation)
- to require 'participant" science and technology to assess the full impact of introducing an intervention (new products etc.) into the ecosystem
- to recognize that simply the possibility of creating new technology should not justify the creation of the technology. (restraint)
- to resist the temptation to accept non-ecologically sound projects because funds from these projects could be allocated for humanitarian projects
- to ensure that the public is fully aware of the ecological consequences of an intervention
- to ensure that the public is not presented with alternatives that do not address the ecological implications of the decisions
- to disallow the rationalizing away of potentially harmful impact on the ecosystem through the guise of altruism or necessity

- to prevent the perpetuation of systemic constraints (institutional and attitudinal) that prevent ecologically sound practices
- To recognize, "unmask" name and identify constraints that are preventing ecological sound practices in the international, national and local communities
- to unmask systemic constraints preventing positive ecological change.

- Collusive public process (government agencies are working with industry)
- Delusion of public process (the public hearing, not a listening or an attending to)
- Counter-argument retrieval device (the public hearing where the decision maker have the opportunity to collect data from the interveners for future rebuttals)
- Ineffectual time of intervention for interveners
- Premature terms of reference
- Feigned alternatives
- Visual misrepresentation
- Misplaced onus of proof
- Altruistic concerns misconstrued and categorized as interest groups
- Presumption and perpetuation of the remedial technological fix
- Presumption that the system that generated harm is the only one capable of addressing and redressing the harm
- "Now we know better but what can we do " device (We recognize that we have destroyed a large segment of the "old growth forest but if we no longer log the old growth forest , the forest industry will shut down)
- Assumption that methodology that worked in the past will still be effective today
- Failure to recognize that situation has changed so substantially that new modes are required to bring about change
- "Seductive posture" "sustainable development- prescription for continuous rape" (K.H.)
- Unwillingness to redefine progress as being integration and interdependence not imposition and exploitation
- Confusion between tenability and non-tenability
- Confusion between fairness and "objectivity" in research
- Avoidance of obvious but unpopular inconsistencies
- Influential use of violation of principle(compromise) couched in euphemistic terms
- Presume rigour of fragmented studies
- Unwillingness to confront complexity

- Media segmentation of issues without reinserting them into the continuous interacting and interdependent plane of outstanding unresolved and resolved issues
- Absence equated with presumed resolution "out of mind"
- Appeasement of international conferences
- Complacency through authority
- Ineffectiveness of international organizations
- Susceptibility of international organizations to being usurped by dominant states
- Illusive substantive change (token change)
- Perception superseding substance
- Dire consequences strategy
- Euphemistic designations ("share the forests" --loggers and industry)
- Disguised concerns expressed in palatable altruistic terms (jobs)
- Legitimized rationalization. Rationalization and justification as inhibitors of change.
- Feigned altruism
- Condoned myopia (unwillingness to link development and disasters , K.H.))
- Addiction to consumption (S.)
- Collective forgetfulness (K.H.)
- Justification of unethical acts because revenue can be used for
- Beneficial purposes
- System inertia (S.W)
- Endemic inertia
- Syndrome of expedient omission
- Calculated diversion (While the ecological community is protesting the destruction of one old growth valley, the forest industry continues to destroy many others)
- Cult of the model
- Laughter of squeamishness (When criticized the perpetrators of the problem laugh as though they were exempt from the criticism and then continue to perpetuate the problem)
- Rationalized non-involvement
- Tenacity of convenience

(Systemic constraints derived from a paper in progress by White (ecologist and educator) and Russow, doctoral candidate in interdisciplinary studies) with contributions from Scott Wakeman (graduate in Philosophy), and Ken Hewitt (Professor of Geography)

- to reassess what is or is not acknowledged, enshrined and guaranteed as rights and to extend the "rights" to include a set of rights related to the ecosystem
 - to enshrine the right to a safe ecosystem
 - to enshrine the right of future generation to their ecological heritage
 - to enshrine the right of future generation to biodiversity
 - to acknowledge that the ecosystem itself has inherent rights beyond those serving the human purpose
 - to enshrine positive rights, such as right to ecological sound work, right to housing, right to food, right to an equitable distribution of resources...

- to prohibit the production of weapons of mass destruction and work towards the control over other weapons and towards eventual disarmament.

- to ensure that models, distinctions and categories are not presumed to reflect reality or determine or predetermine "human reality" (Eurocentric perspectives)
- to encourage the responsible use of the land: reduction of use of harmful pesticides and excessive use of natural resources
- to disallow acts contributing to ecological irreversibility in lands over which there are current disputes of ownership

() THAT from September 1991 - June 1992, I initiated and participated in the planning "clean air/car-free day" to coincide with the opening of UNCED, and to implement the spirit of the Climate Change convention.

COMMENT:

• in 1991 I Initiated the concept of a car-free day at a public meeting with local mayors on "car-dependency." I told the meeting that in the 1970s I took part in Ottawa car free-day; in Ottawa no cars were allowed in the city. I also proposed that there could be rotating car free days in the different municipalities in greater Victoria; a committee was struck; my role was to find out about the details in Ottawa and over a period of months we met and finally "Car free/clean air free day in Victoria (1992) to co-incide with the opening of UNCED on June 2, 1992. David Turner issued a proclamation and I designed posters to promote "Car free/clean air day in Victoria (1992).

I was away in Rio when Car-free day happened. It was anticlimactic. Primarily a photo- op for members of different ministries. There appeared to be a lot of opposition to the notion of Car-free from merchants and suddenly it became "car pooling." I had suggested that anyone who drove a car on that day should be issued a ticket which would condemn him or her to have to walk down Blanshard --a busy street in Victoria- between 4 -6pm. After 1992, June 3rd became Clean Air Day and car-free was dropped and somewhat revived recently.

THAT in 1991, we submitted a Proposal for "Year 2000 Documents; Curricular Integration." (J.Russow and (D. White. (1991).

() THAT on October 30, 1991, I filed an affidavit for the court case calling for an environmental assessment review of the berthing of nuclear powered and nuclear -arms capable vessels in the harbour of Greater Victoria.

EXHIBIT
Court File No.

**IN THE FEDERAL COURT OF CANADA
TRIAL DIVISION**

IN THE MATTER OF PRIVY COUNCIL DECISIONS
1991-2083 and 1991- 2084
Both dated October 30, 1991

AND

IN THE MATTER OF THE ENVIRONMENTAL ASSESSMENT AND
REVIEW PROCESS GUIDELINES ORDER,
SOR/84-567

BETWEEN

BETWEEN THE VANCOUVER ISLAND PEACE SOCIETY,
ANNE A. PASK and GREGORY P. HARTNESS
APPLICANTS

AND

HER MAJESTY THE QUEEN IN THE RIGHT OF CANADA,
PRIME MINISTER OF CANADA,
MINISTER OF NATIONAL DEFENCE,
SECRETARY OF STATE FOR EXTERNAL AFFAIRS
MINISTER OF TRANSPORT, and
MINISTER OF ENVIRONMENT
RESPONDENTS

[DOC] [Vancouver Island Peace Society v - Section de common law
commonlaw.uottawa.ca/15/index.php?option=com_docman&task=doc...gid...](http://commonlaw.uottawa.ca/15/index.php?option=com_docman&task=doc...gid...)

1.

Vancouver Island Peace Society v. Canada. [1994] 1 F.C. 102. Federal Court of Canada - Trial Division. This was an application for certiorari to quash two ...

[Judicial Power and Canadian Democracy](#)

<https://books.google.ca/books?isbn=0773522255>

Paul Howe, Peter H. Russell - 2001 - Political Science

Bear Island Foundation [1991] 2 S.C.R. 570; Blueberry River Indian Band v. Canada ... Canada [1993] 2 F.C. 229; **Vancouver Island Peace Society v. Canada** ...

[Supreme Court of Canada - SCC Case Information - Counsel - 24600](#)
www.scc-csc.ca/case-dossier/info/counsel-procureurs-eng.aspx?cas=24600

1.

Counsel. 24600. **Vancouver Island Peace Society**, et al. v. Her Majesty the Queen in Right of **Canada**, et al. (Federal Court) (Civil) (By Leave) ...

[The Cambridge Yearbook of European Legal Studies: 1998](#)

<https://books.google.ca/books?isbn=1841130885>

Alan Dashwood, Angela Ward - 1999 - Law

151 **Vancouver Island Peace Society v. Canada** (Minister of National Defence), [1994] 1 F.C. 102 (T.D.), affirmed (1995), 179 N.R. 106 (F.C.A.), application for ...

[Vancouver Island - Wikipedia](#)

https://en.wikipedia.org/wiki/Vancouver_Island

1.

Vancouver Island is in the northeastern Pacific Ocean, just off the coast of **Canada**. It is part of ... The southern part of **Vancouver Island** is the only part of British Columbia or Western **Canada** to Jump up ^ The Voyage of George Vancouver 1791–1795, Volume 1, ed: W. Kaye Lamb, Hakluyt **Society**, 1984, p.247; Jump up ...

[Vancouver Island Peace Society - Pej.ca](#)

pej.ca/vip/

1.

Box 8307, Victoria BC, V8W 3R9, **CANADA**, 250.592-8307 ...

The **Vancouver Island Peace Society** was founded in order to challenge the Federal ...Ship Now In Port" signs in their window, lawn or car, whenever a nuclear ship is in port.

[\[PDF\]Placing and Displacing](#)

<http://pej.ca/vip/affindex.htm>[Vancouver Island Peace Society vs. Canada](#)

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AFFIDAVITS Full Text Available Online

1. [Al Rycroft](#), VIP Director & Coordinator, Victoria Peace Centre
2. [Anne Pask](#), Plaintiff
3. [Audrey McLoughlin](#), leader Federal NDP
4. [Beverly Eileen Davis](#), Educator
5. [Bill Robinson](#), Project Ploughshares Researcher
6. [Bruce Torrie](#), Lawyer
7. [David Williams](#), VIP Director
8. [Professor Eric Fawcett](#)
9. [Professor Frederick Knelman](#), VIP Director
10. [Gordon Wilson](#), Leader BC Liberals
11. [Dr. Jan Christilaw](#)
12. [John Brewin](#), Member of Parliament, Victoria

13. [John Mate](#), Greenpeace Campaigner

Annotated References Available Online

If you want to see one of the full affidavits that are listed below, send an [email](#), and we'll see if it can be added to this web site.

1. [Irene Louise Abbey](#)
2. [Norman E. Abbey](#)
3. [Alison Acker](#)
4. [Rosalie Bertell](#)
5. [Jane P. Brett](#)
6. [Helen Elizabeth Brightwell](#)
7. [Shirley Fyles](#)
8. [Dr. Ann Gower](#)
9. [Nancy E. Goldsberry](#)
10. [Gregory P. Hartnell](#)
11. [James Heller](#)
12. [Major General Leonard Verne Johnson \(ret\)](#)
13. [Laurie J. MacBride](#)
14. [Jason R. Miller](#)
15. [Dr. Elinor Powell](#)
16. [Dr. Paul Rosenberg](#)
17. [Raging Grannies of Victoria](#)
18. [Joan Russow](#)
19. [Commander Roger D.C. Sweeney \(ret\)](#)
20. [Liberal MLA Douglas Symons](#)
21. [Rachel Stenberg](#),

22. [Victoria Mayor David Turner](#)
23. [Dr. Robert E. White](#)
24. [Patricia Lee Willis](#)
25. [Chief Michael Nicoll Yahgulanaas](#)

Court File No. T2927-91

IN THE FEDERAL COURT OF CANADA
TRIAL DIVISION

IN THE MATTER OF PRIVY COUNCIL DECISIONS
1991 - 2083 and 1991 - 2084,
both dated October 30, 1991

and

IN THE MATTER OF THE ENVIRONMENTAL ASSESSMENT
AND REVIEW PROCESS GUIDELINES ORDER,
SOR/84-467

BETWEEN:

VANCOUVER ISLAND PEACE SOCIETY,
ANNE A. PASK, and GREGORY P. HARTNELL

APPLICANTS

AND:

HER MAJESTY THE QUEEN IN THE RIGHT OF CANADA,
PRIME MINISTER OF CANADA,
MINISTER OF NATIONAL DEFENCE,
SECRETARY OF STATE FOR EXTERNAL AFFAIRS
MINISTER OF TRANSPORT, and
MINISTER OF ENVIRONMENT
RESPONDENTS

Annotated Index of Affidavits

1. **IRENE LOUISE ABBEY:** Voice of Women for an environmental review. A three page summary by Dr. Jackson Davis, titled "Nuclear Accidents on Military Vessels in Canadian Ports: Site - Specific Analyses for Esquimalt/Victoria" is appended as Exhibit "A".
2. **NORMAN E. ABBEY:** A peace worker with the Nanoose Conversion Campaign, etc. Norm Abbey's affidavit describes the work over time of the Nanoose Conversion Campaign, and their study of the dangers these ships bring us. His affidavit also describes the secrecy and stifling of public discussion by the Defence Ministry.
3. **ALISON ACKER:** A member and frequent songwriter for the Victoria Raging Grannies, she is a neighbour and kayaker directly across the harbour from CFB Esquimalt's docks used for nuclear and other warships. Among other concerns of Alison Acker is the leaking of nuclear coolant into the harbour. Exhibit "A" to Alison's affidavit is the November 28, 1991 Times Colonist article on the USS Longbeach, titled "Leaks from U.S. nuke ship 'prove visits here unsafe'".
4. **ROSALIE BERTELL:** A distinguished Canadian radiation scientist specializing in low level radiation. Rosalie Bertell informs us that the permissible levels of radiation exposure for the general public, or for workers is currently in the process of being lowered to only 20% of what the government of Canada now permits yearly.
5. **JANE P. BRETT:** A peace worker and Chairperson of the Christian Social Action Committee of St. Aidan's United Church of Victoria. Jane Brett describes the public concern over nuclear war ships in our ports as evidenced during the last two federal elections in Saanich, British Columbia. She contrasts the relative attention our community pays to earthquake preparedness, to the lack of preparation and attention to preparation for a nuclear disaster.

6. **HELEN ELIZABETH BRIGHTWELL:** An author, Raging Grannie, and longtime resident of Esquimalt near the mouth of the harbour. Betty Brightwell's affidavit appends both CFB Esquimalt's "Nuclear Emergency Response Plan" and Esquimalt's recently passed "Emergency Plan". This affidavit critiques the inadequacies of those plans. It also contains research on the inadequacy of the Navy's water sampling for radioactivity leaks.
7. **JAN CHRISTILAW:** A physician and 10 year member of the Provincial Executive for the Canadian Physicians for the Prevention of Nuclear War. Appended to her affidavit is a paper she co-authored with University of British Columbia professor, Michael D. Wallace, titled, "Military Related Threats To The B.C. Environment". Dr. Christilaw describes the catastrophic effects on public health, both immediate and long term, in the event of a nuclear accident.
8. **BEVERLY EILEEN DAVIS:** A faculty member in the education department at Simon Fraser University and the President of the Peace and Global Education Provincial Specialist Association. Her affidavit describes the widespread fears of children concerning nuclear disasters and nuclear war. A letter from Prime Minister Mulroney to the schoolchild Natasha is attached with this Respondent acknowledging the public concern among children over the threat of nuclear destruction.
9. **PROFESSOR ERIC FAWCETT:** A Professor of Physics at the University of Toronto, and National Vice-President of Science for Peace. Dr. Fawcett described unbridled militarism as the greatest threat to humankind, and consuming financial and human resources needed to address the manifold current threats to the environment.
10. **SHIRLEY FYLES:** Friend of the Applicant Anne Pask, and a member of the Interfaith Peace Vigil and the Christian Social Action Committee of St. Aidan's United Church in Victoria. Shirley Fyles describes public concern with this issue, and her own personal interactions with a crew member of the U.S. nuclear submarine USS Aspro.
11. **DR. ANN GOWER:** Adjunct Associate Professor of Physics at the University of Victoria, and a longtime member of the Interfaith Peace Vigil. Dr. Gower describes the campaign of her group in displaying large yellow warning signs in homes and offices whenever a nuclear ship has come to local waters.
12. **NANCY E. GOLDSBERRY:** Farmer living in Coombs on Vancouver Island's east coast, north of Nanaimo. As an agriculturalist she writes of the interlocking web of life and the effects that radioactive contamination could have in our ecosystem.
13. **GREGORY P. HARTNELL:** An Applicant, longtime resident of Victoria, and the President of the Greater Victoria Concerned Citizens Association. Gregory Hartnell describes an environmental review as holding the opportunity for real security and not just empty words to the people of the capital region. He describes this issue as transcending partisan politics and commanding nearly unanimous public support.
14. **JAMES HELLER:** An articling student in the law office of Robert Moore- Stewart. His affidavit appends a February 3, 1992, letter from the local Songhees Indian Band, and signed by Chief Norman George

and Councillor Robert Sam. The Songhees Band's reserve is contiguous with Esquimalt and shares part of Esquimalt harbour. The Songhees Band supports a public review and a ban on the docking of nuclear-armed and/or -powered vessels in Esquimalt and Victoria harbours.

15. **MAJOR GENERAL LEONARD VERNE JOHNSON (ret):** Retired Major-General in the Royal Canadian Air Force, and retired Commandant of the National Defence College of Canada in Kingston, Ontario. Currently Leonard Johnson is a Director of the national organization Energy Probe, and the Chairperson of the national organization Project Ploughshares. Leonard Johnston confirms that there is no strategic military purpose served by the nuclear ship visits to Greater Victoria. He states that these visits are conducted for recreational or ceremonial purposes.
16. **PROFESSOR FREDERICK KNELMAN:** Author and Professor, with published research over decades on the subject of nuclear technology and its associated hazards. Dr. Knelman's has filed two affidavits, the first on November 22, 1991. Dr. Knelman's first affidavit goes through the literature concerning known accidents and accident rates for nuclear ships. Dr. Knelman points to the evidence of lying by the U.S. Navy concerning the reality of accident records of U.S. naval nuclear warships. He compares the public civil regulatory schemes for siting land-based nuclear reactors to the secrecy involved in these naval nuclear visits to urban ports. Dr. Knelman states that no civil nuclear reactor could be sited in or near the port of Esquimalt without a thorough public environmental review, even though naval nuclear reactors are inherently less safe than civil land-based reactors.
17. **PROFESSOR FREDERICK KNELMAN:** Dr. Knelman's second affidavit, filed January 29, 1992, furthers Dr. Knelman's reporting on naval nuclear reactor accident rates. He describes a near miss meltdown incident from January 26, 1988, aboard HMCS Resolution, a U.K. nuclear submarine, off the coast of Scotland. Dr. Knelman deals with President Bush's recent initiatives on naval arms control. He also discusses the indemnity policies of the U.S. Government regarding payment for nuclear accidents aboard U.S. naval warships.
18. **LAURIE J. MacBRIDE:** Formerly a full-time Campaigner with the Nanoose Conversion Campaign (1984-1990), and presently the Executive Director of the Save the Georgia Strait Alliance. Laurie MacBride describes the intense and sustained expressions of public concern over U.S. nuclear warships and their use of the Canadian Forces Base at Nanoose, Vancouver Island, and their transit in internal Canadian waters.
19. **JOHN MATE:** Full-time Campaigner with Greenpeace Canada in Vancouver. Mr. Mate headed Greenpeace Canada's Nuclear Free Seas Campaign from February 1989 to December 1991. Greenpeace research is presented showing that the world's nuclear navies suffered over 1200 accidents between 1945 and 1988, losing 48 nuclear warheads and seven nuclear reactors currently on the bottom of the world's oceans.

20. **JASON R. MILLER:** Student and former Canadian naval officer (1985-1991). He discusses his knowledge of U.S. "nuclear capable" ships from joint training exercises. Jason Miller discusses and attaches as exhibits news articles concerning U.S. Navy nuclear sailors who have gone public with their allegations of routine violations of safety standards, and leakages into ports of radioactive coolant.
21. **ANNE A. PASK:** An Applicant, Raging Granny, longtime worker for peace, and retired public health nurse. Anne Pask discusses her motivation leading her to become a party in this action. She discusses her work for peace on the Marshall Islands in 1984 aboard the Pacific Peacemaker. She further discusses her 1991 trip to Kiev, Ukraine, and the Chernobyl area.
22. **DR. ELINOR POWELL:** Retired physician, active member of St. John's Anglican Church Peace & Justice Committee, and Director of the Canadian Government-funded Canadian International Institute of International Peace & Security. Dr. Powell reviews some of the effects of radioactive contamination on a populated port city, and specifically Victoria and Esquimalt.
23. **BILL ROBINSON:** Full-time Researcher with Project Ploughshares, formerly with Operation Dismantle. Bill Robinson explains that the visits by the U.S. Navy to Esquimalt and Victoria are to "show the flag" and not for strategic reasons as they have close-by U.S. bases. While working with Operation Dismantle, Bill Robinson co-authored a booklet in 1986 called "Unsafe Harbours: Nuclear Weapons in Canadian Ports". Two pages of excerpts from this publication are contained as Exhibit "N" to the second affidavit of Al Rycroft.
24. **DR. PAUL ROSENBERG:** An Emergency Medicine Physician who works professionally, in part, in disaster planning. Dr. Rosenberg, while working for the Greater Victoria Hospital Society, evaluated for them the state of preparedness for accidents involving nuclear-powered and nuclear-armed warships at CFB Esquimalt. Dr. Rosenberg reports "the municipalities of Greater Victoria do not have disaster plans for nuclear accidents aboard visiting warships. They have been falsely assured by the Canadian Forces that adequate provisions have been made by their own Nuclear Emergency Response Team. There is no protection for the civilian population in the event of a serious nuclear accident."
25. **RAGING GRANNIES OF VICTORIA:** The Raging Grannies affidavit was signed by Lois Marcoux, Kathy Hall, Doran Doyle, Inger Kronseth, Mary Rose, and Hilda Marczak. This affidavit describes street theatre, sail-ins, and musical protests which the Grannies have been involved in on the subject of foreign nuclear warships in our ports and waters. One overwhelming truth comes from the Grannies' experience of reaching out and communicating on this issue with so many residents and citizens. The Grannies report that the great majority of Canadians are on our side on this issue.
26. **JOAN RUSSOW:** A Doctoral Candidate at the University of Victoria, in Interdisciplinary Studies. Joan Russow did a content analysis of eight federal statutes relating to nuclear regulation and the regulation of potential environmental contaminants. She picked out general principles from these Acts which support a common duty of public

review and full disclosure concerning activities threatening to the environment.

27. **AL RYCROFT**: A Director of the VIP Society, and formerly full-time Coordinator of the Greater Victoria Disarmament Group (1989-1991). Al Rycroft's first affidavit, filed November 22, 1991, deals with the demonstration and documentation of great public concern with this issue. The affidavit details the eight municipalities, all local Members of Parliament, Leaders of B.C.'s NDP and Liberal parties, and many non-profit organizations, who have openly called for a public environmental review of nuclear warship visits.
28. **AL RYCROFT**: Al Rycroft's second affidavit, filed February 12, 1992, attaches many Exhibits documenting the dangers of nuclear warship visits, and the public outcry and protest of their continued visits to Greater Victoria. He appends and discusses materials such as excerpts from the Greenpeace Neptune Papers titled "Naval Accidents 1945-1988 by William Arkin and Joshua Handler. He appends correspondence from B.C. Premier Mike Harcourt, from Victoria Member of Parliament John Brewin who is the Defence Critic for the NDP in Canada's Parliament. Both have been full and publicly supportive of the demand for a public environmental review of nuclear warship visits.
29. **COMMANDER ROGER D.C. SWEENEY (ret)**: A retired Canadian naval officer with 31 years' service (1950-1980). He concludes from his experience: "I know of no naval equipment or procedure which is totally 'sailor-proof'. Anything that can go wrong in a ship eventually will go wrong."
30. **MLA DOUGLAS SYMONS**: Member of the British Columbia Legislature for Richmond Centre, sitting for the Liberal Party of B.C. Douglas Symons has a long history as a respected peace activist. His affidavit states that the "public interest would be served by the holding of a public environmental assessment of the environmental consequences of nuclear- capable and nuclear-powered vessels visiting Victoria, Esquimalt and Vancouver areas."
31. **RACHEL STENBERG**: Full-time Volunteer Coordinator for the Greater Victoria Disarmament Group. Her affidavit gives a historical review of the work that the Disarmament Group has done over the years in public education and demonstration of public concern over nuclear warship visits. The letters by eight Greater Victoria municipal Councils requesting a public environmental review are attached to Rachel's affidavit. Other documentation showing widespread support for this public review is attached to this affidavit, including support letters from Members of Parliament Raymond Skelly, John Brewin, and Lynn Hunter. Representative letters are attached from organizations including the Victoria Labour Council, Sierra Club, and the Vancouver Island Network for Disarmament. Response letters from the Minister of National Defence and the Minister of Transport are also appended.
32. **BRUCE TORRIE**: A Lawyer who has spoken and corresponded with Admiral Robert Falls (retired), Commander of the Canadian Navy until 1976, and Canada's Chief of Defence Staff (1976- 1980). Admiral Falls states in his letter: "I can see no valid reason not to have an

environmental review of the subject to clearly establish the degree of risk involved in such visits. Security reasons are surely becoming more and more irrelevant as the cold war becomes colder and deader. I therefore wish you well in your quest."

33. **MAYOR DAVID TURNER:** The Mayor of Victoria was authorized to submit an affidavit, on behalf of Council, by a January 16, 1992, resolution of Victoria City Council. The affidavit states that "City Council continues to have concerns for public safety" and is in support of a "public environmental assessment review of visits to Victoria and Esquimalt harbours by nuclear-powered and nuclear- armed ships."
34. **DR. ROBERT E. WHITE:** A recently retired university Professor of Physics with over 30 years' experience in nuclear radiation physics. Dr. White was a founder of Scientists Against Nuclear Arms in May, 1983. Dr. White's affidavit in part documents his efforts over years to get documents and information released pertaining to disaster preparedness in connection with nuclear warship visits to New Zealand.
35. **PATRICIA LEE WILLIS:** Research Coordinator for the international organization, Pacific Campaign to Disarm the Seas. Patti Willis is the author of many papers, and has addressed many group on the subject of nuclear navies and their safety and environmental implications. Patti Willis documents carefully three examples from her experience of the federal government's secrecy and inadequate responses to inquiries by the public on issues of naval nuclear safety.
36. **DAVID WILLIAMS:** A Director of VIP Society, and local realtor. David William's affidavit appends the three October 30, 1991, Orders-In-Council concerning the porting of nuclear- armed and nuclear-powered warships, and the passage of U.S. nuclear submarines through the Dixon Entrance. Also appended to David William's affidavit is the "secret" memo from David Barnes of FEARO (Federal Environmental Assessment Review Office) to the federal Cabinet concerning a public review of nuclear ship visits. This David Barnes memo is crucial, since Barnes supported the provision of a public review of these nuclear ship visits, and told the Cabinet "It would be preferable to follow the Process, rather than avoid it."
37. **CHIEF MICHAEL NICOLL YAHGULANAAS:** An elected Chief Councilor of the Old Massett Village Council, also known as the Masett Indian Band, and a member of the Council of the Haida Nation. Michael Nicoll Yahgulanaas discusses the purposeful discharge of coolant waters from nuclear-powered submarines. He discusses the risk of harm to food sources and throughout the ecosystem.(From a VIP report)

() THAT . I wrote the following affidavit:

I, Joan Russow, PhD student, of 1230 St Patrick St. of the city of Victoria, Province of British Columbia MAKE OATH AND SAY AS FOLLOWS:

1 That I am a Doctoral Candidate in Interdisciplinary Studies at the University of Victoria, and that I have extensive experience in analyzing and categorizing research data.

2 That I have made a preliminary content analysis of the statements contained in some related statutes that may be applicable to this case and I have attempted to extract general principles from these statements.

3 That I believe that the statements in these statutes can be subjected to the same form of content analysis as statements in other disciplines.

4 That I have analyzed statements in the following Government of Canada statutes and attempted to extract and categorize general principles underlying these statements:

The Atomic Energy Control Act, R.S. C A-19, S 1

The Emergency Preparedness Act, 1988, C 11.

The Canadian Environmental Protection Act, 1988, C 22.

The Environmental Contaminants Act, 1974-75-76, C 72.

The Fisheries Act, 1977, C 35

The Department of the Environment Act, R.S., C 14 (2nd Supp.), s2

The Government Organization Act 1979, C 13

The Hazardous Products Act, R.S., C H-3, S 1

5. That in all the statutes, which I examined, dealing with either hazardous materials or the pollution caused by hazardous materials, importance is placed on the determination of the safety of the hazardous materials. And it is recognized that in order to determine safety, it is necessary to have information about the materials and their uses. This principle is enunciated in the following examples drawn from the statutes.

a) In section 11 (Disclosure) of the Hazardous Products Act, "disclosure of information is required where the Minister has reason to believe that a product or substance may be dangerous... The Minister may send a written notice to the manufacturer of the product or substance requesting the manufacturer to disclose to the Minister the formula, composition or chemical ingredients of the product or substance and such other Information in the possession of the manufacturer as the Minister deems necessary for the purpose of determining whether the product or substance is or is likely to be a danger to the health or safety of the public."(The Hazardous Products Act. R.S., CH-3, S 1)

b) Pursuant to 7 (2) Of the Environment Contaminants Act "where the Minister of National Health and Welfare believes that a substance will constitute a significant danger to human health or the environment, the Minister may send a written notice to any person engaged in any commercial, manufacturing or processing activity involving the substance or any member of a classes of substances of which the substance is a member requiring that

person to furnish the Minister with such information specified in the notice.” (The Environmental Contaminants Act. 1974-75-76, C 72)

- c) Section 33. 1 of the Fisheries Act states the following:
“Every person who carries on or proposes to carry on any work or undertaking that results or is likely to result in
- a) the deposit of a deleterious substance in water frequented by fish or in any place under any conditions where that deleterious substance or any other deleterious substance that results from the deposit of that deleterious substance may enter any such water, or
 - b) the alteration, disruption or destruction of fish habitat shall on the request of the Minister... (a) provide the Minister with such plans, specifications, studies, procedures, schedules, analyses, samples or other information relating to the work or undertaking and with such analyses, samples, evaluations, studies or other information relating to the water, place or fish habitat that is or is likely to be affected by the work or undertaking as will enable the Minister to determine
 - c) whether there is or is likely to be a deposit of a deleterious substance by reason...d) whether the work or undertaking results or is likely to result in any alternation, disruption or destruction of fish habitat.”
- (Federal Fisheries, 1977, C. 35)

6. That the principle is repeatedly seen in these statutes that the government has a duty to provide the public with crucial and essential information about the environment

- a) In section 5 of the Department of the Environment Act it is written:
“The Minister in exercising his powers and carrying out his duties and functions ... shall...
(iii) provide to Canadians environmental information in the public interest.” (Department of the Environment Act, R.S., R.S., C 14, 2nd Supp., S 2)

- b) Also, in section 19 (6) of Canadian Environmental Protection Act the Minister may disclose information
“Where
- a) the disclosure is in the interest of public health, public safety or the protection of the environment and
 - b) the public interest in the disclosure clearly outweighs in importance any material financial losses or prejudice to the competitive position of the person who provided the information or on whose behalf it was provided.” (Canadian Environmental Protection Act, 1988, C 2)

- c) In section 6 of the Government Organization Act, the mandate is given:

“6 (iii) to provide to Canadians environmental information in the public interest.” (Government Organization Act, 1979, C 13)

7. That the principles are repeatedly enunciated in these statutes that the environment is worthy of protection and that government has a duty to protect the environment and to prevent environmental harm

a) “It is hereby declared that the protection of the environment is essential to the well-being of Canada.” (Canadian Environmental Protection Act, 1988, C 22)

b) “Whereas the presence of toxic substances in the environment is a matter of national concern.” (Canadian Environmental Protection Act, 1988, C 22)

c) In the Department of the Environment Act, under the division of "Powers, duties and functions of the Minister, it is stated that “the duties of the Minister include providing for

a) the preservation and enhancement of the quality of the natural environment, including water, air and soil quality; and to

2(i) endeavour to protect the environment from the release of toxic substances.” (Canadian Environmental Protection Act, 1988, C 22)

d) The duty of the Federal Government is that it shall (a) take both preventative and remedial measures in protecting the environment, (section 2, Canadian Environmental Protection Act, 1988, C 22).

e) In section 5 Department of the Environment Act
“The Minister in exercising his powers and carrying out his duties and functions under section 4 shall...
5(ii) ensure that new federal projects, programs and activities are assessed early in the planning process for potential adverse effects on the quality of the natural environment and that a further review is carried out of those projects, programs, and activities that are found to have probable significant adverse effects and the results thereof taken into account.”

f) Furthermore, in Section 2 of the Environmental Contaminants Act consideration is given to effects that are persistent and cumulative:

“(iii) the extent to which the substance or any class of substances of which it is a member can become dispersed and will persist in the environment.

(iv) the ability of the substance or of any class of substances of which it is a member to become incorporated and to accumulate in biological tissues and to cause biological change.” (The Environmental Contaminants Act. 1974-76)

8. That the principle is set out in the regulations related to the Atomic Energy Board Act that extreme precautions must be taken in the transport of atomic materials:

a) “*(2) Any person who transports or causes to be transported any radioactive material ...” (see Exhibit A for the list of stipulated regulations for atomic materials)

9. That the principle is expressed in the Emergency Preparedness Act that the government has a duty to make extensive provisions for civil emergency preparedness

a) “5 (1) c to provide education and training related to civil preparedness or emergencies.” (Emergency Preparedness Act, 1988, C 11)

b) “5 (1) e to analyze and evaluate civil preparedness for emergencies and conduct related research.” (Emergency Preparedness Act, 1988, C 11)

() THAT on December 24, we marched up to the Esquimalt Naval base. We walked in a long pageant-style procession. It was televised. I was walking with a sheep dog and tied my hair across my face as a beard. There was a pregnant Mary, with a basket of doves. We were met by a number of security people at the base, and we were asked: “who do we represent, and one of the Grannies declared,” [a witty remark that baffled them as doves flew up in the air.]

~1992

() **THAT** in 1992, I worked with the Whistler Foundation for a Sustainable Environment and the Nuclear Age Peace Foundation on the Nobel Laureate Statement to Rio, and I was responsible for distributing the Statement at the international Conference.

EXHIBIT

1992 NOBEL LAUREATE DECLARATION

Nuclear Age Peace Foundation and Whistler Foundation for a Sustainable Environment.

“The primary goal of the summit will be to lay the foundation for a global partnership between developing and developed countries based on mutual need and common interest, to ensure the future of the planet. This partnership will undoubtedly require the mutual solution of the population and over-consumption issues. Equity and environment problems are linked and must be solved together. Further the only major source of the discretionary funds necessary for addressing these issues rests in the radical reduction of the military budget of the Nations of the World” Dr Fred Knelman, Vice President of the Whistler Foundation For a Sustainable Environment; and Dr David Krieger, President of the Nuclear Age Peace Foundation.

NOBEL LAUREATE STATEMENT TO UNCED 92

We, the undersigned Nobel Laureates, urge all nations and peoples to unite in the great cause of creating a secure and sustainable Earth.

This important conference, Earth Summit, links two key issues of sustainability – environment and development – and offers a unique opportunity to find global solutions to problems threatening our common future. Recognizing that we all inhabit one earth and share a common responsibility to posterity, we urge you to act decisively.

- to protect and preserve the integrity of the biosphere, that sustains all life by establishing adequate global regulations, penalties and enforcement mechanisms to prevent human induce global warming, depletion of the ozone layer, destruction of forests and fisheries, pollution of air and water, irreversible loss of species, and release of hazardous substances into the environment.
- to establish a time –table for phasing our fossil fuel and nuclear energy and for the rapid development of solar and other forms of non-polluting energy, and for more efficient energy use;
- * to end hunger and poverty in the world by the transfer of adequate resources and environmentally sound technology required for this task;
- * to demand an immediate end to all nuclear weapons tests.
- * To prevent further proliferation of nuclear weapons and other weapons of mass destruction by establishing effective international controls.
- * To develop international regulations regarding nuclear waste disposal and nuclear power plant operations
- *To initiate a global program of population stabilization
- *To promote a global educational campaign to encourage resource conservation, recycling and environmental protection; and
- *To bring protection of the environment under the rule of international law, establishing appropriate regulation, criminal penalties and methods of enforcement, witching the structure of the United Nations and other international organizations

Signed: Gerd Binnig, The XI Dalai Lama, Leo Esaki, Val L. Fitch, Herbert A. Hauptman, Dudley Herschbach, Gerhard Herzberg, David H. Hubel, Jerome Karle, Gregory S. Kavka, Klaus von Klitzing, Leon M. Lederman, Yuan T. Lee, Wassily Leontief, Bernard Lown, Mairead Corrigan Maguire, Barbara McClintock, J.E. Meade, Sinon van der Meer, Bruce Merrifield, Marshall W. Nirenberg, Linus Pauling, John Polanyi, Carlo Rubbia, Abdus Salam, Claude Simon, Herbert A. Simon, George D. Snell, Roger W. Sperry, Henry Taube, Jan Tinbergen, Archbishop Desmond Tutu, George Wald, Elie Wiesel, Robert W. Wilson.

() THAT IN March 1992 , I attended Global in Vancouver

() THAT in March 1992, I participated in the Prep Com for UNCED in New York

COMMENT

By Joan Russow

On behave of the Whistler Foundation on Sustainable Environment

March 1992, I attended a meeting of accredited NGOs. Prior to this meeting I had attended a number of sessions on Climate Change where the state governments were seriously discussing the issue. At the meeting of NGOs, the topic was not issues that should be addressed but who should be allowed to have accreditation. There appeared to be concern that too many NGOs during the UNCED process had been given accreditation and that UNCED should be deemed to be a special case and that the accreditation should not be extended beyond UNCED.

I commented that perhaps I had come to the wrong meeting the NGOS appeared to be more concerned with sustaining themselves than with dealing with vital issues. I walked out. Someone came out later on and told me that quite a discussion ensued after I left about the issue that I had raised.

Prep com UNCED March 1992, I attended sessions on Indigenous issues. I was at a session where a Brazilian Indigenous man was speaking in Portuguese. It was a session in Spanish which I understand. He was such a powerful speaker that I felt I understood Portuguese. At the end of the meeting we all went over to the General Assembly where a meeting was in progress on indigenous issues. I decided to sit in the Canadian government section which was empty. The speaker, who had the floor, declared that he was furious with the Canadian delegate for refusing to add an "s" to indigenous people. I felt very uncomfortable given that I was the only one sitting in the Canadian delegation section. I was sure that if this discussion were to continue that soon they would refer to the Canadian delegate as "he" and it would be obvious that they were not speaking about me. Another speaker got up and again criticized the Canadian delegate and at that time rather than mentioning "he" referred to the delegate as "she" I did not know what to do what a dilemma I could get up and change sections but I would appear to be guilty or I could stay and be deemed to be guilty. It was like trial by ordeal in water. If I sink, I would be innocent if I floated, I would be guilty. The last speaker explained the significance of the [s] if there were no 's' then there would be only one indigenous delegation at the UN; with the "s", however, there would be several delegations. Suddenly a woman stood up several rows in front, obviously not having the courage to sit in the Canadian section, and defended the Canadian position.

I decided to raise my hand and report that given that at this moment Mulroney is only at 20% of the polls, and that I was sure that the other 80 % would support adding the s and given that I was the only representative sitting in the Canadian section that I would like to propose that the s be placed on all documents with references to indigenous peoples. Before I could make my statement, the meeting closed down. I went up to the moderator after and told him what I was going to say and that I would lobby in Canada to have the s back.

I slipped into the government discussion of the draft Earth Charter. When a Norwegian with elegant swirled turban walked in; at that one point the Chair asked if there were any NGOs were in the room. I felt obliged to leave. I should have stated what my concerns were with the Earth Charter but instead I rose and indicated that I had several concerns and the chair responded that I could meet with him after. I left and went outside with my diagram and spoke to delegates about the exclusion of those delegates who did not speak English. I am able to speak French and Spanish and I raised the issue of the failure of the UN to accommodate in the working groups any official language other than English. I went back and spoke to the Chair about

proposed changes to the Earth Charter. One of which was the Sovereign Right to exploit resources. After the meeting I went to talk with the chair about several sections in the Earth Charter that I thought should be modified or changed. In one of the evening sessions when they were working on the Earth Charter, the US proposed that principle 14 be removed because it was redundant. This principle was that states should prevent the transfer to other states of substances that are harmful to human health or the environment. The US claimed that this was the same as the trans-boundary principle. I believe it was Austria who stated that you are not fooling anyone. that seemed to stop the US and that principle is still in the document.

() THAT I co-authored. With Fred Knelman, F. and J. Russow. (1992) The "not-too-hidden agenda" of the International Atomic Energy Agency (IAEA) at UNCED: nukespeak, and seductive devices, doctrines, dogmas, strategies and fallacies". Paper widely circulated at International Conference and to organizations.

EXHIBIT

1992 THE "NOT-TOO-HIDDEN AGENDA" OF THE INTERNATIONAL ATOMIC ENERGY AGENCY (IAEA) AT UNCED: NUKESPEAK, AND SEDUCTIVE DEVICES, DOCTRINES, DOGMAS, STRATEGIES AND FALLACIES

By Dr F.K. Knelman and Dr. Joan E. Russow

Dr F.K. Knelman is the Vice President of the Whistler Foundation for a Sustainable Environment, and Dr. Joan E. Russow, was the delegate for the Whistler Foundation at the New York Preparatory Committee for UNCED and at the Earth Summit at Rio. The Whistler Foundation and the Nuclear Age Peace Foundation had circulated a Declaration that was signed by 37 Nobel Laureates; this declaration called for the phasing out of Nuclear energy. They requested permission to read this declaration at one of the plenary sessions at Rio Centro; permission was denied.

The International Atomic Energy Agency (IAEA) was initially set up in the 1960's to regulate Nuclear energy; they have, however, become one of the strongest proponents of nuclear energy. A fundamental regulatory principle of the "separation of function" is that "the agency entrusted for regulating a technology cannot be the same agency that promotes the use of that technology"(Knelman, 1975). IAEA, through its UNCED document entitled "Nuclear Techniques and Sustainable Development." acted as a major proponent, not only of the current use, but of the increased use of nuclear energy.

Agenda 21-- the 700-page far-reaching action-plan document from UNCED, was adopted unanimously by the global community represented at the Earth Summit in Rio. In Agenda 21 the following concern about radiation was expressed:

The deterioration of environmental quality, notably air, water and soil pollution owing to toxic chemicals, hazardous wastes, radiation and other sources, is a matter of growing concern. (Chapter 16. subsection 12),

The extent of the consequences of the nuclear industry were also identified in Agenda 21:

Annually about 200,000 m³ of low-level and intermediate- level waste and 10,000 m³ of high-level waste (as well as spent nuclear fuel destined for final disposal) is generated worldwide from nuclear power production. These volumes are increasing as more nuclear power units are taken into operation, nuclear facilities are decommissioned and the use of radionuclides increases. (Chapter 22, subsection 1)

Yet at one of the plenary sessions, Mr. Hans Blix, Director-General of the IAEA, was given permission to present a document advocating nuclear energy as being a safe alternative energy for the future. The International Non-Governmental Organizations (NGOs) however, recognized that the fundamental regulatory principle had been violated and gave IAEA the dubious honour of being presented with the International NGO Community's "Most Preposterous Proposal Award" "for presenting nuclear power as the environmental solution in energy and successfully keeping its problems out of the documents".

We would like to highlight some of the SEDUCTIVE DEVICES, STRATEGIES, DOCTRINES, DOGMAS and FALLACIES that have made the IAEA worthy of this honour. The examples will be drawn from IAEA document which was prepared for UNCED. Also references will be made to other UNCED Documents such as Agenda 21 and the Rio Declaration-- the Earth Charter-- 1992, and the Canada's National Report for UNCED, 1992

The seductive devices, strategies and fallacies used by the IAEA all draw upon the fundamental language of 'nukes peak'. Knelman (1986, 1992) has expanded on the euphemistic nature of Nuke speak: (term first used in Hilgartner S, R. Bell, and R. O'Connor 1982)

The rule is sanitize by euphemism: political euphemism is of course older than nuclear power. How many of us recognize the "elimination of unreliable elements"? There are forbidden words in the language of civil nuclear power. For example, the words "accident". "pollution" or "disease" are never used. Accidents are either "transients". "events", "significant events". "anomalies", "occurrences" or "abnormal occurrences". In the extreme, they become "normal abnormalities", i.e. truth becomes lies. Explosions are "events of rapid disengagement" or "prompt criticality". Waste dumps are "residue areas". Thermal pollution becomes "thermal effects" and pollution becomes "impacts". Disease becomes "health effects". This is a euphemism for cancer and genetic malformations. And missing plutonium, which is the link to clandestine acquisition of nuclear explosives is "material unaccounted for" or simply MUF! (Knelman, 1986.)

Other names relating to nuclear accidents are criticality, nuclear excursions, abnormal evolution, normal aberration, plant transients, unnecessary ignition sources. "Nukespeak" is perpetuated through "nuclear acceptance campaigns" by the PR departments of the nuclear establishment, designed to find "palatable synonyms" for "scare words" through the use of "truth squads" in order to remove "undue public concern", create "pro-energy climate" where "technically qualified persons" would agree that nuclear power poses "no significant threat" and could be entrusted" for the timely detection of potential abnormalities, or there is "no evidence" of such threat (as though lack of evidence is proof of assertion) and the promises that turned into lies i.e. that nuclear power would be "too cheap to meter" providing society with "boundless energy" and save us from "freezing in the dark"., this is the language of Orwell's 1984, where peace is war and truth is a lie. (Knelman, 1992).

Seductive devices, doctrines, dogmas, strategies and fallacies

- The "blatant misrepresentation or expedient omission" device

This device involves the convenient exclusion of any part that could be detrimental to one's position.

The IAEA through expedient omission (possibly for advantageous "clarification") has left out a significant section in Agenda 21 which does not include nuclear energy in the list of "safe" technologies for the future. To "clarify" Agenda 21, the IAEA in its UNCED document stated the following:

The UNCED Agenda 21 notes the need for a transition to environmentally sound energy systems, which will entail major changes in the patterns of energy production and consumption (IAEA Document, p.5, 1992)

In the Atmosphere chapter of Agenda 21, the following [safe] and sound technologies are advocated:

cooperate to increase the availability of capacity, capabilities and relevant technologies ...for utilizing and producing environmentally [safe and} sound renewable energy resources, such as solar, wind, geothermal, hydropower and biomass, ... Each resource should be utilized in a manner that ... minimizes environmental stress and health impacts, (Section 9. Subsection 9 g Agenda 21, 1992)

Thus, we see that in the Energy section of Agenda 21, Nuclear energy is not mentioned as being one of the [safe] or sound technology.

- The "co-opted terms" strategy

This strategy involves the stipulating of a new definition for a term that would jeopardize one's own argument.

In the Rio Declaration the following precautionary principle was advocated:

Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation." (Rio Declaration, 1992).

In the following statement, the IAEA redefines the important precautionary principle that was agreed to in the Rio Declaration, 1992.

The basic principles for radiation protection and safety in all applications and activities in nuclear science and technology are precautionary (IAEA Document, p. 2, authors emphasis)

The Rio principle, however, if enacted and truly adhered to, would bring about a moratorium on new nuclear power plants while phasing out currently existing ones.

- The "comparison of convenience" device

This device involves the narrowing down of alternatives so that whatever aspect is compared will appear favourable to the proposed alternative.

In the following statement from the IAEA document, the IAEA narrows the alternatives used for comparison to those which would appear to be favourable within the terms of reference of their comparison. Thus, for example, they compare the relatively low volume of nuclear wastes to the much larger volume of wastes from fossil fuels. However, it is the volume of wastes multiplied by their toxicity that is significant. Merely comparing volumes is a "comparison of convenience". The same false comparison is used to compare fuel requirements for the same energy output.

A nuclear plant would require 27 tonnes of slightly enriched uranium each year, which corresponds to a few truckloads. The corresponding quantity of natural uranium is 160 tonnes.

a coal fired plant would need 2.6 million tonnes of coal each year... which corresponds to the load carried by 5 trains, each transporting 1400 tones every day

an oil-fired plant would require 2 million tonnes of fuel oil per year, which is about 10 supertanker loads. (IAEA document, 1992, p.12)

The nuclear establishment never fails to compare coal and nuclear as competing energy sources, always claiming the inherent superiority of nuclear. Usually this is accomplished by failing to include the entire fuel cycle over its full life of impacts, social and environmental. They conveniently exclude "safety" factors," "production of wastes," "disposability of wastes," "degree of potential for bioaccumulation," lifetimes of wastes, toxicity and proliferation problems associated with nuclear.

Yet no bombs are built of coal, no terrorist is interested in hijacking coal or in the clandestine acquisition of coal weapons, coal plants do not have to be decommissioned and mothballed after some 30 to 50 years of operation, their hazardous wastes do not have to be guarded for 100,000 years, coal dust is easier to contain than radon and coal plants do not require liability subsidies by acts of parliament" (Knelman, 1992)

- The "lull and lure of the technological fix" syndrome (the "misleading assurance" device or the fallacy of "technological omnipotence")

This syndrome, device or fallacy involves the revealing of the seriousness of the problem and the offering of a "solution" which is usually worse than the problem

The proponents of a potentially dangerous act indicate that they recognize the danger and focus on one area for which they can offer a technological fix

In the following statement from the Radioactive Wastes section of Agenda 21, into which it appears that the IAEA had input, the following situation is recognized:

Annually about 200,000 m³ of low-level and intermediate-level waste and 10,000 m³ of high-level waste (as well as spent nuclear fuel destined for final disposal) is generated worldwide from nuclear power production. These volumes are increasing as more nuclear power units are taken into operation, nuclear facilities are decommissioned and the use of radionuclides increases. The high-level waste contains about 99 percent of the radionuclides and thus represents the largest radiological risk. (Agenda 21, Radio Active wastes, 21.1.).

In the IAEA document the authors affirm the certainty of the technological fix.

There is nevertheless a consensus among experts that safe geological disposal of high-level wastes, including spent nuclear fuel, is technically feasible. (IAEA Document, p.17)

The view of experts in the field is that safe technological solutions exist for managing the waste. (IAEA Document, 1992, p. 15)

Knelman (1992) points out that

The assumption behind the notion of permanent disposal of High level wastes deep in a stable geological formation is false because this assumption relies on the mistaken belief that anything we do technologically can be permanent This assumption of permanence is particularly false when we are dealing with the lithosphere over some 100,000 years and when we must first disturb the geological structure by digging a very deep hole. AECL (Atomic Energy of Canada Limited) has dug a deep hole near Lac du Bonnet in Manitoba which is totally inappropriate for such so-called "permanent" disposal. For one thing you must, in all events, avoid water. Yet, The AECL hole must be soaked

Walt Patterson, a nuclear critic described this AECL research as follows: A drunk has lost his keys and is discovered by a police officer crawling around a street light. When questioned, the drunk admitted that he had lost his keys in front of a dark building, a block away. When asked why the drunk was then searching around the street light the drunk said "you see, officer, the light is better here" and as Dr Martin Resnikoff, an expert on geological waste disposal has put it, " the earth does not stand still. "In other words, experts in the relevant fields do not agree. (Knelman, 1992, in progress)

- The "rhetoric of notwithstanding clause" doctrine.

This doctrine allows for the indulging in strong statements about deep concern and the need for significant change and then including a notwithstanding clause that negates the strong statement.

In the Rio declaration (1992) there is a strong statement about third world dumping:

States should effectively cooperate to discourage or prevent the relocation and transfer to other States of any activities and substances that cause severe environmental degradation or are found to be harmful to human health. (Principle 14 Rio Declaration, 1992)

There are, however, disturbing "notwithstanding clauses" that appear such as in the following statements:

Develop regulatory and non-regulatory measures and procedures aimed at preventing the export of chemicals that are banned, severely restricted, withdrawn or not approved for health or environmental reasons, except when such export has received prior written consent from the importing country or is otherwise in accordance with the PIC procedure; (Section 19. subsection 53 f, Agenda 21, 1992)

In the following statement in the IAEA document, the IAEA energetically adopts the spirit of the "rhetoric of notwithstanding clauses"

The IAEA in 1990 promulgated a Code of Practice on the International Transboundary Movement of Radioactive Waste as a basis for harmonization of national legislation and policies. The code lays down the conditions and principles for international waste transfers, such as that movement must be made in a manner consistent with the international safety standards, that there must be prior notification and consent of the sending, receiving and transit States, and that each State involved should have a regulatory authority...(IAEA Document, 1992, p. 20

- The "flamboyant absurdity" doctrine or dogma

This doctrine or dogma carries the concerns of one's opponents to the point where the regulations governing the opponent's concerns should become the standard by which other potentially lesser concerns will be addressed.

The IAEA appears to advocate that, what is considered to be the most dangerous industry, just because it is dangerous, has developed stringent standards, and that they who contribute to possibly the greatest uncontrollable hazard are the ones who should assist the community in dealing with other hazards.

The basic principles for radiation protection and safety in all applications and activities in nuclear science and technology are precautionary and are so well founded in science and so widely accepted that they are now also being regarded as a source of guidance in controlling pollutants and impacts arising from other human activities. Their wider application would undoubtedly contribute towards sustainable development. (p.2)

- The "justification through dire consequences of alternatives" device

This device involves the revealing of the dire consequences of the current practices and offering one own practice as the salvation for the problem

In the following statement the IAEA cites the dire consequences of the other alternatives to justify their proposed alternative:

The problem of acid rain, which is linked to emissions from the burning of fossil fuels, has been recognized for decades.... the primary concern about the continued and increasing use of fossil fuels is the problem of CO₂ emission and the potential impact on world climate..... World conference on the Changing Atmosphere... need to reduce CO₂ emission (IAEA document, p. 5)

climate change in connection with fossil fuels (p. 9)

- The "benevolent outcome exploitation" strategy

This strategy involves the selection of the outcome which the opposition to the proposed alternative would advocate and the subsequent attempt to demonstrate that the proposed alternative, which the opposition would condemn, would be the best way of achieving that outcome.

In the following statements from the IAEA document, the IAEA focuses on the desired outcomes of reducing acid rain and limiting greenhouse gas to justify the selection of their proposed alternative:

Several governments have already made commitments to reduce carbon emission, while recognizing that this will be hard to achieve except through drastic policy decisions in the energy sector. (IAEA Document, 1992, p.6)

Nuclear power plants in normal operations cause very little environmental detriment and are beneficial when they replace plants which would emit CO₂, SO₂, and NO₂ (p. 12). In this respects they would help to reduce acid rain and limit greenhouse gas emissions (IAEA Document 1992, p. 12).

To accomplish the above, IAEA and other nuclear proponents are recommending the construction of some 4000 to 5000 new commercial nuclear power plants. The combination of the multi-trillion cost and the time required for construction renders this proposal no less than bewildering. By the 6 to 10-year period required for construction, other sources of climate-altering gases would wipe out all gains. Secondly at 1/7th to 1/10th the above cost, a much greater reduction in CO₂ and other climate-altering gases can be achieved through simple available conservation and efficiency measures.

- The "flaunting and condoning of the vicious circle principle" strategy

This strategy is best explained by the economic principle that "bad money drives out good,"; that is the opportunity costs of nuclear power are unacceptable and prohibitive. Thus the money spent to subsidize nuclear power is at the expense of the funds required to solve the energy problem with safe alternatives and consequently, because the research into alternatives will not be effectively carried out, the safe alternatives will not be able to adequately replace the non-renewable forms of energy.

In the 1992 report to UNCED, following was stated:

Nuclear energy has safety risks associated with the entire uranium cycle, from mining through processing to the ultimate disposal of high-level radioactive wastes. In addition, there are safety risks associated with the reactors used to generate electricity from uranium. And the use of fossil fuel to drive conventional thermal generation produces carbon dioxide and waste heat. (Canada's National report UNCED pp. 46- 47).

From a domestic consumption point of view, the least environmentally damaging energy option is energy efficiency. (Canada's National report UNCED p. 47)

Despite the above statement, the document concludes:

New, cleaner technologies such as solar energy may help, but the hard fact is that to a large extent we will have to rely on either thermal, hydro, or nuclear energy in the future. In addition, energy projects for both export and domestic supply provide jobs and economic wealth to the country, and are especially important in some regions of Canada" (p. 47. Canada's National report UNCED June, 1992, authors' emphasis),

The Canadian government has invoked the "vicious circle principle" by cutting subsidies to conservation efficiency and renewals. Canada is thus playing an important role in facilitating this not too hidden agenda by using many strategies, devices, doctrines, etc.

CONCLUSION:

The " nukes peak" and the seductive devices, strategies, syndromes used by the Nuclear Industry involve the language of delusion and distortion. Hopefully, through the continued revealing and categorizing of these words of delusion we could, in some small way, counteract the impact of the not too-

hidden-agenda of the IAEA, and the rest of the nuclear establishment and their government supporters.

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() **THAT** in 1992, I worked with Professor~ Rod Dobell on a submission to NAMI

EXHIBIT

NAFTA, a "realization of dire predictions" or an opportunity for significant change: environmental implications."

"La nueva ecologia en Norte America"

"NAFTA, a "realization of dire predictions" or an opportunity for significant change: environmental implications."

Dobell, R. and J. Russow

MARCH 30, 1992

Paper presented by Rod Dobell

at the NAMI meeting, April, 1992 INTRODUCTION

Un dia, espero estar capable de comunicar en Espanol. Hasta esto momento, yo quiero decir solamente algunas palabras en Espanol para expressar mi gusto en estar aqui in Mexico y en asistir a questa conferencia.

When we look at the way human populations now act and interact as part of ecological structures, it is probably not unreasonable to treat North

America as an ecosystem in itself, linked together both through the dynamics of natural system and through economic relationships.

The thread of my reasoning here in this brief paper is very simple:

1. There have been a lot of concerns expressed about NAFTA as a threat to social goals, including environmental goals, in all three countries.
2. All three countries of North America have expressed their environmental objectives very clearly (although implementation often does not follow), and want to see them respected in trade arrangements.
3. The GATT tradition is different. From experience with GATT and other trade deals, it seems clear that environmental objectives have to be explicitly addressed within NAFTA.
4. NAMI might help in educational efforts and in animating a broad consensus on strong environmental provisions within NAFTA"

But the problem is being approached from the wrong direction at the moment. The difficulty is that NAFTA negotiations are in the hands of trade policy people. These policy people work from a very strong tradition of economic analysis, and they are out to slay a particular dragon—the dragon of *protectionism*.

This view of the problem sees the solution as writing "trade rules governing environmental measures".

But I want to argue that this whole approach is backwards. The starting point is the need to assure the integrity of the ecological systems of the planet. At our scales of population and economic activity, it is no joke to say that the life-support systems on which we all depend are truly at risk.

We must therefore shape our trade policy, like all our other economic policy, within some over-riding agreed framework of environmental ground rules

Therefore, I want to talk about trade and environment questions involving the three countries of North America. In particular, I should like to discuss briefly with you the way in which the conflicts between trade values (the goal of unimpeded flows of goods and all) and environmental values (pursuit of a sustainable society through conservation of resources and preservation of biodiversity) might be resolved within the emerging North American community.

I start from the premise that economic integration is occurring, and will continue. The domain of the economy is now the globe (even if the domain of the polity still reflects much smaller communities). It is not desirable or sensible to fight this process — the big cliché of the Canada-US FTA debate

(that "the status quo is not an option") is surely equally correct in relation to the on-going NAFTA negotiations. We can, however, and — in my view we must, however, resist the tendency toward unlimited growth and the perceived mandate for development even at the expense of social or environmental goals. Economic integration will occur but needs to be channeled and guided by some agreed synthesis of common high environmental goals.

In all our three countries citizens and organizations are concerned about the apparently unquestioned imperative to grow, the relentless destruction of the environment, rapidly increasing loss of ecological heritage, and increasing disenfranchisement and poverty. Citizens are also concerned about arriving at solutions to these problems.

1. CONCERN ABOUT NAFTA

These concerned citizens look with trepidation on the proposed trilateral trade agreement. For different reasons they see it as a threat:

i. The growth imperative.

There is reluctance in political and industrial circles to address the need to limit growth and over-consumption, and a concomitant reluctance to acknowledge the implications, both social and economic of violating those limits.

In the process of wrapping the semantic capsule 'sustainable development' around this potentially unpalatable two sided world-view was born the genteel ploy of emphasizing the growth imperative for consumption in the South and the industrial communities comfortable with "business (much) as usual", while focusing on sustainability for purposes of dealing with the increasingly strident and influential concerns of environmental movements and scientific bodies documenting the possible dangers of global change. Thus there remains latent much of the old Stockholm debate between environmentalists and industrialist in the North and between developed nations of the North and developing nations of the South.(Dobell, 1992, p. 4)

Since our economies are growing and the ecosystems within which they are embedded are not, the consumption of resources everywhere has begun to exceed sustainable rates of biological production. Seen in this light, much of today's wealth is illusion derived from the irreversible conversion of productive natural capital into perishable human-made capital. (Rees, 1991, Draft. p. 9)

The result of unchecked growth has been the following:

Encroaching deserts (6 million ha/year; deforestation (11 million ha/yr of tropical forests alone); acid precipitation and forest dieback (31 million ha damaged in Europe alone); soil oxidation and erosion (26 billion tonnes/yr in excess of formation); toxic contamination of food supplies; draw-down and pollution of water tables; species extinction (1000s/yr); fisheries exhaustion; ozone depletion (5% loss over North America [and probably globally] in the decade to 1990); greenhouse gas build-up (25% increase in atmospheric CO₂ alone); potential climatic change (1.5-4.5C⁰ mean global warming expected by 2040); and rising sea-levels (1.2-2.2 m by 2100) and like trends are the result of either excess consumption or the thermodynamic dissipation of toxic by-products of economic activity into the ecosphere (Data from: Brown et al [Annual]; Brown and Flavin 1988; Canada 1988; WCRP 1990; Schneider 1990; US Environmental Protection Agency [reported in Stevens 1991]). (reported in Rees, 1991, Draft. p. 11)

Continued development and growth has even been perceived as an inevitable fact of life by the president of the World Bank: in a recent speech, Barber Conable suggested that " a basic truth is that development cannot be halted, only directed". (Conable, 1989, p. 15)

ii. The trade policy imperative.

There is a discrepancy between the establishment of environmental policy through international commitments and the denial of the policy through free trade agreements:

In June 1988 both the US and Canada participated actively in a world conference on The Changing Atmosphere: Implications for Global Security. The conference concluded that global atmospheric problems were the product of 'an unintended, uncontrolled, globally pervasive experiment whose ultimate consequences could be second only to a global nuclear war.' and recommended national efforts to reduce carbon emissions by 20 % by the year 2005. yet later that year the Canada-US Free trade Agreement was ratified, entrenching energy and resource policies that are fundamentally at odds with the policy directions endorsed by representatives of the countries at the global warming conference. Under the terms of the free trade agreement; both countries forego, for as long as the agreement stands, the use of regulatory devices that could prevent the development of fossil fuel resources for export. (Shrybman, S. 1990, p. 22)

There is also the compromising of the environment as a result of trade agreements:

It [NAFTA] may limit Canada's or British Columbia's authority to establish relatively tough environmental standards; and it may limit the public's access to decision-making affecting the environment during the negotiation of an agreement and the operation of such an agreement. Therefore, the association urged the government of British Columbia to:

- undertake an environmental assessment (with full opportunity for public access to information and involvement) of the potential impact on British Columbia's environment and environmental decision-making process
 - insist that the federal government do the same; and
 - oppose any trade agreement with Mexico that:
 - i) would impair the province's ability to set relatively high environmental standards;
 - ii) does not specify that failure to establish and enforce reasonable environmental standards is considered to be a trade subsidy; or
 - iii) does not include mechanisms to facilitate public access to information regarding and public participation in, decision-making under the agreement
- (Environmental Law Association , Ministry of Development, Trade and Tourism,1991 p. 23)

iii. The difficulty of translating negotiated agreements into enforceable action. There is a watering down of environmental resolve when action is required. For example a policy "to prevent pollution" frequently becomes translated into action "to reduce or mitigate pollution to the extent feasible and practicable" or "as appropriate" or words to that effect.

Compare, for example, conference statements like

12. The Ministers agreed that, in order to achieve ESID, industry initiatives should include the following objectives:
- a) Adoption of pollution prevention, the approach that prevents pollution at the source in products and manufacturing processes rather than removing it after it has been created (UNIDO, 1992, p. 7)

With operating guidelines like;

"...the thrust of the world Bank's energy work is increasingly to promote development in the energy sectors of developing countries while taking prudent steps to mitigate damage to the environment" (the World Bank, 1989)

2. ENVIRONMENTAL CONCERNS THROUGH INTERNATIONAL DISCUSSIONS

Thus we see that there are a number of discordant themes in the trade/environment area. We do, however, have general agreement on environmental goals.

Indeed, for at least twenty years we have engaged in fairly strong environmental rhetoric.

In June 1972 at the UN (Stockholm) Conference on the Human Environment the following statement was made and principles enunciated:

To achieve this environmental goal will demand the acceptance of responsibility by citizens and communities and by enterprises and institutions at every level, all sharing equitably in common efforts. Individuals in all walks of life as well as organizations in many fields, by their values and the sum of their actions, will shape the world environment of the future. Local and national governments will bear the greater burden for large-scale environmental policy and action within their jurisdictions.

This conference stated the common conviction that:

Principle 1

Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well being and he bears a solemn responsibility to protect and improve the environment for present and future generations...

Principle 2:

The natural resources of the earth, including the air, water, land, flora and fauna and especially representative samples of natural ecosystems, must be safeguarded for the benefit of present and future generations through careful planning or management, as appropriate.

Principle 13:

In order to achieve a more rational management of resources and thus to improve the environment, States should adopt an integrated and co-ordinated approach to their development planning so as to ensure that development is compatible with the need to protect and improve the human environment for the benefit of their population. (Stockholm Conference on the Human Environment, June 1972)

Was this only rhetoric in 1972: empty words whose legacy of inaction we now have to face?

If we are to achieve significant change we must translate our rhetoric into realistic commitments to action.

Now in June of 1992 we are entering into a new world agreement, the "Rio Declaration on Environment and Development" at UNCED, and we have also been grappling with the GATT . [EXPAND] Do these recent international documents address environmental concerns or are these documents still just rhetoric?

UNCED

Indications to date suggest that the discussions at UNCED will not resolve the basic tensions between environmental goals and economic principles [ecological rights and economic privileges]. The Draft text for the RIO Declaration [on the Environment and Development] reveals still far too strong an overhang of orientation to a model of the nation-state and national sovereignty and a reluctance to curb growth or to come up with international environmental standards, with an international court of environmental law, with the enshrinement of the right to a safe environment and to an environmental heritage, or with establishing any form of international environmental governance.

In principle 2. "States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental and developmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction. (2 April 1992, Rio Declaration on Environment and Development]

In principle 3.

The right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations (2 April 1992, Rio Declaration on Environment and Development]

The Prep Com delegates also failed to define explicitly what is meant by development: it can be argued that there is a fundamental distinction between exploitative and humanitarian development. Even the chair of the drafting committee on "Rio Declaration on Environment and Development" continued to perpetuate the simplistic myth that the north is concerned about [only] the environment and the south is concerned about [only] development.

(March 26, 1992, personal communication). Such claims overlook, of course, concerns embodied in declarations such as those in the "Constitutional Law for the Ecological Equilibrium and Protection of the Environment".

(Government of Mexico, 1988)

Not only have the delegates been reluctant to argue for an agreement which limits growth and gives the environment primacy within the sustainable development context, they have also failed to recognize more fundamental non-anthropocentric rights .

Principle 1 Human beings are at the centre of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature.

(2 April 1992, Rio Declaration on Environment and Development]

GATT

Other agreement such as GATT have NOT succeeded in resolving the tension between environmental goals and economic principles [ecological rights and economic privileges] by giving primacy to unimpeded flows of goods and all and ignoring environmental values (pursuit of a sustainable society through conservation of resources and preservation of biodiversity).

GATT is built on the premise of nation states and meaningful national borders. Indeed the whole apparatus of international law has to presume that the relevant actors are national governments.

GATT, as presently interpreted, fails to recognize the "power of governments to implement environmental regulation ..." and brings about "increased economic pressures to reduce environmental standards."

(Comments by Rolfe, C. , "Environmental considerations regarding a possible Mexico-Canada Free trade Agreement," for the West Coast Environmental Law Association, February, 1991).

Each one of the three states involved in the current NAFTA negotiations has attempted to object to other states using high environmental standards to influence trade, and in each case GATT has supported the state seeking to object to high standards:

"The Canadian pulp and paper industry has urged Canada to challenge U.S. laws requiring the use of recycled fibre in newsprint." (Shrybman, 1991, p. 13). The Canadian government has argued that a US. Environmental Protection Agency rule banning the use of all forms of asbestos violates the US. Canada FTA and GATT(Eric Christensen, "Pesticide Regulations and International Trade", Environment, Vol. 32. No. 9, November, 1990, p 45)

The U.S. recently proposed in GATT negotiations that nations be prevented from adopting domestic pesticide standards more stringent than international standards. (Eric Christensen, "Pesticide Regulation and International Trade", Mark Ritchie, "GATT, Agriculture and the Environment: The US Double Zero Plan, " The Ecologist, Vol. 20, No. 6, November, 1990, p. 214.)

The U.S.- based Non-Ferrous Metals Producers Committee is using the U.S.- Canada FTA to support its challenge to Canadian federal and provincial pollution control programs intended to reduce emissions from the Canadian smelting industry. (Shrybman "Selling the Environment Short: an environmental assessment of the first two years of free trade between Canada and the United States", Canadian Environmental Law Association, January, 1991, p. 13)

(cited in Rolfe, Chris, Environmental considerations regarding a possible Mexico-Canada Free trade Agreement for the West Coast Environmental Law Association, February, 1991).

And Mexico ... When in 1990 the U.S. placed an embargo upon tuna products from Mexico, "Mexico complained that the tuna embargo was inconsistent with obligations owed to Mexico under GATT. The September 1991 report of a three-member panel of experts established pursuant to the third-party dispute settlement procedures of GATT determined that the American embargo on Mexican tuna, even though designed to conserve dolphins was inconsistent with the GATT (McDorman, T. 1991, p. 2)

The GATT Panel stated that under the GATT " a contracting party may not restrict imports of a product merely because it originates in a country with environmental policies different from its own". (US. Mexico GATT Panel, 3 September 1991, at paras 2.1-2.2). It is this statement that has been seen as the biggest problem with the "GATT Panel report from an environmentalist point of view. (McDorman, T. 1992, p. 19). However, even the normally environmentally sensitive Nordic countries have indicated that a country is not free 'to require that imported products [be] produced as cleanly abroad as at home." (EFTA members press convening of working party, 82 Focus- GATT Newsletter 2-3 (July 1991) Any other conclusion reached by the GATT Panel would allow certain countries to dictate to others what standards must exist and this would clearly be an invasion of a country's sovereignty. Moreover, as the Panel concluded, any other conclusion would permit trade only between countries with identical regulations and this would amount to a dismantling of

the GATT. (McDorman, T., 1992, p. 19) CHECK CITATIONS PUT IN FOOTNOTES

The unwillingness to "impose standards" was underlined in the Venezuelan intervention when the delegate stated,

Potentially, any nation could thereby justify unilaterally imposing its own social, economic or employment standards as a criterion for accepting imports. Any influential contracting party could effectively regulate the internal environment of others simply by erecting trade barriers based on unilateral environment policies. (The Venezuelan intervention in the U.S.- Mexico GATT Panel, note 3, at para. 4.27).

Rather than considering high standards an "imposition", perhaps we should contemplate high standards as "the expression of collective will". Given the recognized urgency of the global situation, the relevant goal should perhaps be the attaining of the highest tenable common standards so that at least within the North American context through a strongly principled NAFTA... our energy could be directed toward moving upward to these standards rather than in using the GATT to condone and even foster lower standards.

Thus the goal of trade policy and GATT is almost the antithesis of the goal of international agreement on environmental standards.

GATT prohibits discrimination among like products according to their mode of manufacture. An environmental agreement, on the other hand, would like to discriminate strongly in favour of environment—friendly processes and production methods.

In the long run, the only way this can be effectively accomplished is by thorough-going resource pricing and internationalization of all environmental costs. But even then we need strong social ground rules, and government action to create a framework for the system expressing agreed environmental objectives and establishing a regulatory strategy to achieve them.

We must, in other word, assure that trade policy is the servant of our broader [environment] and development goals. Anything less than full environmental pricing must be seen as a trade-distorting subsidy and unacceptable in a liberal trading regime.

The point is to establish clearly some prior international understanding on the primacy of the environmental concern. Protecting the ecological systems on which we all depend must be the foundation for other relationships.

We must cast the requirement of sustainability [sustaining the environment] as the starting point for any negotiations on trade policy or economic activity. "The environment" —particularly the renewable resource base, ecological systems and the gene pool — represents the trust fund and the core asset which has to be preserved throughout all our other activities.

The GATT argument, and the conventional economic argument, is that we have to become rich enough to be able to afford environmental protection, clean up, and a high quality of life.

The sustainable development argument, properly interpreted, seems to me almost exactly contrary. Of course trade liberalization is important and will help to generate higher incomes and a taste for a higher quality environment. But still more important is to achieve the full internalization of resource costs and environmental costs, and thus cut off unsustainable activities before they need to be cleaned up. [Otherwise we will be caught up in a never ending cycle of "rectification of avoidable error".]

Smith (1992) notes that the Tokyo Round introduced explicit reference to the "environment" in setting out possible exceptions to GATT rules. The WWF in a recent paper proposes that such reference should be written explicitly into the GATT itself, and specifically into article xx.

3. POSSIBILITY OF COMMON ENVIRONMENTAL CONCERNS BEING ADDRESSED WITHIN AND THROUGH NAFTA

There has been a lot of commentary on NAFTA thus far; the "environment" has now emerged as a major topic. More generally trade/environment issues are becoming the contemporary challenge. But presently these issues are too much dominated by trade policy and notions of sovereignty.

On the issue of a North American Free Trade Agreement there has already accumulated a great deal of literature [refs. Hart, CD Howe, Murray Smith, Conference volumes, BC consultation documents, etc.]

On the more particular question of trade and environment, there is also beginning to accumulate a vast literature. The issue is being addressed by a GATT working party and OECD studies, and is a major topic for discussion at UNCED. Also a number of reports [IISD conference, GATT report,...]

Does NAFTA become the realization of the dire predictions enunciated by its critics or an opportunity for significant change? Is it possible to summon up the political will to limit growth, to achieve respect for human rights, to

attain social justice, to enshrine ecological rights and to entrench fair and ecologically sound employment?

We need to do a lot more than admit there is a problem (Aridis, 1992)

"All measures taken so far are Band-Aid solutions ... we need real solutions (Carbajal, 1992)

"Future economic growth will compound existing problems unless specific steps are taken to integrate free trade and environmental protection. (Emerson, 1991)

Human rights, labour rights and environment deserve equal treatment with trade rights (Axworthy , 1991,)

Within Canada, United States and Mexico there are laws, policies, and regulations in place which appear to preserve and protect the environment; yet industry is continually in non-compliance with these environmental provisions and government is continually violating its own policies by not enforcing regulations. Without a commitment to achieve enforceable means to attain a limit to growth, and without a commitment to set up an infrastructure to enforce regulations, the current North American situation which is now urgent will become irreversible.

The three countries negotiating the NAFTA all enunciate strong environmental objectives but will all three countries have the political will to ensure that there will be long term preservation and protection of the environment and to insist that such preservation and protection of the environment become an integral part of the NAFTA agreement? Will the government translate their rhetoric into action and ensure that high environmental standards will be enforced?

Mexico: President Salinas has expressed his commitment to the environment in the following way:

" Social liberalism therefore presupposes a State that promotes and encourages private initiative, but has the capability to firmly regulate economic activity and thus prevent the few from taking advantage of the many; a State that channels attention and resources towards meeting Mexicans' basic needs, is respectful of labor rights and union autonomy, and protects the environment." (Carlos Salinas de Gortari, Social Liberalism: Our Path, Mexico: On the Record. Vol. 1. No. 4 (March 1992)

In March 1988, Mexico enacted its General Law for Ecological Equilibrium and Environmental Protection. It is a comprehensive statute designed to ensure that there is an

adequate legal basis for protecting the environment. Indeed, the law is based in large part on US. law and experience.

A central element of the 1988 law is the requirement for environmental impact assessments to be completed on all new investment projects; in both the public and private sectors. To ensure they comply with these requirements, many privately owned companies have already created special environmental offices to analyze the environmental impacts of proposed business activities. (US. government publication] Free trade Negotiations with Mexico Environmental Matters, p. 3)

In 1990.. the Government [of Mexico] shut down all 24 Military industrial installation in the Mexico City area because of potential environmental risks." (Free trade negotiations with Mexico, Environmental matters, US. government publication]

Canada: The Canadian Government has expressed its concern for the environment through the objectives and goals of the "Green Plan".

"Canada's Green plan for a healthy environment is a co-ordinated package of actions to help Canadians work together in partnership to achieve, within this decade, a healthy environment and a sound , prosperous economy.

Canada's Green Plan is second to none in its comprehensive approach to a full range of environmental challenges, funding, accountability and provision for public involvement ,he [Minister of Environment, de Cotret] added.

Canada's Green Plan offers new policies, programs and standards to clean up, protect and enhance our land, water and air, our renewable resources, the Arctic, parks and wildlife, and to reduce waste generation and energy use. it also includes measures to maintain global environmental security, foster environmentally responsible decision -making and improve our emergency preparedness....

Canada's Green Plan is a major step forward of our country. It greatly expands, organizes and focuses our environmental activities. It is an optimistic document about the future of our environment," Mr. de Cotret said. (Government of Canada's release " Federal Government releases environmental green plan" December, 1990.)

Goal

to ensure that citizens today and tomorrow have clean air, water and land essential to sustaining human health and the environment....p. 1

Goal:

The balanced use of strong and effective environmental laws, with market-based approaches for environmental protection. p. 20

INITIATIVES

- Over the next five years, strengthen federal inspection, information exchange and investigation programs to better enforce environmental regulations

In 1991, develop and adopt a comprehensive Code of Environmental Stewardship covering all areas of federal operations and activities. The Code will be complemented by a list of targets on issues ranging from waste generation to contaminated sites clean-up and emission standards, establishment of an office of Environmental Stewardship and measures to ensure that federal purchasing policies and practices integrate environmental considerations.

Implementation of the code will ensure that the activities and operations of the federal government meet or exceed the standards and practices it is recommending for others. (p. 21) Government of Canada's release " Federal Government releases environmental green plan" December, 1990.)

United States:

President Bush has also reiterated the United States' concern for the environment in the following letter to Congress.

"A NAFTA offers an historic opportunity to bring together the energies and talents of their great nations already bound by strong ties of family, business and culture. Prime Minister Mulroney and President Salinas are both leaders of great vision. They believe as do I, that a NAFTA would enhance the well-being of our peoples. They are ready to move forward with us in this unprecedented enterprise. In seeking to expand our economic growth, I am committed to achieving a balance that recognizes the need to preserve the environment, protect worker safety, and facilitate adjustment. ... At my direction, Ambassador Hills and my Economic Policy Council have undertaken an intensive review of our NAFTA objectives and strategy to ensure thorough considerations of the economic, labor and environmental issues raised by you and your colleagues.

Environmental issues in the NAFTA

- Protection of Health and Safety: We will ensure that our right to safeguard the environment is preserved in the NAFTA.

- we will maintain the right to exclude any products that do not meet our health or safety requirements and we will continue to enforce those requirements
- we will maintain our right to impose stringent pesticide, energy conservation, toxic waste, and health and safety standards
- we will maintain our right , consistent with other international obligations, to limit trade in products controlled by international treaties (such as treaties on endangered species or protection of the ozone layer).
- Enhancement and Enforcement of Standards: we will seek a commitment to work together with Mexico to enhance environmental health and safety standards regarding produces and to promote their enforcement
- we will provide for full public and scientific scrutiny of any change to standards before they are implemented.
- we will provide for consultations on enhancing enforcement capability, inspection training, monitoring and verification
- we will consult on national environmental standards and regulations, and will provide an opportunity for the public to submit data on alleged non-compliance. (Response of the Administration to issues raised in connection with the negotiation of a North American Free Trade Agreement. May 1, 1991, p. 5)

The current global ecological crisis is urgent and a serious shift in perspective is necessary if the crisis is to be addressed. This shift in perspective must permeate all future considerations of trade and development related to the environment, health, human rights and social justice. Through this new perspective we must begin perceiving that the ecological preservation and protection must be given primacy and that an integral part of ecological preservation and protection is the correction of presently distorted market mechanisms.

The onus of proof would then shift from those objecting to increased growth and to potentially ecologically unsound interventions having to demonstrate harm to those advocating industrial interventions into the ecosystem having to demonstrate worth and safety.

All three of our countries have spent years enunciating the goal of protecting and preserving the environment. What we now need to do is achieve the highest attainable synthesis of our common goals in the coordination of policy in a North American community, not some lowest common denominator achieved through some process of mechanical compromise [re - integrative bargaining—we need to achieve a bargaining set with sufficient diversity to be able to trade off objectives for one country in one area with goals for others in others.]

Such standards should be related to environmental, social justice, human rights and health provisions. The enshrining of high standards conforms in principle to declared objectives of all three countries. These declared objectives are present not only in legislation from all three countries but also in many international covenants and declarations to which all three countries to varying degrees subscribe [have ratified] . These declared objectives are evident in the preamble to Bill C 13 (Environmental Assessment Review Act) in Canada, in the intent behind the Mexican Constitutional Law for the Ecological Equilibrium and Protection of the Environment and in the Standards set by the U.S. Environmental Protection Agency.

So I would like to ask whether NAFTA can provide a lead in a [more] fruitful direction which achieves a better reconciliation of the differing perspectives, situations and orientations of the different players and at the same time establishes high common standards. Differences in North America are not so great as in the world as a whole, and should be more easily bridged. All three countries share the same lofty rhetoric and indeed the same idealistic -- apparently potent -- legislation. All three fall down badly on implementation, on monitoring and on enforcement.

But all also can see the writing on the wall, and might be ready to turn around the decision structures and alter the priorities in the direction necessary to move towards sustainable development. All may be ready jointly to move against the threats of "jobs blackmail" and "competitiveness blackmail" which have stalled any realistic moves thus far towards adequate pricing of resources or adequate weighting of preservation and future interests.

Working together we may be able to reach meaningful agreements on measures to avoid both "the race to the bottom" in jurisdictional competition and cost associated with the "first over the top" fear. What is needed is strong political will to entrench high common standards and strong enforcement measures to be enshrined in a code of commitments that will be an integral part of the NAFTA.

So I am not here to wring hands about the threat posed by Mexico as a pollution haven in a North American community. (In fact, in many ways all of North America currently could be described as a pollution haven for industry) Rather, on the assumption that we will, for political reasons, have a little time before a final agreement is reached, I want to ask how we can use this lull to translate some of our nice rhetoric into realistic commitments to action within a trade agreement.

4. POTENTIAL ROLE FOR NAMI IN ASSISTING IN THE ESTABLISHING THE HIGHEST ATTAINABLE SYNTHESIS OF OUR COMMON GOALS IN THE COORDINATION OF POLICIES IN A NORTH AMERICAN COMMUNITY

I would also like to suggest that perhaps NAMI could provide leadership in bringing together independent thinkers from all three countries to articulate a broader vision within which the process of economic integration might proceed. A model might be found in an independent group (the so-called "Group of Forty" which met in Stockholm in 1972, and at that time stated the following:

II There is a fundamental conflict between traditional concepts of economic growth and the preservation of the environment. During the last century, uncontrolled continuous growth in the industrial production of environmentally harmful substances and products in some regions of the world has produced dangerous amounts of pollution and has been responsible for an inordinate waste of resources. At the same time, an increasing concentration of economic power and industrial activity has led to a centralization within a few nations of the benefits from the use of the earth's natural resources, and the international political influence that is derived from the control of these resources. It has become clear that more rational distribution of industrial power is necessary if the global problems of environment and society are to be solved. Such a redistribution would achieve at the same time a more equal apportionment of economic and political benefits among nations and individuals.

III The exploitation of third World national and regional resources by foreign corporations, with a consequent outflow of profits from the exploited regions, has resulted in a vast and growing economic disparity among nations and ;a monopoly of industrialized countries over production, energy, technology, information and political power. Complementary to this is the flooding of developing countries with surplus goods and capital, with a resultant distortion of their economies, and the deformation of their environments into monocultures in the interest of further enriching the industrial states. The foreign investments, economic development and technological practices of such industrial states must be curbed and altered by the basic claim of a region's people to control of its resources. Use of these resources, however, should not be dictated ;by the accidents of geography, but must be allocated in such ways as to sere the needs of the world's people in this and future generations. The authority of any region's people over resources and environment includes the obligation to recognize that the environment is an indivisible whole, not subject to political barriers. The environment must be protected from

avoidable pollution, destruction and exploitation from all sources.
(Earth Talk, 1972, p. 170)

Much conventional technology and many of its proliferating products have proved ecologically harmful. We cannot reject technology per se but must restructure and reorient it. Ecologically sound technologies will minimize stresses to the environment. A rapid development of the new approach should be complemented by a technology review and surveillance system to assure that any new technology is ecologically compatible and will be used for human survival and fulfillment. It is not enough to add anti-pollution devices to existing technologies, although this might well be the initial stage of phasing out present polluting technologies. (Earth Talk, An Independent Declaration on the Environment, 1972)

5. CONCLUSION:

1) At the last NAMI meeting in November in Santa Fe, participants indicated that they were struck by "the speed at which the environmental issue has risen to the top of the NAFTA agenda". Throughout the past 20 years there have been numerous declarations related to the environment. These declarations reflect deep international concern, but, once passed, give only momentary relief to the anguish that the international community senses about the environment and then they sink into oblivion. International environmental standards have to be ratified and enforced. NAFTA needs to reflect the strong international principles that have been enunciated by the General Assembly in declarations. Such as "Historical Responsibility of States for the Preservation of Nature for Present and Future Generations (UN Assembly Resolution 35/8 (1080); "Interrelationships between Resources, Environment, People and Development "(UN General Assembly Resolution 36/179. 1981); "International Cooperation in the Field of the Environment" (UN General Assembly 36/192:, 1981); "World Charter for Nature" (UN General Assembly Resolution 37/7, 1981) and the World Conservation Strategy itself.

If we in a North American community are seriously to address the issue of the environment, NAFTA must embody a set of international principles and environmental objectives that can explicitly override or supersede the trade imperatives which otherwise drive our economic relationships.

2. As part of its role of "exploring ideas for increased cooperation among the peoples of the North American continent", NAMI — itself an independent/

informal community of commentators — should promote participation in a series of informal tripartite non-governmental consultations to establish a synthesis of high standards and an infrastructure to ensure that these standards are enforced.

3. Beyond agreed legislative standards, however, we must look to changing the underlying attitudes and values which drive economic decisions. We must work towards a new perspective or outlook for consumers and producers, where both consumers and producers will be socially and environmentally; individually and organizationally responsible. NAMI could make a serious contribution through its educational activities.

Ultimately, we need to move through participation and education to shape not just consumer-driven corporations but principle-driven corporations (the true 'socially responsible' green corporation), and not just interest-based negotiations but value-based consensus. It's a task we can all work on.

Muchas gracias

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SYSTEMIC CONSTRAINTS:

- discrepancy between rhetoric and action
- discrepancy between regulations and enforcement
- Short-term changes as means to end
- False dichotomy between jobs and environment economic pressures and environment
- required or discretionary environmental assessment review coupled with non-arms length research to determine environmental impact
- misplaced onus of proof
- reluctance to cede sovereignty to global governance in urgent situation
- industrial hypocrisy

The British Columbia Federation of Labour (BCFL) also felt that free trade with Mexico would threaten the quality of life enjoyed in British Columbia and jeopardize the province's economic stability. The only advantage will be corporations' access to cheap labour. According to the respondent, Mexico will sell its cheap labour in order to attract foreign capital. The BCFL raised a number of other issues it felt should be addressed as part of the discussion on trilateral free trade: Mexico's low wages, anti-democratic union practices, the lack of environmental regulations and restrictions, unhealthy and dangerous working conditions and unprotected consumers. (Ministry of Development, Trade and Tourism, 1991, p. 27.)

As Cuauhtemoc Cardenas put it to the B.C. Federation of labour last November, "an alternative to the proposed free trade agreement should include a social charter and be based on common standards for labour, social and environmental rights. A different pact would strengthen our internal struggle for democracy and improve the situation of human rights of Mexicans in Mexico and the United States." (Salazar, J. 1991, p. 39)

Environmental problems are probably the most pressing with regard to the health and well-being of the Mexican workers. The Rio Grande, on which hundreds of communities on both sides of the US Mexico border depend for drinking water, is deluged by industrial waste, uranium mining runoff, hazardous spills from trans-border transport, agricultural chemicals and millions of gallons a day of untreated Mexican raw sewage. Lax environmental standards that allow this to happen are also what attracts U.S. and now Canadian companies to the border zones to do business.(Northcotte, 1991, p. 31)

According to the US based Coalition for Justice in the Maquiladoras, the damaging characteristics of the maquiladoras, environmental contamination, unsafe working conditions and the exploitation of workers, have shattered the quality of life in the border communities. " (Northcotte, V. 1991, p. 31)

Although Mexico claims that it will not become an environmental haven, the general industrial perception is that, at least in the short term it will be one. The possibility of Mexico's becoming [or becoming more of] an environmental haven is reiterated in the section on Environmental and Pollution Control in the Ministry of Development and trade and tourism report on BC. consultations with the private sector re.: Mexico, Canada and the United States: the trilateral free trade proposal.

" Environmental regulations on businesses operating in Mexico are expected to be less stringent than they generally are for operations in British Columbia or the United States. At least initially, therefore, Mexico will be more attractive for locating new industries with pollution concerns than in British Columbia or U.S. jurisdictions. This likely will not be significant in the long term but initially it will result in some impact on the British Columbia industry. " (Ministry of Development, Trade and Tourism, June 1991, p. 24)

The new perspective must move away from "pollution concerns" being the concerns that industry has when they have to abide by stringent regulations to being the concerns that the community has about the preservation of the ecosystem. the new perspective must also move away from considering "impact" as being economic impact to considering "impact" as being ecological impact.

[Environmental provisions necessary to prevent either one of the three countries from becoming an environmental pollution haven
Environmental provisions to ensure that the highest tenable principles are in place to ensure that neither one of the three countries becomes an environmental pollution haven.]

As Cuauhtemoc Cardenas put it to the B.C. Federation of labour last November, "an alternative to the proposed free trade agreement should include a social charter and be based on common standards for labour, social and environmental rights. A different pact would strengthen our internal struggle for democracy and improve the situation of human rights of Mexicans in Mexico and the United States." (Salazar, J. 1991, p. 39)

All of our three countries appear to agree on what is needed to be done . Now we must ensure that what needs to be done , is done.

iii. The discrepancy between government and industry rhetoric embodied in laws and regulations and the political will to enforce these regulations.

iv. The discrepancy between institutional rhetoric embodied in publications and the traditional role that is played by the institution (the usurping of the environmental movement to the point of making it redundant)
(see "Eco-development" in Colby, M., Environmental management in development; the evolution of paradigms, 1990, World Bank discussion papers V. 39)

vi. The advocating of self regulation by industry; the moving away from compliance, imposed regulations etc.

QUOTE FROM SESSION AT GLOBE 92

vii. The discarding of the principle of arms-length research in industrial projects

The Royal Bank conveys in Econoscope, that " the new rules [in Mexico] automatically allow 100% foreign ownership of Mexican companies provide that less than US100 million is involved and that certain other criteria are met (for example, the funds must come from abroad and the investment must not be in areas which are already industrialized) (Royal Bank of Canada p 4.)

Note: no mention of safe industry

The move towards a free trade agreement with the United States is seen by the Mexican government as a powerful tool to modernize its economy. Such an alliance leading to a greater integration of Mexico into the North American economy could provide an anchor of stability for Mexico's monetary and fiscal policies. (Royal Bank of Canada p. 4)

....On the plus side, the United States will find that an improved Mexican economy, particularly if it can help to reduce the flow of economic refugees into the United States, and improved co-operation on narcotics and the environment sufficiently compelling reasons to pursue free trade talks. The greater competition offered by Mexican low-cost labour-intensive products had to be kept in perspective. A central tenet of international trade theory is that countries specialize in the production and export of goods according to comparative advantage rather than absolute advantage.

Man developing countries have failed to convert their advantages with respect to plentiful and cheap labour into a comparative advantage because of a number of factors impeding overall labour productivity. (Royal Bank of Canada p. 9)

...For Mexico the comparative advantage offered by low-cost labour is offset to a certain extent by the lower level of manufacturing productivity except perhaps for the most recent manufacturing plants built in the in-bond maquiladora sector). Moreover, Mexico is faced with a number of other problems such as heavy state involvement, absenteeism and poor transportation and communication infrastructures. (Royal Bank of Canada p. 11)

NOTE mention of pollution controls

There are several areas in which Canadian expertise could find a market in Mexico. These include agriculture, fishing, forestry and pollution control. Royal Bank of Canada p. 11
[Note the only mention of anything that is related to the environment is the possibility of a market for Canadians in pollution control.]

On the issue of whether or not 'export protectionism' would grow, one must ask what the multinational corporations want to use the spoke countries for. Do they want them as markets or as production bases? If they want them as export markets, the multinationals would then favor export protections. If, however, they want them as production bases (as is increasingly the case with Mexico) then the multinationals gain no advantage from maintaining export protections. (Weintraub, Sidney, in Hill, R. et al 1991, p. 9)

...the multinational might well prefer an expanding free trade area to rationalize their production. ...U.S. multinationals have distribution systems set up to take advantage of the preferences it provides, they may well want it to continue. (Wonnacott, R. in Hill, R. et al 1991 p. 9)

First, it sets a timetable that lends itself to the 'Yankee trader' attitude that you cannot conclude a deal until the deadline (indeed after the deadline) because if a deal is reached earlier, it is because you have not squeezed enough and ended up leaving money on the table. Mexican negotiators have not experienced this, but they soon will...Second, the fast-track process lends itself to some very damaging side deals between the administration and Congress. In the Canadian case, while approval was given for the process by Congress, the price was a side deal whereby the administration essentially promised to restrict the Canadian forest products industry in any way it could. It did so with trumped-up cases against cedar shakes and shingles and softwood lumber. (Ritchie in Hill, R. et al 1991, p. 11)

To increase Canada's Weight in Settling Trade Disputes

A trilateral resolution of disputes would provide Canada and Mexico together with greater weight in holding the United States to its commitments than either would have alone. But for precisely this reason, it is far from clear that the United States would accept the trilateralizing of dispute settlement. ...Nor is it even clear that Canada would wish to trilateralize dispute settlement, since this could weaken, rather than strengthen, Canada's voice in disputes with the United States where Mexico did not support Canada's position. (Wonnacotte, R.J. "Canada

and the U.S. - Mexico Free Trade Negotiations." Commentary. No.21, September 1990. C.D Howe Institute p. 3)

To Have a Low-Wage Partner in the Free Trade Bloc

" Finally, Canada, like the United States, needs a low-wage partner such as Mexico. Every other participating country in a free-trade bloc has such a partner. Without access to a pool of low-wage labor, Canadian industry will find it more difficult to remain competitive in world markets. However, low wages in Mexico will raise the question: How can Canadian industry compete with cheap Mexican labor? .Wonnacotte, R.J. "Canada and the U.S. - Mexico Free Trade Negotiations." Commentary. No.21, September 1990. C.D Howe Institute. p. 4

Fear of trade with low-wage Mexico

One major fear will be that Canadians cannot risk trading freely with Mexico because of that country's cheap supplies of labour, which will give Mexican goods an overwhelming competitive advantage.If we really had to worry about the competitive advantage conferred by low Mexican wages, then existing Canadian tariffs would provide little relief: if 'sixty-cent-an-hour wages' are a threat, then 'sixty-six cent-an-hour wages' are not much less of a threat. What matters in international competition is ;not how ;much local labor is paid in terms of purchasing power. What matters is how unit costs of production compare internationally at the going exchange rates. (Lipsey, R. "Canada at the U.S. -Mexico Free Trade Dance." Commentary. No.20, August 1990. C.D Howe Institute p. 10).

...Observaciones: El esfuerzo di Gobierno en el combate a la contaminacion comprende acciones que abarcan a todos los sectores de la sociedad, las cuale han sideo aplicadas con gran efectividad gracias al esfuerzo y al desarrollo de la conciencia ecological del la poblacion con su conjunto. (documentation sent by Consulat of Mexico, latest news from April 12 and April 13 related to the environment)

The Government of Mexico's three year environmental plan for the border communities calls for a doubling of the number of inspectors from the Secretariat of Urban Development and Ecology (SEDUE) by January 1992. This represents a four-fold increase from 1989. "By January 1992, The SEDUE team of 200 qualified inspectors will be ensuring that industries in the border communities adhere strictly to Mexico's environmental laws and regulations. Businesses that refuse or cannot comply will be subject to penalties, including having their operations shut down. Information and data systems are being upgraded and decentralized. These improvements will allow for closer monitoring of raw materials and dangerous wastes.

Already, in the last three years, almost 1 million tons of hazardous materials have been prohibited from entering Mexico. Progress can already be seen in the "maquiladora" industries where compliance with regulations on operating licenses , on the declaration of the production of hazardous wastes and on the proper disposal of hazardous wastes has increased dramatically since 1989. All existing maquiladora plants must be entirely re-certified by 1992. All new investment must present environmental impact statements. ("Protecting the Environment Mexico's public works program for the Border Region," undated, and unsigned document)

Mexico and the United States are committed to a cooperative program that will encourage sustained economic growth and environmental protection in both countries. President Bust and president Salinas believe that the two are complementary and must be pursued together. (Free trade Negotiations with Mexico Environmental matters, p. 1)

Mexico has established a good basis for progress on environmental protection and conservation of natural resource. President Salinas states that, while seeking to stimulate foreign investment, Mexico will not accept investments that have been rejected by the United States or Canada for environmental reasons. (U.S. government publication] Free trade Negotiations with Mexico Environmental matters, p. 2)

Convenio con las industrias en el valle de Mexico para combatir la contaminacion ambiental

Por su parte el jefe del Departamento del Distrito Federal, Manuel Camacho Solis, explico las medidas tomadas en el pacto con la industria, entre las que destacan las siguientes;

- establecer la verificación obligatoria de las emisiones industriales, principalmente de las partículas de monóxido de carbono, azufre, óxidos de nitrógeno, plomo, hidrosulfatos y compuestos orgánicos volátiles para lo cual en un plazo máximo de 18 meses, 220 empresas que consumen el 53% del total de combustibles en el valle de México deberán contar con equipos anticontaminantes
- se integra un programa de capacitación de inspectores, auditores y verificadores, así como operadores de calderas y equipos de combustión.
- Se crea un cuerpo especial de inspección y asesoría profesional en la materia, y que actualmente las partículas de origen industrial son las de mayor riesgo para la salud, pues contienen químicos inorgánicos y metales pesados y constituyen el 65% de las partículas tóxicas suspendidas en el aire.

- se otorgara asesoria y equipo tecnologico a la industria para ue instale equipos anticontaminantes
- se desarrollaran politicas de energia (ahorro, consumo racional, entre otras), ademas de que se controlaran y reformularan solventes de pinture
- Se cuenta con un billn de pesos para financiar el control de emisiones, cambiar procesos y descentralizar industrias,. Es importante se? alar que por primera vez en un programa de esta naturaleza intevienen siete bancos comerciales: Multibanco Mercantil d Mexico, Banca Serfin, Banca Confia, Bancomer, Banco Internacional, Multibanco Comermex y Banco BCH, asi como ocho arrendadoras.

Note: Need for sustained monitoring and implementation of regulations cannot only be implemented as a means to an end. Implementation of standards and regulations as a means to an end, without the provisions in place, continue to impose implement these regulations.. relax regulations

- SE continuaran actualizando y desarrolando nors cada vez mas estrictas para la industria, hasta alcanzar reducciones en la emision de paticulas entre un 70 y 90%

...Observaciones: El esfuerzo dl Gobierno en el combate a la contaminacion comprende acciones que abarcan a todos los sectores de la sociedad, las cuale han sideo aplicadas con gran efectividad gracias al esfuerzo y al desarrollo de la conciencia ecological del la poblacion con su conjunto. (documentation sent by Consulat of Mexico, latest news from April 12 and April 13 related to the environment)

Whereas the Government of Canada in demonstrating national leadership should establish national environmental quality objectives, guidelines and codes of practice. (Canadian Environmental protection act, 1988)

Whereas toxic substances, once introduced into the environment, cannot always be contained within geographic boundaries (Canadian Environmental protection act, 1988) section 2. a Government of Canada shall... take both preventative and remedial measures in protecting the environment. (Canadian Environmental protection act, 1988)

In the Department of the Environment Act, under the division of "Powers, duties and functions of the Minister , it is stated that "the duties of the Minister include providing for:

- a) the preservation and enhancement of the quality of the natural environment, including water, air and soil quality; and to

2(i) endeavour to protect the environment from the release of toxic substances". (Canadian Environmental Protection Act, 1988, C 22)

[" deleterious substance means:

a) any substance that, if added to any water would degrade or alter or form part of a process of degradation or alteration of the quality of that water so that it is rendered or is likely to be rendered deleterious to fish or fish habitat or to the use by man of fish that frequent that water

(Fisheries act, statutes of Canada 1976077, c35)

yet raw sewage is still dumped into the waters around Vancouver Island and fish have lesions]

" whereas... no present activity should compromise activities... fulfill the needs of future generations

Based on my discussions with President Salinas, I am convinced that he is firmly committed to strengthened environmental protection, and that there is strong support for this objective among the Mexican people. Because economic growth can and should be supported by enhanced environmental protection, we will develop and implement an expanded program of environmental cooperation in parallel with the free trade talks. ...thus, our efforts toward economic integration will be complemented by expanded programs of cooperation of labour and the environment." (Letter from George Bush to Chairman Rostenkowski and Majority Leader Gephardt; similar letter sent to every member of Congress, May 1, 1991)

Mexico's commitment to environmental protection

- Mexico has no interest in becoming a pollution haven for U.S. companies.
- Mexico's comprehensive environmental law of 1988, which is based on U.S. law and experience, is a solid foundation for tackling its environmental problems.
- All new investments are being held to these higher legal standards and an environmental impact assessment is required to show how they will comply.
- Enforcement has in the past been a key problem, but Mexico's record has been improving dramatically. Since 1989, Mexico has ordered more than 980 temporary and 82 permanent shutdowns of industrial facilities for environmental violations; the budget of SEDUE (Mexico ' EPA) has increased almost eight-fold

Response of the Administration to issues raised in connection with the negotiation of a north American Free trade agreement. May 1, 1991)

Direction to proceed is spelled out in McDorman analysis: need international agreement on priority for environmental objectives sufficiently strong that it formally and explicitly over-rides GATT where necessary.

Want to look closely at the US_Mexico GATT panel report as outlined by McDorman

This shift in perspective must move away from perceiving that states have "the sovereign right to exploit their resources pursuant to their own environmental and developmental policies [and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other states or of areas beyond the limits of national jurisdiction." (Principle 2 in the Rio Declaration on Environment and Development)] . This shift in perspective must move away from perceiving that states have " the right to development [being fulfilled] so as to equitable meet developmental and environmental needs of present and future generations" (Principle 3 in the Rio Declaration on Environment and Development).

... few clauses from existing RIO declaration draft about prohibitions against use of environmental regulations as trade barriers, etc.

FIND

Let's recap briefly the steps already taken in the two major countries (US story is perhaps well enough known anyway.)

Mexico ..citation for Salinas

ref. to NAMI doc and related refs

Major steps

goals explicitly states "his goal is not to attract polluting industries but to substitute clean ones"

Canada SOE report

Green plan

Environmental Assessment Review Act.

[to look at different sources of conflict associated with scarcity of exhaustible resources and struggles over shares of renewable resource in which everyone is racing to be first to harvest stocks; in which no one is investing enough to assure any kind of sustainability of renewability]

The advocating of a new found role of international governance for industry as a potential replacement for government.

Ramphal at Globe 92 described the new found role as " enlightened long-term thinking": He described the newly found enlightenment in the following way:

The private sector has been traditionally regarded as trammelled by short-term profit considerations. Enlightened long-term thinking was a preserve of the State, of governments. Today the greatest flaw in governance at the national level is the ascendancy of the short-term in the political calculus, as leaders respond frenetically to democratic pressures for immediate results. It is the private sector, and particularly the larger

enterprises within it, that have the intellectual space to think beyond tomorrow. ... (Ramphal, S. 1992)

iv. The revealing of the true intent by industry in in-house documents.????
from statements from industry about industry's perceived advantages of tripartite free trade.

McCrae, Jim World Bank Environmental division CHECK
"dirty technology belongs in third world"
Basle convention related to third world dumping

He reports that the panel found that "the obligations owed by the US to Mexico under GATT prohibited use of trade measures to deal with such environmental issues [i.e. those having effect beyond the borders of the country adopting the trade measures]. This conclusion flows from the fact that GATT may regulate conditions around product, but not around means of production, and from the view that it is still possible to talk about the actions of a particular country affecting its environment. With these orientations, GATT can conclude that "Countries cannot look behind a good to determine if the production or manufacturing process was environmentally friendly. Or in other words countries cannot impose their environmental standards or regulations on other countries by boycotting their goods. "to a certain extent, this is what comparative advantage is all about: differences in their environment of production, including the environment of government regulations".

If this is true, how do we deal responsibly with environmental concerns in an emerging North American community in which sovereign communities still wish to pursue their own vision of interpersonal and inter-generational equity and sustainability?

The point is to establish clearly the prior international understanding on the primacy of the environmental concern. Protecting the ecological systems on which we all depend must be the foundation for other relationships. We must cast the requirements of sustainability [sustaining the environment] as the starting point for any negotiations on trade policy or economic activity. "The environment" —particularly the renewable resource base, the ecological systems and the gene pool — represents the trust fund and the core asset — which has to be preserved throughout all our other activities.

() **THAT** in February 1st, I contacted the Ministry of Environment and Forestry, to ask about the enforcement of section 59 and 60 of the Forest Act. I then went through Freedom of Information and was told that it would take 150 hours to respond to my question about how often the act had been enforced,

and that I would have to pay 30 per hour research after a given number of hours. I realized the discriminatory nature of the Freedom of information Act because if the information was readily available there would be little cost; however, if the information should have been available but was not, and had to be generated then only those with money could pay for the number of hours of work to generate the information. I was told that I could file a subsequent complaint to the Freedom of Information Commissioner, and argue that the information that I was seeking should have been compiled. I sent the letter. I was then contacted about reducing my request to how often have the sections in the Act been applied to MacMillan Bloedel within a given year.

I was particularly astonished that the representative in the Department of Environment, who had been responsible for implementing environmental regulations for twenty years, did not even know that the sections existed.

EXHIBIT

1992 FEBRUARY 1
Editor

In response to the invoking by McMillan Bloedel and Fletcher Challenge of a little-known appeal procedure in the Forest Act, I would like to suggest that the Minister of Forests invoke two also little-known provisions in the Forest Act: Section 59 and section 60 which are related to the suspension of rights

59 (1) subject to section 60 and in addition to any penalty under this Act or the regulations, the regional manager or district manager may suspend, in whole or in part, rights in an agreement where its holder

a) made a material misrepresentation, omission or misstatement of fact in his application for the agreement or in information furnished with it:

60 The regional manager, a district manager or a forest officer authorized by either of them may, by written order and without notice suspend in whole or part the rights under an agreement where he believes on reasonable and probable grounds that its holder has failed to comply with the Act or the regulations, and that the failure of performance or compliance is causing or may imminently cause serious damage to the natural environment.

At the 1990 NDP Convention, the delegates, through resolutions related to sustainability, unanimously decried the Social Credit Government for "destroying irreplaceable landscapes, disrupting wildlife, ruining watersheds and damaging fisheries" (1990, p. 11, "Towards a sustainable Future.")

The culprit was identified as the sanctioning of non-ecologically sound logging practices; the victim; the public's present and future ecological rights.

Non-ecologically sound logging practices, prevalent during the Social Credit administration are currently allowed to persist in the NDP administration, and may continue while the newly formed Commission deliberates.

Four months ago, members of the ERA Ecological Rights Association filed a complaint with the Ombudsman's office about the violation of ecological rights brought about by the Ministry of Forests non-compliance with the Forest

Act. The Ombudsman's office is currently investigating how the non-compliance or unfair compliance by the Ministry of Forests has compromised ecological rights.

For years dedicated environmentalists and concerned foresters in different regions of B.C have been compiling data on specific instances of non-compliance to the Forest Act. For this complaint we are gathering evidence from throughout the province to demonstrate the continual destruction through non-ecologically sound logging practices of the natural environment, and to demonstrate examples of misrepresentation which may have been used to support the granting of permission to use non-ecologically sound logging practices.

Non-ecologically sound logging practices have destroyed and continue to destroy the natural environment.

Yet, the Minister of forests has failed and continues to fail to invoke section 60 of the Forest Act which allows for suspension of licenses.

"Where the holder has failed to perform an obligation to be performed by him under the agreement or has failed to comply with this Act or the regulations, and that the failure of performance or compliance is causing or may imminently cause serious damage to the natural environment." (Section 60 Suspension by officer, Forest Act, 1988).

Non- ecologically sound logging practices have been condoned even though permission to engage in non-ecologically sound logging practices may have been obtained through misrepresentation of information to the public. During the public viewings, often companies give the impression through visual displays, which are more accessible to the public than the actual display of the Management and working plans, that the companies will be engaging in ecologically sound practices. In the visual displays there is often "the-protected-fawn-in-the-forest," "the-single-logger-in-a-fully-treed-forest," and the "the-simulation-of-a-small-clear-cut." The public is left with the impression that ecologically sound logging practices will be engaged in.

Yet, the Ministry of Forest fails to invoke section 59 which allows the district manager" to suspend, in whole or in part, rights in an agreement where its holder a) made a material misrepresentation..."(Section 59, Suspension and Cancellation, Forest Act.

One of the outcomes of the investigation by the ombudsman's office hopefully will affect the compensation to companies when sections of the TFL are permanently set aside for wilderness.

Joan Russow
Ecological Rights Association
598-2740

() **THAT** in Feb 1992, I made a presentation of an analysis of the Earth Charter at the Path to Brazil Conference in Victoria. In this presentation, I documented the discrepancy between the positions of various member states of the UN in the context of the draft proposal prepared for the Royal Society of Canada.

1992 I participated in the Municipal committee that instituted "Car free/clean air free day in Victoria (1992) to co-incide with the opening of UNCED on June 2, and design posters to promote "Car free/clean air day in Victoria (1992) Conference.

In this presentation:

() **THAT** in March 1992 I drafted the Old Growth Proclamation based on the World Charter of Nature; this Proclamation was used by the Clayoquot Sound Protesters to counter the Injunction

() I prepared an ideagraph of an Earth charter, compiling the strongest statements drawn from the charter that I had made for the Royal Society, the Pathway to Brazil and the Charter of ecological Rights.

EXHIBIT ideagraph

() THAT in 1992 in March, I co-author of a paper with Rod Dobell for his presentation to NAMI

"La nueva ecologia en Norte America"

"NAFTA, a "realization of dire predictions" or an opportunity for significant change: environmental implications."

Dobell, R. and J. Russow

MARCH 30, 1992

Paper presented by Rod Dobell
at the NAMI meeting, April, 1993

WORKING PAPER: DRAFT
INTRODUCTION

Un dia, espero estar capable de comunicar en Espanol. Hasta esto momento, yo quiero decir solamente algunas palabras en Espanol para expressar mi gusto en estar aqui in Mexico y en assistir a questa conferencia.

When we look at the way human populations now act and interact as part of ecological structures, it is probably not unreasonable to treat North

America as an ecosystem in itself, linked together both through the dynamics of natural system and through economic relationships.

The thread of my reasoning here in this brief paper is very simple:

1. There have been a lot of concerns expressed about NAFTA as a threat to social goals, including environmental goals, in all three countries.
2. All three countries of North America have expressed their environmental objectives very clearly (although implementation often does not follow), and want to see them respected in trade arrangements.
3. The GATT tradition is different. From experience with GATT and other trade deals, it seems clear that environmental objectives have to be explicitly addressed within NAFTA.
4. NAMI might help in educational efforts and in animating a broad consensus on strong environmental provisions within NAFTA"

But the problem is being approached from the wrong direction at the moment. The difficulty is that NAFTA negotiations are in the hands of trade policy people. These policy people work from a very strong tradition of economic analysis, and they are out to slay a particular dragon—the dragon of *protectionism*.

This view of the problem sees the solution as writing "trade rules governing environmental measures".

But I want to argue that this whole approach is backwards. The starting point is the need to assure the integrity of the ecological systems of the planet. At our scales of population and economic activity, it is no joke to say that the life-support systems on which we all depend are truly at risk.

We must therefore shape our trade policy, like all our other economic policy, within some over-riding agreed framework of environmental ground rules.

Therefore, I want to talk about trade and environment questions involving the three countries of North America. In particular, I should like to discuss briefly with you the way in which the conflicts between trade values (the goal of unimpeded flows of goods and all) and environmental values (pursuit of a sustainable society through conservation of resources and preservation of biodiversity) might be resolved within the emerging North American community.

I start from the premise that economic integration is occurring, and will continue. The domain of the economy is now the globe (even if the domain of the polity still reflects much smaller communities). It is not desirable or sensible to fight this process — the big cliché of the Canada-US FTA debate

(that "the status quo is not an option") is surely equally correct in relation to the on-going NAFTA negotiations. We can, however, and — in my view we must, however, resist the tendency toward unlimited growth and the perceived mandate for development even at the expense of social or environmental goals. Economic integration will occur but needs to be channeled and guided by some agreed synthesis of common high environmental goals.

In all our three countries citizens and organizations are concerned about the apparently unquestioned imperative to grow, the relentless destruction of the environment, rapidly increasing loss of ecological heritage, and increasing disenfranchisement and poverty. Citizens are also concerned about arriving at solutions to these problems.

1. CONCERN ABOUT NAFTA

These concerned citizens look with trepidation on the proposed trilateral trade agreement. For different reasons they see it as a threat:

i. The growth imperative.

There is reluctance in political and industrial circles to address the need to limit growth and over-consumption, and a concomitant reluctance to acknowledge the implications, both social and economic of violating those limits.

In the process of wrapping the semantic capsule 'sustainable development' around this potentially unpalatable two sided world-view was born the genteel ploy of emphasizing the growth imperative for consumption in the South and the industrial communities comfortable with "business (much) as usual"; while focusing on sustainability for purposes of dealing with the increasingly strident and influential concerns of environmental movements and scientific bodies documenting the possible dangers of global change. Thus, there remains latent much of the old Stockholm debate between environmentalists and industrialist in the North and between developed nations of the North and developing nations of the South. (Dobell, 1992, p. 4)

Since our economies are growing and the ecosystems within which they are embedded are not, the consumption of resources everywhere has begun to exceed sustainable rates of biological production. Seen in this light, much of today's wealth is illusion derived from the irreversible conversion of productive natural capital into perishable human-made capital. (Rees, 1991, Draft. p. 9)

The result of unchecked growth has been the following:

Encroaching deserts (6 million ha/year; deforestation (11 million ha/yr of tropical forests alone); acid precipitation and forest dieback (31 million ha damaged in Europe alone); soil oxidation and erosion (26 billion tonnes/yr in excess of formation; toxic contamination of food supplies; draw-down and pollution of water tables; species extinction (1000s/yr); fisheries exhaustion; ozone depletion (5% loss over North America [and probably globally] in the decade to 1990); greenhouse gas build-up (25% increase in atmospheric CO₂ alone); potential climatic change (1.5-4.5C⁰ mean global warming expected by 2040); and rising sea-levels (1.2-2.2 m by 2100) and like trends are the result of either excess consumption or the thermodynamic dissipation of toxic by-products of economic activity into the ecosphere (Data from: Brown et al [Annual]; Brown and Flavin 1988; Canada 1988; WCRP 1990; Schneider 1990; US Environmental Protection Agency [reported in Stevens 1991]). (reported in Rees, 1991, Draft. p. 11)

Continued development and growth has even been perceived as an inevitable fact of life by the president of the World Bank: in a recent speech, Barber Conable suggested that " a basic truth is that development cannot be halted, only directed". (Conable, 1989, p. 15)

ii. The trade policy imperative.

There is a discrepancy between the establishment of environmental policy through international commitments and the denial of the policy through free trade agreements:

In June 1988 both the US and Canada participated actively in a world conference on The Changing Atmosphere: Implications for Global Security. The conference concluded that global atmospheric problems were the product of 'an unintended, uncontrolled, globally pervasive experiment whose ultimate consequences could be second only to a global nuclear war.' and recommended national efforts to reduce carbon emissions by 20 % by the year 2005. yet later that year the Canada-US Free trade Agreement was ratified, entrenching energy and resource policies that are fundamentally at odds with the policy directions endorsed by representatives of the countries at the global warming conference. Under the terms of the free trade agreement; both countries forego, for as long as the agreement stands, the use of regulatory devices that could prevent the development of fossil fuel resources for export. (Shrybman, S. 1990, p. 22)

There is also the compromising of the environment as a result of trade agreements:

It [NAFTA] may limit Canada's or British Columbia's authority to establish relatively tough environmental standards; and it may limit the public's access to decision-making affecting the environment during the negotiation of an agreement and the operation of such an agreement. Therefore, the association urged the government of British Columbia to:

- undertake an environmental assessment (with full opportunity for public access to information and involvement) of the potential impact on British Columbia's environment and environmental decision-making process
 - insist that the federal government do the same; and
 - oppose any trade agreement with Mexico that:
 - i) would impair the province's ability to set relatively high environmental standards;
 - ii) does not specify that failure to establish and enforce reasonable environmental standards is considered to be a trade subsidy; or
 - iii) does not include mechanisms to facilitate public access to information regarding and public participation in, decision-making under the agreement
- (Environmental Law Association , Ministry of Development, Trade and Tourism,1991 p. 23)

iii. The difficulty of translating negotiated agreements into enforceable action. There is a watering down of environmental resolve when action is required. For example a policy "to prevent pollution" frequently becomes translated into action "to reduce or mitigate pollution to the extent feasible and practicable" or "as appropriate" or words to that effect.

Compare, for example, conference statements like

12. The Ministers agreed that, in order to achieve ESID, industry initiatives should include the following objectives:

- a) Adoption of pollution prevention, the approach that prevents pollution at the source in products and manufacturing processes rather than removing it after it has been created (UNIDO, 1992, p. 7)

with operating guidelines like-

the thrust of the world Bank's energy work is increasingly to promote development in the energy sectors of developing

countries while taking prudent steps to mitigate damage to the environment" (the World Bank, 1989)

2. ENVIRONMENTAL CONCERNS THROUGH INTERNATIONAL DISCUSSIONS

Thus we see that there are a number of discordant themes in the trade/environment area. We do, however, have general agreement on environmental goals.

Indeed, for at least twenty years we have engaged in fairly strong environmental rhetoric.

In June 1972 at the UN (Stockholm) Conference on the Human Environment the following statement was made and principles enunciated:

To achieve this environmental goal will demand the acceptance of responsibility by citizens and communities and by enterprises and institutions at every level, all sharing equitably in common efforts. Individuals in all walks of life as well as organizations in many fields, by their values and the sum of their actions, will shape the world environment of the future. Local and national governments will bear the greater burden for large-scale environmental policy and action within their jurisdictions.

This conference stated the common conviction that:

Principle 1

Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well being and he bears a solemn responsibility to protect and improve the environment for present and future generations...

Principle 2:

The natural resources of the earth, including the air, water, land, flora and fauna and especially representative samples of natural ecosystems, must be safeguarded for the benefit of present and future generations through careful planning or management, as appropriate

Principle 13:

In order to achieve a more rational management of resources and thus to improve the environment, States should adopt an integrated and co-ordinated approach to their development planning so as to ensure that development is compatible with the need to protect and improve the human environment for the benefit of their population. (Stockholm Conference on the Human Environment, June 1972)

Was this only rhetoric in 1972: empty words whose legacy of inaction we now have to face?

If we are to achieve significant change we must translate our rhetoric into realistic commitments to action.

Now in June of 1992 we are entering into a new world agreement, the "Rio Declaration on Environment and Development" at UNCED, and we have also been grappling with the GATT . [EXPAND] Do these recent international documents address environmental concerns or are these documents still just rhetoric?

UNCED

Indications to date suggest that the discussions at UNCED will not resolve the basic tensions between environmental goals and economic principles [ecological rights and economic privileges]. The Draft text for the RIO Declaration [on the Environment and Development] reveals still far too strong an overhang of orientation to a model of the nation-state and national sovereignty and a reluctance to curb growth or to come up with international environmental standards, with an international court of environmental law, with the enshrinement of the right to a safe environment and to an environmental heritage, or with establishing any form of international environmental governance.

In principle 2. "States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental and developmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction. (2 April 1992, Rio Declaration on Environment and Development]

In principle 3.

The right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations (2 April 1992, Rio Declaration on Environment and Development]

The Prep Com delegates also failed to define explicitly what is meant by development: it can be argued that there is a fundamental distinction between exploitative and humanitarian development. Even the chair of the drafting committee on "Rio Declaration on Environment and Development" continued to perpetuate the simplistic myth that the north is concerned about [only] the environment and the south is concerned about [only] development. (March 26, 1992, personal communication). Such claims overlook, of course, concerns embodied in declarations such as those in the "Constitutional Law

for the Ecological Equilibrium and Protection of the Environment"
(Government of Mexico, 1988)

Not only have the delegates been reluctant to argue for an agreement which limits growth and gives the environment primacy within the sustainable development context, they have also failed to recognize more fundamental non-anthropocentric rights.

Principle 1 Human beings are at the centre of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature.

(2 April 1992, Rio Declaration on Environment and Development]

GATT

Other agreement such as GATT have NOT succeeded in resolving the tension between environmental goals and economic principles [ecological rights and economic privileges] by giving primacy to unimpeded flows of goods and all and ignoring environmental values (pursuit of a sustainable society through conservation of resources and preservation of biodiversity).

GATT is built on the premise of nation states and meaningful national borders. Indeed the whole apparatus of international law has to presume that the relevant actors are national governments.

GATT, as presently interpreted, fails to recognize the "power of governments to implement environmental regulation ..." and brings about "increased economic pressures to reduce environmental standards."
(Comments by Rolfe, C. , "Environmental considerations regarding a possible Mexico-Canada Free trade Agreement," for the West Coast Environmental Law Association, February, 1991).

Each one of the three states involved in the current NAFTA negotiations has attempted to object to other states using high environmental standards to influence trade, and in each case GATT has supported the state seeking to object to high standards:

"The Canadian pulp and paper industry has urged Canada to challenge U.S. laws requiring the use of recycled fibre in newsprint." (Shrybman, 1991, p. 13). The Canadian government has argued that a US. Environmental Protection Agency rule banning the use of all forms of asbestos violates the US. Canada FTA and GATT(Eric Christensen, "Pesticide Regulations and International Trade", Environment, Vol. 32. No. 9, November, 1990, p 45)

The U.S. recently proposed in GATT negotiations that nations be prevented from adopting domestic pesticide standards more stringent than international standards. (Eric Christensen, "Pesticide Regulation and

International Trade", Mark Ritchie, "GATT, Agriculture and the Environment: The US Double Zero Plan, " The Ecologist, Vol. 20, No. 6, November, 1990, p. 214.)

The U.S.- based Non-Ferrous Metals Producers Committee is using the U.S.- Canada FTA to support its challenge to Canadian federal and provincial pollution control programs intended to reduce emissions from the Canadian smelting industry. (Shrybman "Selling the Environment Short: an environmental assessment of the first two years of free trade between Canada and the United States", Canadian Environmental Law Association, January, 1991, p. 13)

(cited in Rolfe, Chris, Environmental considerations regarding a possible Mexico-Canada Free trade Agreement for the West Coast Environmental Law Association, February, 1991).

And Mexico ... When in 1990 the U.S. placed an embargo upon tuna products from Mexico, "Mexico complained that the tuna embargo was inconsistent with obligations owed to Mexico under GATT. The September 1991 report of a three-member panel of experts established pursuant to the third-party dispute settlement procedures of GATT determined that the American embargo on Mexican tuna, even though designed to conserve dolphins was inconsistent with the GATT (McDorman, T. 1991, p. 2)

The GATT Panel stated that under the GATT " a contracting party may not restrict imports of a product merely because it originates in a country with environmental policies different from its own". (US. Mexico GATT Panel, 3 September 1991, at paras 2.1-2.2). It is this statement that has been seen as the biggest problem with the "GATT Panel report from an environmentalist point of view. (McDorman, T. 1992, p. 19). However, even the normally environmentally sensitive Nordic countries have indicated that a country is not free 'to require that imported products [be] produced as cleanly abroad as at home." (EFTA members press convening of working party, 82 Focus- GATT Newsletter 2-3 (July 1991) Any other conclusion reached by the GATT Panel would allow certain countries to dictate to others what standards must exist and this would clearly be an invasion of a country's sovereignty. Moreover, as the Panel concluded, any other conclusion would permit trade only between countries with identical regulations and this would amount to a dismantling of the GATT. (McDorman, T., 1992, p. 19) CHECK CITATIONS PUT IN FOOTNOTES

The unwillingness to "impose standards" was underlined in the Venezuelan intervention when the delegate stated,

“Potentially, any nation could thereby justify unilaterally imposing its own social, economic or employment standards as a criterion for accepting imports. Any influential contracting party could effectively regulate the internal environment of others simply by erecting trade barriers based on unilateral environment policies.” (The Venezuelan intervention in the U.S.- Mexico GATT Panel, note 3, at para. 4.27).

Rather than considering high standards an "imposition", perhaps we should contemplate, high standards as "the expression of collective will" . Given the recognized urgency of the global situation, the relevant goal should perhaps be the attaining of the highest tenable common standards so that at least within the North American context, through a strongly principled NAFTA, our energy could be directed toward moving upward to these standards rather than in using the GATT to condone and even foster lower standards.

Thus the goal of trade policy and GATT is almost the antithesis of the goal of international agreement on environmental standards.

GATT prohibits discrimination among like products according to their mode of manufacture. An environmental agreement, on the other hand, would like to discriminate strongly in favour of environment—friendly processes and production methods.

In the long run, the only way this can be effectively accomplished is by thorough-going resource pricing and internationalization of all environmental costs. But even then we need strong social ground rules, and government action to create a framework for the system expressing agreed environmental objectives and establishing a regulatory strategy to achieve them.

We must, in other word, assure that trade policy is the servant of our broader [environment] and development goals. Anything less than full environmental pricing must be seen as a trade-distorting subsidy and unacceptable in a liberal trading regime.

The point is to establish clearly some prior international understanding on the primacy of the environmental concern. Protecting the ecological systems on which we all depend must be the foundation for other relationships. We must cast the requirement of sustainability [sustaining the environment] as the starting point for any negotiations on trade policy or economic activity. "The environment" —particularly the renewable resource base, ecological systems and the gene pool — represents the trust fund and the core asset which has to be preserved throughout all our other activities.

The GATT argument, and the conventional economic argument, is that we have to become rich enough to be able to afford environmental protection, clean up, and a high quality of life.

The sustainable development argument, properly interpreted, seems to me almost exactly contrary. Of course trade liberalization is important and will help to generate higher incomes and a taste for a higher quality environment. But still more important is to achieve the full internalization of resource costs and environmental costs, and thus cut off unsustainable activities before they need to be cleaned up. [Otherwise we will be caught up in a never ending cycle of "rectification of avoidable error".]

Smith (1992) notes that the Tokyo Round introduced explicit reference to the "environment" in setting out possible exceptions to GATT rules. The WWF in a recent paper proposes that such reference should be written explicitly into the GATT itself, and specifically into article xx.

3. POSSIBILITY OF COMMON ENVIRONMENTAL CONCERNS BEING ADDRESSED WITHIN AND THROUGH NAFTA

There has been a lot of commentary on NAFTA thus far; the "environment" has now emerged as a major topic. More generally trade/environment issues are becoming the contemporary challenge. But presently these issues are too much dominated by trade policy and notions of sovereignty.

On the issue of a North American Free Trade Agreement there has already accumulated a great deal of literature [refs. Hart, CD Howe, Murray Smith, Conference volumes, BC consultation documents, etc.]

On the more particular question of trade and environment, there is also beginning to accumulate a vast literature. The issue is being addressed by a GATT working party and OECD studies, and is a major topic for discussion at UNCED. Also a number of reports [IISD conference, GATT report,...]

Does NAFTA become the realization of the dire predictions enunciated by its critics or an opportunity for significant change? Is it possible to summon up the political will to limit growth, to achieve respect for human rights, to attain social justice, to enshrine ecological rights and to entrench fair and ecologically sound employment?

"We need to do a lot more than admit there is a problem." (Aridis, 1992)

"All measures taken so far are Band-Aid solutions ... we need real solutions" (Carbajal, 1992)

"Future economic growth will compound existing problems unless specific steps are taken to integrate free trade and environmental protection. (Emerson, 1991)

Human rights, labour rights and environment deserve equal treatment with trade rights" (Axworthy , 1991,)

Within Canada, United States and Mexico there are laws, policies, and regulations in place which appear to preserve and protect the environment; yet industry is continually in non-compliance with these environmental provisions and government is continually violating its own policies by not enforcing regulations. Without a commitment to achieve enforceable means to attain a limit to growth and without a commitment to set up an infrastructure to enforce regulations, the current North American situation which is now urgent will become irreversible.

The three countries negotiating the NAFTA all enunciate strong environmental objectives but will all three countries have the political will to ensure that there will be long term preservation and protection of the environment and to insist that such preservation and protection of the environment become an integral part of the NAFTA agreement? Will the government translate their rhetoric into action and ensure that high environmental standards will be enforced?

Mexico: President Salinas has expressed his commitment to the environment in the following way:

" Social liberalism therefore presupposes a State that promotes and encourages private initiative, but has the capability to firmly regulate economic activity and thus prevent the few from taking advantage of the many; a State that channels attention and resources towards meeting Mexicans' basic needs, is respectful of labor rights and union autonomy, and protects the environment." (Carlos Salinas de Gortari, Social Liberalism: Our Path, Mexico: On the Record. Vol. 1. No. 4 (March 1992)

"In March 1988, Mexico enacted its General Law for Ecological Equilibrium and Environmental Protection. It is a comprehensive statute designed to ensure that there is an adequate legal basis for protecting the environment. Indeed, the law is based in large part on US. law and experience. A central element of the 1988 law is the requirement for environmental impact assessments to be completed on all new investment projects, in both the public and private sectors. To ensure they comply with these requirements, many privately owned companies have already created special environmental

offices to analyze the environmental impacts of proposed business activities." (US. government publication] Free trade Negotiations with Mexico Environmental Matters, p. 3)

"In 1990.. the Government [of Mexico] shut down all 24 Military industrial installation in the Mexico City area because of potential environmental risks." (Free trade negotiations with Mexico, Environmental matters, US. government publication]

Canada: The Canadian Government has expressed its concern for the environment through the objectives and goals of the "Green Plan".

"Canada's Green plan for a healthy environment is a co-ordinated package of actions to help Canadians work together in partnership to achieve, within this decade, a healthy environment and a sound , prosperous economy. Canada's Green Plan is second to none in its comprehensive approach to a full range of environmental challenges, funding, accountability and provision for public involvement ," he [Minister of Environment, de Cotret] added.

Canada's Green Plan offers new policies, programs and standards to clean up, protect and enhance our land, water and air, our renewable resources, the Arctic, parks and wildlife, and to reduce waste generation and energy use. It also includes measures to maintain global environmental security, foster environmentally responsible decision -making and improve our emergency preparedness....

Canada's Green Plan is a major step forward of our country. It greatly expands, organizes and focuses our environmental activities. It is an optimistic document about the future of our environment," Mr. de Cotret said. (Government of Canada's release " Federal Government releases environmental green plan December, 1990.)

Goal

to ensure that citizens today and tomorrow have clean air, water and land essential to sustaining human health and the environment....p. 1

Goal

the balanced use of strong and effective environmental laws, with market-based approaches for environmental protection. p. 20

INITIATIVES

- Over the next five years, strengthen federal inspection, information exchange and investigation programs to better enforce environmental regulations

In 1991, develop and adopt a comprehensive Code of Environmental Stewardship covering all areas of federal

operations and activities. The Code will be complemented by a list of targets on issues ranging from waste generation to contaminated sites clean-up and emission standards, establishment of an office of Environmental Stewardship and measures to ensure that federal purchasing policies and practices integrate environmental considerations. Implementation of the code will ensure that the activities and operations of the federal government meet or exceed the standards and practices it is recommending for others." (p. 21) Government of Canada's release "Federal Government releases environmental green plan" December, 1990.)

United States:

President Bush has also reiterated the United States' concern for the environment in the following letter to Congress:

"A NAFTA offers an historic opportunity to bring together the energies and talents of these great nations, already bound by strong ties of family, business and culture. Prime Minister Mulroney and President Salinas are both leaders of great vision. They believe as do I, that a NAFTA would enhance the well-being of our peoples. They are ready to move forward with us in this unprecedented enterprise. In seeking to expand our economic growth, I am committed to achieving a balance that recognizes the need to preserve the environment, protect worker safety, and facilitate adjustment. At my direction, Ambassador Hills and my Economic Policy Council have undertaken an intensive review of our NAFTA objectives and strategy to ensure thorough considerations of the economic, labor and environmental issues raised by you and your colleagues."

Environmental issues in the NAFTA

- **Protection of Health and Safety:** We will ensure that our right to safeguard the environment is preserved in the NAFTA
 - we will maintain the right to exclude any products that do not meet our health or safety requirements and we will continue to enforce those requirements
 - we will maintain our right to impose stringent pesticide, energy conservation, toxic waste, and health and safety standards
 - we will maintain our right, consistent with other international obligations, to limit trade in products controlled by international treaties (such as treaties on endangered species or protection of the ozone layer).
- **Enhancement and Enforcement of Standards:** we will seek a commitment to work together with Mexico to enhance

environmental health and safety standards regarding produces and to promote their enforcement

- we will provide for full public and scientific scrutiny of any change to standards before they are implemented.

-we will provide for consultations on enhancing enforcement capability, inspection training, monitoring and verification

- we will consult on national environmental standards and regulations, and will provide an opportunity for the public to submit data on alleged non-compliance. (Response of the Administration to issues raised in connection with the negotiation of a North American Free Trade Agreement. May 1, 1991, p. 5)

The current global ecological crisis is urgent and a serious shift in perspective is necessary if the crisis is to be addressed. This shift in perspective must permeate all future considerations of trade and development related to the environment, health, human rights and social justice. Through this new perspective we must begin perceiving that the ecological preservation and protection must be given primacy and that an integral part of ecological preservation and protection is the correction of presently distorted market mechanisms.

The onus of proof would then shift from those objecting to increased growth and to potentially ecologically unsound interventions having to demonstrate harm to those advocating industrial interventions into the ecosystem having to demonstrate worth and safety.

All three of our countries have spent years enunciating the goal of protecting and preserving the environment. What we now need to do is achieve the highest attainable synthesis of our common goals in the coordination of policy in a North American community, not some lowest common denominator achieved through some process of mechanical compromise [re-integrative bargaining—we need to achieve a bargaining set with sufficient diversity to be able to trade off objectives for one country in one area with goals for others in others.]

Such standards should be related to environmental, social justice, human rights and health provisions. The enshrining of high standards conforms in principle to declared objectives of all three countries. These declared objectives are present not only in legislation from all three countries but also in many international covenants and declarations to which all three countries to varying degrees subscribe [have ratified]. These declared objectives are evident in the preamble to Bill C 13 (Environmental Assessment Review Act) in Canada, in the intent behind the Mexican,

Constitutional Law for the Ecological Equilibrium and Protection of the Environment and in the Standards set by the U.S. Environmental Protection Agency.

So I would like to ask whether NAFTA can provide a lead in a [more] fruitful direction, which achieves a better reconciliation of the differing perspectives, situations and orientations of the different players and at the same time establishes high common standards. Differences in North America are not so great as in the world as a whole, and should be more easily bridged. All three countries share the same lofty rhetoric and indeed the same idealistic -- apparently potent -- legislation. All three fall down badly on implementation, on monitoring and on enforcement.

But all also can see the writing on the wall, and might be ready to turn around the decision structures and alter the priorities in the direction necessary to move towards sustainable development. All may be ready jointly to move against the threats of "jobs blackmail" and "competitiveness blackmail" which have stalled any realistic moves thus far towards adequate pricing of resources or adequate weighting of preservation and future interests.

Working together we may be able to reach meaningful agreements on measures to avoid both "the race to the bottom" in jurisdictional competition and cost associated with the "first over the top" fear. What is needed is strong political will to entrench high common standards and strong enforcement measures to be enshrined in a code of commitments that will be an integral part of the NAFTA.

So I am not here to wring hands about the threat posed by Mexico as a pollution haven in a North American community. (In fact, in many ways all of North America currently could be described as a pollution haven for industry) Rather, on the assumption that we will, for political reasons, have a little time before a final agreement is reached, I want to ask how we can use this lull to translate some of our nice rhetoric into realistic commitments to action within a trade agreement.

4. POTENTIAL ROLE FOR NAMI IN ASSISTING IN THE ESTABLISHING THE HIGHEST ATTAINABLE SYNTHESIS OF OUR COMMON GOALS IN THE COORDINATION OF POLICIES IN A NORTH AMERICAN COMMUNITY

I would also like to suggest that perhaps NAMI could provide leadership in bringing together independent thinkers from all three countries to articulate a broader vision within which the process of economic integration might proceed. A model might be found in an independent group (the so-

called "Group of Forty" which met in Stockholm in 1972, and at that time stated the following:

II " There is a fundamental conflict between traditional concepts of economic growth and the preservation of the environment. During the last century, uncontrolled continuous growth in the industrial production of environmentally harmful substances and products in some regions of the world has produced dangerous amounts of pollution and has been responsible for an inordinate waste of resources. At the same time, an increasing concentration of economic power and industrial activity has led to a centralization within a few nations of the benefits from the use of the earth's natural resources, and the international political influence that is derived from the control of these resources. It has become clear that more rational distribution of industrial power is necessary if the global problems of environment and society are to be solved. Such a redistribution would achieve at the same time a more equal apportionment of economic and political benefits among nations and individuals.

III The exploitation of third World national and regional resources by foreign corporations, with a consequent outflow of profits from the exploited regions, has resulted in a vast and growing economic disparity among nations and ;a monopoly of industrialized countries over production, energy, technology, information and political power. Complementary to this is the flooding of developing countries with surplus goods and capital, with a resultant distortion of their economies, and the deformation of their environments into monocultures in the interest of further enriching the industrial states. The foreign investments, economic development and technological practices of such industrial states must be curbed and altered by the basic claim of a region's people to control of its resources. Use of these resources, however, should not be dictated by the accidents of geography, but must be allocated in such ways as to serve the needs of the world's people in this and future generations. The authority of any region's people over resources and environment includes the obligation to recognize that the environment is an indivisible whole, not subject to political barriers.

The environment must be protected from avoidable pollution, destruction and exploitation from all sources." (Earth Talk, 1972, p. 170)

"Much conventional technology and many of its proliferating products have proved ecologically harmful. We cannot reject technology per se but must restructure and reorient it. Ecologically sound technologies will minimize stresses to the environment. A rapid development of the new approach should

be complemented by a technology review and surveillance system to assure that any new technology is ecologically compatible and will be used for human survival and fulfillment. It is not enough to add anti-pollution devices to existing technologies, although this might well be the initial stage of phasing out present polluting technologies." (Earth Talk, An Independent Declaration on the Environment, 1972)

5. CONCLUSION:

1) At the last NAMI meeting in November in Santa Fe, participants indicated that they were struck by "the speed at which the environmental issue has risen to the top of the NAFTA agenda". Throughout the past 20 years there have been numerous declarations related to the environment. These declarations reflect deep international concern, but, once passed, give only momentary relief to the anguish that the international community senses about the environment and then they sink into oblivion. International environmental standards have to be ratified and enforced. NAFTA needs to reflect the strong international principles that have been enunciated by the General Assembly in declarations. Such as "Historical Responsibility of States for the Preservation of Nature for Present and Future Generations (UN Assembly Resolution 35/8 (1080); "Interrelationships between Resources, Environment, People and Development "(UN General Assembly Resolution 36/179. 1981); "International Cooperation in the Field of the Environment" (UN General Assembly 36/192:, 1981); "World Charter for Nature" (UN General Assembly Resolution 37/7, 1981) and the World Conservation Strategy itself.

If we in a North American community are seriously addressing the issue of the environment, NAFTA must embody a set of international principles and environmental objectives that can explicitly override or supersede the trade imperatives which otherwise drive our economic relationships.

2. As part of its role of "exploring ideas for increased cooperation among the peoples of the North American continent", NAMI — itself an independent/informal community of commentators — should promote participation in a series of informal tripartite non-governmental consultations to establish a synthesis of high standards and an infrastructure to ensure that these standards are enforced.

3. Beyond agreed legislative standards, however, we must look to changing the underlying attitudes and values which drive economic decisions.

We must work towards a new perspective or outlook for consumers and producers where both consumers and producers will be socially and environmentally , individually and organizationally responsible. NAMI could make a serious contribution through its educational activities.

Ultimately we need to move through participation and education to shape not just consumer-driven corporations but principle-driven corporations (the true 'socially responsible" green corporation), and not just interest-based negotiations, but value-based consensus. It's a task we can all work on.

Muchas gracias

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SYSTEMIC CONSTRAINTS:

- discrepancy between rhetoric and action
- discrepancy between regulations and enforcement
- Short-term changes as means to end
- False dichotomy between jobs and environment economic pressures and environment
- required or discretionary environmental assessment review coupled with non-arms length research to determine environmental impact
- misplaced onus of proof
- reluctance to cede sovereignty to global governance in urgent situation
- industrial hypocrisy

The British Columbia Federation of Labour (BCFL) also felt that free trade with Mexico would threaten the quality of life enjoyed in British Columbia and jeopardize the province's economic stability. The only advantage will be corporations' access to cheap labour. According to the respondent, Mexico will sell its cheap labour in order to attract foreign capital. The BCFL raised a number of other issues it felt should be addressed as part of the discussion on trilateral free trade: Mexico's low wages, anti-democratic union practices, the lack of environmental regulations and restrictions, unhealthy and dangerous working conditions and unprotected consumers. (Ministry of Development, Trade and Tourism, 1991, p. 27.)

As Cuauhtemoc Cardenas put it to the B.C. Federation of labour last November, "an alternative to the proposed free trade agreement should include a social charter and be based on common standards for labour, social and environmental rights. A different pact would strengthen our internal struggle for democracy and improve the situation of human rights of Mexicans in Mexico and the United States." (Salazar, J. 1991, p. 39)

"Environmental problems are probably the most pressing with regard to the health and well-being of the Mexican workers. The Rio Grande, on which hundreds of communities on both sides of the US Mexico border depend for drinking water, is deluged by industrial waste, uranium ;mining runoff, hazardous spills from trans-border transport, agricultural chemicals and millions of gallons a day of untreated Mexican raw sewage. Lax environmental standards that allow this to happen are also what attracts U.S. and now Canadian companies to the border zones to do business."(Northcote, 1991, p. 31)

According to the US based Coalition for Justice in the Maquiladoras, "...the damaging characteristics of the

maquiladoras, environmental contamination, unsafe working conditions and the exploitation of workers, have shattered the quality of life in the border communities. " (Northcotte, V. 1991, p. 31)

Although Mexico claims that it will not become an environmental haven, the general industrial perception is that, at least in the short term it will be one. The possibility of Mexico's becoming [or becoming more of] an environmental haven is reiterated in the section on Environmental and Pollution Control in the Ministry of Development and trade and tourism report on BC. consultations with the private sector re.: Mexico, Canada and the United States: the trilateral free trade proposal.

" Environmental regulations on businesses operating in Mexico are expected to be less stringent than they generally are for operations in British Columbia or the United States. At least initially, therefore, Mexico will be more attractive for locating new industries with pollution concerns than in British Columbia or U.S. jurisdictions. This likely will not be significant in the long term but initially it will result in some impact on the British Columbia industry. " (Ministry of Development, Trade and Tourism, June 1991, p. 24)

The new perspective must move away from "pollution concerns" being the concerns that industry has when they have to abide by stringent regulations to being the concerns that the community has about the preservation of the ecosystem. the new perspective must also move away from considering "impact" as being economic impact to considering "impact" as being ecological impact.

[Environmental provisions necessary to prevent either one of the three countries from becoming an environmental pollution haven
Environmental provisions to ensure that the highest tenable principles are in place to ensure that neither one of the three countries becomes an environmental pollution haven.]

As Cuauhtemoc Cardenas put it to the B.C. Federation of labour last November, "an alternative to the proposed free trade agreement should include a social charter and be based on common standards for labour, social and environmental rights. A different pact would strengthen our internal struggle for democracy and improve the situation of human rights of Mexicans in Mexico and the United States." (Salazar, J. 1991, p. 39)

All of our three countries appear to agree on what is needed to be done .
Now we must ensure that what needs to be done , is done.

cut sections

iii. The discrepancy between government and industry rhetoric embodied in laws and regulations and the political will to enforce these regulations

iv. The discrepancy between institutional rhetoric embodied in publications and the traditional role that is played by the institution (the usurping of the environmental movement to the point of making it redundant)
(see "eco-development" in Colby, M., Environmental management in development; the evolution of paradigms, 1990, World Bank discussion papers V. 39)

vi. The advocating of self regulation by industry; the moving away from compliance, imposed regulations etc.
QUOTE FROM SESSION AT GLOBE 92

vii. The discarding of the principle of arms-length research in industrial projects

The Royal Bank conveys in Econoscope, that " the new rules [in Mexico] automatically allow 100% foreign ownership of Mexican companies provide that less than US100 million is involved and that certain other criteria are met (for example, the funds must come from abroad and the investment must not be in areas which are already industrialized)Royal Bank of Canada p 4.

Note: no mention of safe industry

The move towards a free trade agreement with the United States is seen by the Mexican government as a powerful tool to modernize its economy. Such an alliance leading to a greater integration of Mexico into the North American economy could provide an anchor of stability for Mexico's monetary and fiscal policies. (Royal Bank of Canada p. 4)

...On the plus side, the United States will find that an improved Mexican economy, particularly if it can help to reduce the flow of economic refugees into the United States, and improved co-operation on narcotics and the environment sufficiently compelling reasons to pursue free trade talks. The greater competition offered by Mexican low-cost labour-intensive products had to be kept in perspective. A central tenet of international trade theory is that countries specialize in the production and export of goods according to comparative advantage rather than absolute advantage.

Man developing countries have failed to convert their advantages with respect to plentiful and cheap labour into a comparative advantage because of a number of factors impeding overall labour productivity. (Royal Bank of Canada p. 9)

"...For Mexico the comparative advantage offered by low-cost labour is offset to a certain extent by the lower level of manufacturing productivity except perhaps for the most recent manufacturing plants built in the in-bond maquiladora sector). Moreover, Mexico is faced with a number of other problems such as heavy state involvement, absenteeism and poor transportation and communication infrastructures." (Royal Bank of Canada p. 11)

There are several areas in which Canadian expertise could find a market in Mexico. These include agriculture, fishing, forestry and pollution control. Royal Bank of Canada p. 11
[Note the only mention of anything that is related to the environment is the possibility of a market for Canadians in pollution control.]

On the issue of whether or not 'export protectionism' would grow, one must ask what the multinational corporations want to use the spoke countries for. Do they want them as markets or as production bases? If they want them as export markets, the multinationals would then favor export protections. If, however, they want them as production bases--as is increasingly the case with Mexico--then the multinationals gain no advantage from maintaining export protections. (Weintraub, Sidney, in Hill, R. et al 1991, p. 9)

...the multinational might well prefer an expanding free trade area to rationalize their production. ...U.S. multinationals have distribution systems set up to take advantage of the preferences it provides, they may well want it to continue. (Wonnacott, R. in Hill, R. et al 1991 p. 9)

First, it sets a timetable that lends itself to the 'Yankee trader' attitude that you cannot conclude a deal until the deadline (indeed after the deadline), because if a deal is reached earlier, it is because you have not squeezed enough and ended up leaving money on the table. Mexican negotiators have not experienced this, but they soon will...Second, the fast-track process lends itself to some very damaging side deals between the administration and Congress. In the Canadian case, while approval was given for the process by Congress, the price was a side deal whereby the administration essentially promised to restrict the Canadian forest products industry in any way it could. It did so with trumped-up cases against cedar shakes and shingles and softwood lumber. (Ritchie in Hill, R. et al 1991, p. 11)

To increase Canada's Weight in Settling Trade Disputes

"A trilateral resolution of disputes would provide Canada and Mexico together with greater weight in holding the United States to its commitments than either would have alone. But for precisely this reason, it is far from clear that the United States would accept the trilateralizing of dispute settlement. ...Nor is it even clear that Canada would wish to trilateralize dispute settlement, since this could weaken, rather than strengthen, Canada's voice in disputes with the United States where Mexico did not support Canada's position." (Wonnacotte, R.J. "Canada

and the U.S. - Mexico Free Trade Negotiations." Commentary. No.21, September 1990. C.D Howe Institute p. 3)

To Have a Low-Wage Partner in the Free Trade Bloc

" Finally, Canada, like the United States, needs a low-wage partner such as Mexico. Every other participating country in a free-trade bloc has such a partner. Without access to a pool of low-wage labor, Canadian industry will find it more difficult to remain competitive in world markets. However, low wages in Mexico will raise the question: How can Canadian industry compete with cheap Mexican labor? .Wonnacotte, R.J. "Canada and the U.S. - Mexico Free Trade Negotiations." Commentary. No.21, September 1990. C.D Howe Institute. p. 4

Fear of trade with low-wage Mexico

"One major fear will be that Canadians cannot risk trading freely with Mexico because of that country's cheap supplies of labour, which will give Mexican goods an overwhelming competitive advantage.If we really had to worry about the competitive advantage conferred by low Mexican wages, then existing Canadian tariffs would provide little relief: if 'sixty-cent-an-hour wages' are a threat, then 'sixty-six cent-an-hour wages' are not much less of a threat. What matters in international competition is ;not how ;much local labor is paid in terms of purchasing power. What matters is how unit costs of production compare internationally at the going exchange rates." (Lipsey, R. "Canada at the U.S. -Mexico Free Trade Dance." Commentary. No.20, August 1990. C.D Howe Institute p. 10).

"...Observaciones: El esfuerzo di Gobierno en el combate a la contaminacion comprende acciones que abarcan a todos los sectores de la sociedad, las cuale han sideo aplicadas con gran efectividad gracias al esfuerzo y al desarrollo de la conciencia ecological del la poblacion con su conjunto."

(documentation sent by Consulat of Mexico, latest news from April 12 and April 13 related to the environment)

The Government of Mexico's three year environmental plan for the border communities calls for a doubling of the number of inspectors from the Secretariat of Urban Development and Ecology (SEDUE) by January 1992. This represents a four-fold increase from 1989. "By January 1992, The SEDUE team of 200 qualified inspectors will be ensuring that industries in the border communities adhere strictly to Mexico's environmental laws and regulations. Businesses that refuse or cannot comply will be subject to penalties, including having their operations shut down. Information and data systems are being upgraded and decentralized. These improvements will allow for closer monitoring of raw materials and dangerous wastes. Already, in

the last three years almost 1 million tons of hazardous materials have been prohibited from entering Mexico.

Progress can already be seen in the "maquiladora" industries where compliance with regulations on operating licenses, on the declaration of the production of hazardous wastes and on the proper disposal of hazardous wastes has increased dramatically since 1989. All existing maquiladora plants must be entirely re-certified by 1992. All new investment must present environmental impact statements. ("Protecting the Environment Mexico's public works program for the Border Region," undated, and unsigned document)

"Mexico and the United States are committed to a cooperative program that will encourage sustained economic growth and environmental protection in both countries. President Bust and president Salinas believe that the two are complementary and must be pursued together." (Free trade Negotiations with Mexico Environmental matters, p. 1)

"Mexico has established a good basis for progress on environmental protection and conservation of natural resource. President Salinas has states that, while seeking to stimulate foreign investment, Mexico will not accept investments that have been rejected by the United States or Canada for environmental reasons." (U.S. government publication] Free trade Negotiations with Mexico Environmental matters, p. 2)

"Convenio con las industrias en el valle de Mexico para combatir la contaminacion ambiental

Por su parte el jefe del Departamento del Distrito Federal, Manuel Camacho Solis, explico las medidas tomadas en el pacto con la industria, entre las que destacan las siguientes;

- establecer la verificación obligatoria de las emisiones industriales, principalmente de las partículas de monóxido de carbono, azufre, óxidos de nitrógeno, plomo, hidrosulfatos y compuestos orgánicos volátiles para lo cual en un plazo máximo de 18 meses, 220 empresas que consumen el 53% del total de combustibles en el valle de México deberán contar con equipos anticontaminantes
- se integra un programa de capacitación de inspectores, auditores y verificadores, así como operadores de calderas y equipos de combustión.
- Se crea un cuerpo especial de inspección y asesoría profesional en la materia, y que actualmente las partículas de origen industrial son las de mayor riesgo para la salud, pues contienen químicos inorgánicos y metales pesados y constituyen el 65% de las partículas tóxicas suspendidas en el aire.

- se otorgara asesoria y equipo tecnologico a la industria para ue instale equipos anticontaminantes
- se desarrollaran politicas de energia (ahorro, consumo racional, entre otras), ademas de que se controlaran y reformularan solventes de pinture
- Se cuenta con un billn de pesos para financiar el control de emisiones, cambiar procesos y descentralizar industrias,. Es importante se? alar que por primera vez en un programa de esta naturaleza intevienen siete bancos comerciales: Multibanco Mercantil d Mexico, Banca Serfin, Banca Confia, Bancomer, Banco Internacional, Multibanco Comermex y Banco BCH, asi como ocho arrendadoras.

Note. Need for sustained monitorin and implementation of regualtions regualtions cannot only be implemented as a means to an end. IMplementation of standards and regulations as a means to an end without the provisions in place to continue to impose, implement these regulation.. relax regulation

- SE continuaran actualizando y desarrollando nors cada vez mas estrictas para la industria, hasta alcanzar reducciones en la emision de paticulas entre un 70 y 90%

...Observaciones: El esfuerzo dl Gobierno en el combate a la contaminacion comprende acciones que abarcan a todos los sectores de la sociedad, las cuales han sido aplicadas con gran efectividad gracias al esfuerzo y al desarrollo de la conciencia ecologica del la poblacion con su conjunto.” (documentation sent by Consulat of Mexico, latest news from April 12 and April 13 related to the environment)

“Whereas the Government of Canada in demonstrating national leadership should establish national environmental quality objectives, guidelines and codes of practice” (Canadian Environmental protection act, 1988)

“Whereas toxic substances, once introduced into the environment, cannot always be contained within geographic boundaries (Canadian Environmental protection act, 1988) section 2. a Government of Canada shall... take both preventative and remedial measures in protecting the environment” (Canadian Environmental protection act, 1988)

In the Department of the Environment Act, under the division of "Powers, duties and functions of the Minister , it is stated that “the duties of the Minister include providing for

- a) the preservation and enhancement of the quality of the natural environment, including water, air and soil quality; and to

2(i) endeavour to protect the environment from the release of toxic substances". (Canadian Environmental Protection Act, 1988, C 22)

['deleterious substance' means

a) any substance that, if added to any water would degrade or alter or form part of a process of degradation or alteration of the quality of that water so that it is rendered or is likely to be rendered deleterious to fish or fish habitat or to the use by man of fish that frequent that water"

(Fisheries act, statutes of Canada 1976077, c35)

yet raw sewage is still dumped into the waters around Vancouver Island and fish have lesions]

" whereas... no present activity should compromise activities... fulfill the needs of future generations

Based on my discussions with President Salinas, I am convinced that he is firmly committed to strengthened environmental protection, and that there is strong support for this objective among the Mexican people. Because economic growth can and should be supported by enhanced environmental protection, we will develop and implement an expanded program of environmental cooperation in parallel with the free trade talks. ...thus, our efforts toward economic integration will be complemented by expanded programs of cooperation of labour and the environment." (Letter from George Bush to Chairman Rostenkowski and Majority Leader Gephardt; similar letter sent to every member of Congress, May 1, 1991)

Mexico's commitment to environmental protection

- Mexico has no interest in becoming a pollution haven for U.S. companies.
- Mexico's comprehensive environmental law of 1988, which is based on U.S. law and experience, is a solid foundation for tackling its environmental problems.
- All new investments are being held to these higher legal standards and an environmental impact assessment is required to show how they will comply.
- Enforcement has in the past been a key problem, but Mexico's record has been improving dramatically. Since 1989, Mexico has ordered more than 980 temporary and 82 permanent shutdowns of industrial facilities for environmental violations; the budget of SEDUE (Mexico ' EPA) has increased almost eight-fold

Response of the Administration to issues raised in connection with the negotiation of a north American Free trade agreement. May 1, 1991)

Direction to proceed is spelled out in McDorman analysis: need international agreement on priority for environmental objectives sufficiently strong that it formally and explicitly over-rides GATT where necessary.

Want to look closely at the US_Mexico GATT panel report as outlined by McDorman

This shift in perspective must move away from perceiving that states have "the sovereign right to exploit their resources pursuant to their own environmental and developmental policies [and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other states or of areas beyond the limits of national jurisdiction." (Principle 2 in the Rio Declaration on Environment and Development)] . This shift in perspective must move away from perceiving that states have " the right to development [being fulfilled] so as to equitable meet developmental and environmental needs of present and future generations" (Principle 3 in the Rio Declaration on Environment and Development).

... few clauses from existing RIO declaration draft about prohibitions against use of environmental regulations as trade barriers, etc.

FIND

Let's recap briefly the steps already taken in the two major countries (US story is perhaps well enough known anyway.)

Mexico ..citation for Salinas

ref. to NAMI doc and related refs

Major steps

goals explicitly states "his goal is not to attract polluting industries but to substitute clean ones"

Canada SOE report

Green plan

environmental Assessment Review Act.

to look at different sources of conflict associated with scarcity of exhaustible resources and struggles over shares of renewable resource in which everyone is racing to be first to harvest stocks in which no one is investing enough to assure any kind of sustainability of renewability

The advocating of a new found role of international governance for industry as a potential replacement for government.

Ramphal at Globe 92 described the new found role as " enlightened long-term thinking": He described the newly found enlightenment in the following way:

The private sector has been traditionally regarded as trammelled by short-term profit considerations. Enlightened long-term thinking was a preserve of the State, of governments. Today the greatest flaw in governance at the national level is the ascendancy of the short-term in the political calculus, as leaders respond frenetically to democratic pressures for immediate results. It is the private sector, and particularly the larger

enterprises within it, that have the intellectual space to think beyond tomorrow. ... (Ramphal, S. 1992)

iv. The revealing of the true intent by industry in in-house documents.????
from statements from industry about industry's perceived advantages of tripartite free trade.

McCrae, Jim World Bank Environmental division CHECK
"dirty technology belongs in third world"
Basle convention related to third world dumping

He reports that the panel found that "the obligations owed by the US to Mexico under GATT prohibited use of trade measures to deal with such environmental issues [i.e. those having effect beyond the borders of the country adopting the trade measures]. This conclusion flows from the fact that GATT may regulate conditions around product, but not around means of production, and from the view that it is still possible to talk about the actions of a particular country affecting its environment. With these orientations, GATT can conclude that "Countries cannot look behind a good to determine if the production or manufacturing process was environmentally friendly. Or in other words countries cannot impose their environmental standards or regulations on other countries by boycotting their goods. "to a certain extent, this is what comparative advantage is all about: differences in their environment of production, including the environment of government regulations".

If this is true, how do we deal responsibly with environmental concerns in an emerging North American community in which sovereign communities still wish to pursue their own vision of interpersonal and inter-generational equity and sustainability?

() **THAT** in March 1992 I attended the Globe 1992, and I presented the draft Earth Charter at different sessions, and gave a copy to Noel Brown, the Secretary General of UNEP, to Arthur Campeau, the Canadian Ambassador to the UN, to the head European group, and to the head of the G77 group.

COMMENT

Talked to Noel Brown about Charter and was advised to pass it on to delegations in New York and to visit him in New York

() **THAT** in 1992, at Globe 21 I attended a session on ethics chaired by DOW chemical and intervened

() **THAT** in March 1992, I attended the Globe 1992 --the Environmental Clean-up Industry
Environmentalists were invited to attend. They were always up at the microphone.

COMMENT

it was obvious that globe 92 was an obfuscation of the environmental issue with very little call for doing it right the first time. the participants in the environment industry thrived on deregulation so that they could develop clean-up technologies.

Hugh Faulkner, whom I had gone out with in Ottawa, had become the executive director of the Business Council on Sustainable Development. he was on one of the panels. I spoke to him just before the session. when he was introduced as having worked at Alcan, he looked over at me and he could sense my disgust. i went up to the microphone, and used the opportunity to criticize the devastating logging practices in BC and the impact on the economy, export of raw laws, disregard for statutory law, and failure to implement effective value added. The moderator, ruled that my comments were out of order and did not have anything to do with the economy. Hugh Faulkner defended me, and then stated that the clear-cutting practices in British Columbia were not sustainable. He received questioning and disapproving glare from his cohorts.

() THAT in April,1992, I Conducted a workshop on the Delusion of Certainty in Science "Principle-based education. National Association of Research into Science Teaching (NARST) Conference in Boston, 1992

COMMENT

I arrived a day early in Boston because I wanted to roam around Harvard University. I went to the Kennedy Centre, and I picked up a student newspaper and found out that there was a fascinating colloquium that day. Professors from MIT and from Harvard had written a controversial paper where they argued that Thomas Kuhn's concept of Paradigm shift based on the emergence of an anomaly was flawed and that the paradigm was so entrenched that the adherents could not recognize the anomaly until after the paradigm had shifted. It was obviously a colloquium of significance; emeritus professors came in on canes. there was the language of uncertainty and conditionality such as, if an electron were to behave would etc. I mentioned at one point that I was going to be attending the NARST conference where I was going to discuss the delusion of certainty in science, and I said I wish the discussion taking place now could be part of my presentation.

I went to the evening plenary of the NARST conference;a professor Rice who, in full patriarchal style with a beautiful assistant not unlike a tradition stage show was discussing the simplicity of science and models. I stood up and challenged him and said that he was offering nothing new but only reiterating what Herbert Simon from his University had advocated years ago. There was silence in the room of 5 hundred. I went to the washroom, and several women came up to me and thanked me for raising the issues that I raised. I also talked to one of the principal organizers who said that he had felt the same way about the key note address but of course he could not say anything.

() **THAT** in April 1992, at the Forest Caucus meeting of the BCEN, I worked on drafting resolutions based on the recommendations made during the caucus meeting. I was informed that the BCEN because it was a network

could not as an organization come out with resolutions. Presumably, the federal government would only fund the Environmental network if it remained a network and thus essentially a less effective organization.

COMMENT

1992 BCEN attended the BCEN meeting in Victoria . Spent most of my time in the Forest Caucus compiling recommendations made by members. I proposed that we should come up with resolutions based of the recommendations coming from the members. It was agreed and a committee was set up. I spent the rest of the time working on the resolutions with his committee. On the final day of the Forest Caucus meeting I had the resolutions printed up and transferred to overheads in order to present them to the plenary of the Forest Caucus. No time was given to the resolutions. When there was the plenary session of the BCEN I went up to the microphone and started to read the resolutions. I was told that there could be no resolutions endorsed by the BCEN because it was a network and received funding on that basis. Subsequently at every BCEN meeting I raised the issue that the BCEN would be far more effective if they could issue resolutions.

EXHIBIT:

FOREST CAUCUS RESOLUTION:

1. Whereas, grass roots environmental groups and professional biologists believe present AAC levels are too high to sustain the ecological integrity of B.C.'s forest land, and the climate.

Be it resolved that the government bring about the immediate reduction in AAC levels across the province of 46% (40 million M³)

2. Whereas forests are [still] not being sustainably managed, and whereas the environment of a large portion of British Columbia has already been seriously degraded through past and current forest practices, and Whereas changes in AAC levels may affect forest employment,

Be it resolved that the government implement a restoration project based on the principle of ecological sustainability with a view to creating local forest employment in every bio geoclimatic region.

4. Whereas there are no comprehensive regulations of logging practices on privately owned unmanaged forest land and whereas currently there is over cutting occurring throughout the province on these lands with little regard to ecological considerations or follow-up silviculture.

Whereas raw logs are routinely exported from these private lands,

Be it resolved that the Forest Practices [Act] {be extended to cover these lands] and that the export of raw logs [can't and chips] from these lands cease immediately.

5. Whereas GATT ruling is used to justified the continued export of raw logs

Be it resolved that the government of British Columbia, urge the Federal Government to make a representation to GATT that the export of raw logs should not come under GATT

6.&7 under revision

8 Whereas the results of audit of TFL 23 showed excessive site degradation to the ecosystem

Whereas there is considerable evidence that the forest companies have "caused serious damage to the natural environment

Whereas [representatives from] the Ministry of Forest admit that the Forest companies have caused serious damage to the natural environment

Be it resolved that the government of British Columbia require the Ministry of Forest to invoke Section 60 of the Forest Act to suspend all licensees where there is evidence of serious damage to the natural environment

Suspension by officer

60. The regional manager, a district manager or a forest officer authorized by either of them may, by written order and without notice, suspend in whole or part the rights under an agreement where he believes on reasonable and probable grounds that its holder has failed to perform an obligation to the performed by him under the agreement or has failed to comply with this Act or the regulations, and that the failure of performance or compliance is causing or may imminently cause serious damage to the natural environment

Be it further resolved that section 28 of the Forest Act and section 2 of the PHSP be enforced

8-10. Whereas the teaching of Forestry in British Columbia forces students to accept questionable scientific values regarding the ecological maintenance of our forests

Be it resolved that an internationally based inquiry be made into the teaching of forestry in British Columbia and that subsequent action by government on the conclusions be taken.

11 Whereas the environment must be given primacy, and whereas long term ecological rights must be given priority over short term economic privileges, and

Be it resolved that [courts undertake to shift the onus of proof from the opponents of an intervention [in the ecosystem] having to demonstrate harm to the proponents of the intervention, having to demonstrate no long-term impacts on ecosystem.

12. Whereas the Federal Ministry of Fisheries has sufficient evidence that damage to fish habitat has been caused though ecologically unsound logging and road building practices

Be it resolved that Section 33 of the Fisheries Act be enforced by the Federal Government to prosecute companies that have through the deposit of deleterious substances caused deterioration of Fisheries.

33.1 Every person who carries on or proposes to carry on any work or undertaking those results or is likely to result in the following:

a) the deposit of a deleterious substance in water frequented by fish or in any place under any conditions where that deleterious substance or any other

deleterious substance that results from the deposit of that deleterious substance may enter any such water, or
b) the alteration, disruption or destruction of fish habitat,
shall on the request of the Minister... (a) provide the Minister with such plans, specifications, studies, procedures, schedules, analyses, samples or other information relating to the work or undertaking and with such analyses, samples, evaluations, studies or other information relating to the water, place or fish habitat that is or is likely to be affected by the work or undertaking as will enable the Minister to determine
c) whether there is or is likely to be a deposit of a deleterious substance by reason...d) whether the work or undertaking results or is likely to result in any alternation, disruption or destruction of fish habitat ...

13. Whereas there is currently a lack of meaningful participation by the public in all aspects of the planning process, [and
whereas there continues to be an imbalance on consultative boards, of consumptive forest use]

Be it resolved those provincial principles of preservation and ecologically sound practices be established, in line with high international standards and that community resource boards also be established to enable the public to have full participation in planning from the creation of the process, through the formulation of the terms of reference, through to the decision making and subsequent actions taken, to the follow up monitoring of the lands.

[Be it further resolved that on all consultative boards that there now be an imbalance in favor of non-consumptive use or a balance between consumptive and non-consumptive use]

15. Whereas the Board of Directors of companies in the Forest Industry have had and continue to have the power to address the serious degradation of the environment through ecologically unsound practices

Be it resolved that the Board of Directors be held responsible for past and current ecological devastation caused by destructive practices in forestry [through criminal law proceedings].

16 Whereas there is increasing scientific evidence that the water quality in logged community watersheds has deteriorated as the result of logging in water sheds?

Be it resolved that logging cease immediately in all community watersheds, until studies have been conducted to determine the impact of logging and road building on water quality, [and until these studies can demonstrate that there will be no potential harmful effect on water quality]

Recommendations for change in forest practices in B.C.

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Be it resolved that the government bring about the immediate reduction in AAC levels across the province of 46% (40 million M³)

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b) the alteration, disruption or destruction of fish habitat shall on the request of the Minister... (a) provide the Minister with such plans, specifications, studies, procedures, schedules, analyses, samples or other information relating to the work or undertaking and with such analyses, samples, evaluations, studies or other information relating to the water, place or fish habitat that is or is likely to be affected by the work or undertaking as will enable the Minister to determine

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Be it resolved that logging cease immediately in all community watersheds, until studies have been conducted to determine the impact of logging and road building on water quality, [and until these studies can demonstrate that there will be no potential harmful effect on water quality]

() THAT in March 1992, I attended the PrepCom for UNCED

COMMENT

March 1992, I attended a meeting of accredited NGOs. Prior to this meeting I had attended a number of sessions on Climate Change where the state governments were seriously discussing the issue. At the meeting of NGOs the topic was not issues that should be addressed but who should be allowed to have accreditation. There appeared to be concern that too many NGOs during the UNCED process had been given accreditation and that UNCED should be deemed to be a special case and that the accreditation should not be extended beyond UNCED. I commented that perhaps I had come to the wrong meeting: The NGOS appeared to be more concerned with sustaining themselves than with dealing with vital issues. I walked out. Someone came out later on and told me that quite a discussion ensued after I left about the issue that I had raised.

Prep com UNCED March 1992 attended sessions on Indigenous issues. I was at a session where a Brazilian Indigenous man was speaking in Portuguese. It was a session in Spanish which I understand. He was such a powerful speaker that I felt I understood Portuguese . At the end of the meeting we all went over to the General Assembly where a meeting was in progress on indigenous issues. I decided to sit in the Canadian government section *which was empty*. The speaker, who had the floor, declared that he was furious with the Canadian delegate for refusing to add an "s" to indigenous people. I felt very uncomfortable given that I was the only one sitting in the Canadian delegation section. I was sure that if this discussion were to continue

that soon they would refer to the Canadian delegate as “he” and it would be obvious that they were not speaking about me. Another speaker got up and again criticized the Canadian delegate and at that time rather than mentioning “he” referred to the delegate as “she” I did not know what to do; what a dilemma; I could get up and change sections but I would appear to be guilty or I could stay and be deemed to be guilty. It was like trial by water . If I sank I would be innocent if I floated I would be guilty- rejected by God. The last speaker explained the significance of the [s] if there were no (s) then there would be only one indigenous delegation at the UN; with the (s), however, there would be several.

Suddenly a women stood up several rows in front, obviously not having the courage to sit in the Canadian section, and defended the Canadian position.

I decided to raise my hand and report that given that at this moment Mulroney is only at 20% of the polls, and that I was sure that the other 80 % would support adding the “s” and given that I was the only representative sitting in the Canadian section that I would like to propose that the “s” be placed on all documents with references to indigenous people. Before I could make my statement the meeting closed down. I went up to the moderator after and told him what I was going to say and that I would lobby in Canada to have the “s” back.

I slipped into the government discussion of the draft Earth Charter. When a Norwegian with an elegantly swirled green turban walked in. At one point the Chair asked if there were any NGOs in the room. I felt obliged to leave. I should have stated what my concerns were with the Earth Charter but instead I rose and indicated that I had several concerns and the chair responded that I could meet with him after. I left and went outside with my diagram and spoke to delegates about the exclusion of those delegates who did not speak English. I am able to speak French and Spanish and I raised the issue of the failure of the UN to accommodate in the working groups any official language other than English. I went back and spoke to the Chair about proposed changes to the Earth Charter. One of which was the Sovereign Right to exploit resources. After the meeting, I went to talk with the chair about several sections in the Earth Charter which I thought should be modified or changed.

In one of the evening sessions when they were working on the Earth Charter, the US proposed that principle 14 be removed because it was redundant. This principle was that states should prevent the transfer to other states of substances that are harmful to human health or the environment . The US claimed that this was the same as the trans-boundary principle. I believe it was Austria who stated that you are not fooling anyone. that seemed to stop the US and that principle is still in the document.

() **THAT** in March 31,1992 a document was issued about US playing God at the Summit, and I circulated this document widely

EXHIBIT

U.S Playing God at Earth Summit (March 31, 1992)

Early this week members of the US delegation were advised by a senior US delegation member that ten key issues must be kept off UNCED's agenda at all costs. During the meeting and since, these issues have been referred to within the delegation as the "ten Commandments."

the United States Government's "Ten Commandments" for UNCED are:

1. Thou shalt not ascribe to the precautionary principle
2. Thou shalt not share the benefits of technology.
- 3 Those shalt not allow financial resource formulas
4. Thou shalt oppose liability/compensation for environmental damage
5. Thou shalt avoid commitments of any kind.
6. Thou shall case aside environmental impact assessment concepts inconsistent with US law
7. Thou shalt frown upon new dispute resolution requirements
8. Thou shalt strike any reference to the military. (The military's name shall not be taken in vain).
9. Thou shalt block new institutions
- 10 Thou shalt not honour new UN pledges.

() THAT I circulated the Charter, the Declaration and a statement prior to leaving for Rio

EXHIBIT

The global environmental situation is so urgent approaching irreversibility that a new fundamental principle must underlie all development proposals. All proposed interventions in the ecosystem must have to be justified. The burden of proof must shift from opponents having to demonstrate harm to proponents having to demonstrate safety. We have come to this convention with the expectation that the global community recognizes that the global situation is urgent enough to move from global international rhetoric to global action.

Miami beach frozen in time. talked to Jules most of the night talked to Argentinian businessman- slept or about 15 minutes all night. No air conditioning on the plane from Paraguay - smoking prohibited feigned allergy

UNCED

Arrival in Rio

I stayed with Lucia Lopes whom I met at Uvic

Rio contradiction

Incredible mountains like meteora, in Greece, houses built up the side of mountain.

Could have integrated building with incredible rock formation. Military presence.

Everywhere guns cocked ready for action. Lucia believes military to keep poor from interfering with delegates- beautiful apartment view from window of Christ on mountain and Panama; series of mountains and beaches; tunes
THOUGHTOUT THE CONFERENCE THE WANTS OF THE NORTH WERE IN CONFLICT WITH THE NEEDS OF THE SOUTH; NOTHING EXPRESSES THIS CONFLICT MORE THAN THIS CARTOON BY GABLE

COMMENT

When I arrived at UNCED, the first thing I did was to go to talk with an NGO official to ask if I could read the Nobel Laureate Declaration in the UN General Assembly. At this time, it was not possible. There were however, many opportunities to lobby state delegates, media and NGOs, And I printed up about 2000 Declarations and distributed them widely throughout the conference, including in the final plenary.

COMMENT

Everyday there were briefings given by an organizing committee of NGOs. At one of the meetings, they were discussing developing a list of the worst government and institute performers. I suggested that we also add “the most preposterous proposal category, “and referred to the suggestion in the General Assembly by Hans Blik that nuclear energy was the solution to climate change.

()**THAT** in 1992 at UNCED June 1992, UNCED, I participated, as media, in the opening press conference

COMMENT

I attended the opening press conference where Maurice Strong and Gro Brundtland addressed the media. I waited until two male reporters had spoken and then I called out and asked her if she did not think that the continued enshrining of the Sovereign right to exploit resources would undermine any principles that would emerge from UNCED or weaken the resolve of UNCED. She replied that she would be going to be speaking on this issue in the next two weeks at Harvard. I then waited until the next session where Jacques Cousteau was speaking. He referred to many issues but did not mention anything about nuclear issue. I asked him what he thought of Hans Blix from the IAEA who had made the preposterous proposal that nuclear energy was the solution to climate change in the plenary of the General Assembly at UNCED. He responded that nuclear was no solution and that the north is phasing out nuclear and dumping it on the South. IAEA was in full force they were distributing thousands of brochures during the closing plenary as well Hans Blix had been given a platform at the General Assembly. When I saw the pamphlets being distributed, I copied hundreds of the Nobel Laureate Declaration. Note that there had been another Nobel Laureate declaration that was beginning to be circulated this declaration I believe.

() THAT I intervened at Jean Charest's press conference

Jean Charest was introduced as coming from a country that was extremely concerned about the environment and that Canada had produced a Green Book which should become the example of the world. I waited again until two men had spoken and then I called out that I thought that UNCED should be a time to dispel myths not to perpetuate them and that Canada was not a country that was concerned about the environment: Canada clearcuts forests, destroys biodiversity, dumps raw sewage into the ocean, allows nuclear powered and nuclear arms capable vessels to enter Canadian harbours etc. Also, Canada fails to discharge international obligations. I would like to stand up here and be proud of the Canadian record.

[I had intended to raise the issue of declaring old growth areas on Vancouver Island as World Heritage sites under the Convention on the Protection of Cultural and Natural heritage and that UNCED would be an excellent time to make this commitment.]

I spoke to Charest afterwards and said that I had to say what I said. I think that hypocrisy has to be exposed. If the government of Canada continues to give the impression to the global community that Canadians are concerned about being "stewards" of a "relatively unspoiled wilderness" (Canada report—Canada's submission to UNCED, 1992), then the citizens of Canada can legitimately expect that Canada will fulfill this obligation to be the steward of "relatively unspoiled wilderness" (doctrine of legitimate expectation): "If the government of Canada continues to give the impression to the global community that Canadians are concerned about being "stewards" of a "relatively unspoiled wilderness", then the citizens of Canada have the equitable right to expect that Canada will fulfill this expectation." (Doctrine of legitimate expectation)

Pauline Tangiora from Aotearoa, spoke after me and raised indigenous issues. A reporter from the Globe and Mail was furious because out of the five questions that were allowed at the press conference two of them were from NGOs. I responded that he could raise some of the issues that we raised. I was told afterwards that Louise Comeau, from the Sierra Club had assured Charest that she would discourage me from attending his press conferences.

() THAT IN 1992, I had heard that a US senator was going to be giving a press conference. I went to the international press room;

COMMENT

I knew his press conference would be crowded so I went into the preceding conference to wait for his conference; I waited but he did not arrive. When I left the press room, I saw a colleague who told me that she had been at the press conference given by the American senator at the NGO press room. I asked her to point out the senator who at that moment was walking towards us followed by the media. I wanted to interview him about the US insistence that any aid to the South had to be conditional aid. I wanted to point out that this request was hypocritical given that the US still has people sleeping on the streets and no universal health care. I went with my camera

up to the senator who was at that moment being interviewed by ABC. I asked his handler if I could ask a question and she said yes but only a short one. I interviewed him about the US insistence that any aid to the South had to be conditional I pointed out that this request was hypocritical given that the US still has people sleeping on the streets and no universal health care. While ABC was still there. He answered that if you are asking me if we could do better the answer is yes and then he left. I thought, "typical response of a senator". I didn't realize until two weeks later when I saw Gore on television that I had interviewed Gore and the "we" meant the Democrats.

() THAT in 1992, I intervened at Brian Mulroney's press conference'

COMMENT

Brian Mulroney had just signed the Convention on Biological Diversity and was surrounded by the international media and roses This was his moment! Canada had supposedly been the first to sign. Mulroney gave an almost Star-Wars statement We have dared to do what few could expect we have achieved never did we expect that so much could be accomplished [a paraphrase]. I borrowed a microphone from a French reporter and asked if this meant that he would condemn ecologically unsound practices that destroy biodiversity such as clear-cutting forests.

He stopped short and said, "I don't want to deal with any issues". Obviously, this was not the moment to discuss implementation. This was his moment of glory. Obviously surrounded by sympathetic media. He then glared at me and declared, "you know exactly what I mean."

I left then left for an Indigenous press conference.

() THAT IN 1992, I intervened at British PM press conference

At a press conference Prime Minister Major was asked what he was going to do about population. He responded in the usual white burden manner, about helping the South to achieve population control. I asked him if he did not think that perhaps he should allow the South to determine what would be the best approach

French premier raised the issue of nuclear energy

() THAT in 1992, I re-circulated the 10 commandments from the UNCED prep-com

EXHIBIT

10 COMMANDMENTS The Methodist got hold of a memo directed to EPA in it for example there were instructions not to agree to the precautionary principle, or any reference to military. THEY PREPARED A 10 COMMANDMENT DOCUMENT

March 21, 1992

US PLAYING GOD AT EARTH SUMMIT United Methodist a US NGO gave me a spoof on leaked US document about issues to be disqualified. The document was rephrased by NGOs to read as 10 commandments of negotiations.

Early this week members of the US delegation were advised by a senior US delegation member that ten key issues must be kept off UNCED's agenda at all costs. During the meeting and since; these issues have been referred to within the delegation as the ' ten Commandments."

The United States Governments' a "Ten Commandments" for UNCED are:

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- 6 thou shalt cast aside environmental impact assessment concepts inconsistent with US law
7. Thou shalt frown upon new dispute resolution requirements
- 8 Thou shalt strike any references to the military. (the military's name shall not be taken in vain)
9. Thou shalt block new institutions
- 10 Thou shalt not honor new UN pledges.

-

() **THAT** in 1992 at Rio, I worked with a government delegate from Hungary on attempting to strengthen the Forest Principles document and place the document in the context of other obligations and commitments.

EXHIBIT

() **THAT** in 1992, at Rio, I placed the Forest Principles document in the context of previous international obligations and commitments to demonstrate the discrepancies between the Forest Principles and other environmental instruments.

EXHIBIT

Re-examination of the final "unofficial" version of the document "land resources; deforestation, (June 16, 1992)" in the light of commitments made in Agenda 21, Rio Declaration and other international documents as well as in the light of recommendations made by ERA Ecological Rights Association with the assistance of other environmental groups.

Contact:

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STYLE LEGEND:

10-point plain text drawn from Land Resources: Deforestation. the unofficial final text dated June 16, 1992 from UNCED

10-point italics; suggested deletions from final text

10 point plain underlined drawn from various sections of Agenda 21(1982) and the Rio Declaration, (1992) World Charter of Nature (1982) and Preservation of cultural and Natural Heritage (1972)

10-point underlined italics: sections that should be eliminated from Agenda 21 or Rio Declaration

10 bold drawn from various recommendations made by environmental groups

12 CAPITALS COMMENTS AND TITLES

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1. THE NEED FOR HARMONIZATION WITH OTHER INTERNATIONAL DOCUMENTS P. 1

2. BACKGROUND DISCUSSION RELATED TO "DECLARATION OF FOREST PRINCIPLES P.5.

3. SECTION BY SECTION ANALYSIS P.5

1.THE NEED FOR HARMONIZATION OF THE "LAND RESOURCES: DEFORESTATION" DOCUMENT WITH RELEVANT SECTIONS IN AGENDA 21 (1992), IN THE RIO DECLARATION (1992), THE WORLD CHARTER OF NATURE (1982), AND THE PRESERVATION OF CULTURAL AND NATURAL HERITAGE (1972). TO HARMONIZE WITH AGENDA 21, THE "LAND RESOURCES; DEFORESTATION" DOCUMENT MUST ADDRESS THE FOLLOWING SECTIONS ADOPTED BY THE GLOBAL COMMUNITY THROUGH AGENDA 21, AND THE RIO DECLARATION:

- THREAT OF UNCONTROLLED DEGRADATION
- THREAT OF CONVERSION TO OTHER TYPES OF USE
- HARMFUL MISMANAGEMENT SUCH AS UNSUSTAINABLE COMMERCIAL LOGGING

"Forests world-wide have been and are being threatened by uncontrolled degradation and conversion to other types of land uses; influenced by increasing human needs; agricultural; expansion, and environmentally harmful mismanagement, including, for example, lack of adequate forest-fire control and anti-poaching measures, unsustainable commercial logging, overgrazing and ... the impacts of loss and degradation of forests are in the form of soil erosion; loss of biological diversity, damage to wildlife habitats and

degradation of watershed areas, deterioration of the quality of life and reduction of the options for development. (Agenda 21, 11.12. Deforestation)

- ECOLOGICAL DETERIORATION OF WATERSHEDS
- EXCESSIVE DEFORESTATION

"There are serious problems of ecological deterioration in these watershed areas. ... In many areas this is accompanied by excessive livestock grazing, deforestation and loss of biomass cover. (Agenda 21 -13.13 Fragile ecosystems)

- INAPPROPRIATE AND UNCONTROLLED LAND USE

" Inappropriate and uncontrolled land uses are a major cause of degradation and depletion of land resources. Present land use often disregards the actual potentials, carrying capacities and limitations of land resources as well as their diversity in space. (Agenda 21 - 14.34 Agriculture)

- LOSS OF BIODIVERSITY FROM OVER-HARVESTING
- LOSS OF BIODIVERSITY FROM HABITAT DESTRUCTION
- LOSS OF BIODIVERSITY FROM POLLUTION

" Despite mounting efforts over the past 20 years, the loss of the world biological diversity, mainly from habitat destruction, over-harvesting, pollution and the inappropriate introduction of foreign plants and animals has continued." (Agenda 21, 15.3 Biodiversity)

- WATER QUALITY AFFECTED BY DEFORESTATION
- WATER QUALITY AFFECTED BY LOSS AND DESTRUCTION OF CATCHMENT AREAS
- LAND DEGRADATION FROM DEFORESTATION
- PROBLEMS ARISE BECAUSE OF DEVELOPMENT MODEL IS ENVIRONMENTALLY DESTRUCTIVE
- INADEQUATE MONITORING
- NEED FOR PREVENTIVE APPROACH

"Major problems affecting the water quality of rivers and lakes arise, in variable order of importance according to different situations, from inadequately treated domestic sewage, inadequate controls on the discharges of industrial waste waters, loss and destruction of catchment areas, ill-considered siting of agricultural practices. This gives rise to the leaching of nutrients and pesticides. Aquatic ecosystems are disturbed and living freshwater resources are threatened. ...Erosion, degradation, deforestation and desertification have led to increased land degradation, and the creation of reservoirs have, in some cases, resulted in adverse effects on ecosystems. Many of these problems have arisen from a development model that is environmentally destructive and from a lack of protection. Ecological and human health effects are the measurable consequences... although the means to monitor them are inadequate or non-existent in many countries. There is a widespread lack of perception of the linkages between the development, management, use and treatment of water resources and aquatic ecosystems. A preventive approach, where appropriate, is crucial to

the avoiding of costly subsequent measures to rehabilitate, treat and develop new water supplies. (Agenda 21, 18.45 Fresh water)

- CONSERVATION OF BIODIVERSITY

" Promote cooperation between the parties to relevant international conventions and action plans with the aim of strengthening and coordinating efforts to conserve biological diversity and the sustainable use of biological resources. (Agenda 21, 15.8 e. biodiversity)

" Strengthen support for international and regional instruments, programmes and action plans concerned with the conservation of biological diversity and the sustainable use of biological resources. (15.8 f, Biodiversity)

- NEED TO REORIENT EXISTING PRODUCTION AND CONSUMPTION PATTERNS

"Achieving the goals of environmental quality and sustainable development will require efficiency in production and changes in consumption patterns in order to emphasize optimization of *resource use* and minimization of waste. In many instances, this will require reorientation of existing production and consumption patterns that have developed in industrial societies and are in turn emulated in much of the world. (4.15 Changing Consumption Patterns, Agenda 21).

- PROMOTION OF PATTERNS OF CONSUMPTION TO MEET BASIC NEEDS

" To promote patterns of consumption and production that reduce environmental stress and will meet the basic needs of humanity (4.7.a Changing Consumption Patterns, Agenda 21)

- PRECAUTIONARY PRINCIPLE

" Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation." (Rio Declaration, 1992).

- PROVISION FOR NOMINATION OF WORLD HERITAGE SITES FOR OLD GROWTH

" Establishing, expanding and managing, as appropriate to each national context, protected area systems, which includes systems of conservation units for their environmental, social and spiritual functions and values, including conservation of forests in representative ecological systems and landscapes, primary old-growth forests, conservation and management of wildlife, nomination of world Heritage Sites under the World Heritage Conventions, as appropriate, conservation of genetic *resources*, involving in situ and ex situ measures and undertaking supportive measures to ensure sustainable utilization of biological resources and conservation of biological diversity and the traditional forest habitats of indigenous people, forest dwellers and local communities; (11.15 b., Deforestation, Agenda 21)

- VALUE OF FORESTS THROUGH NON-DAMAGING USES

It is also possible to increase the value of forests through non-damaging uses such as eco-tourism and the *managed supply* of genetic materials.

Concerted action is needed in order to increase people's perception of the value of forests and of the benefits they provide. (11.22. Deforestation, Agenda 21)

- **VALUE OF ECOTOURISM**

"To promote more comprehensive use and economic contribution of forest areas by incorporating eco-tourism into forest management and planning. (11.23 d Deforestation, Agenda 21)

- **SUPPORT OF ARMS-LENGTH RESEARCH**

Governments and institutions, in collaboration where necessary with appropriate international agencies and organizations, Universities and non-governmental organizations should undertake assessments and systematic observations of forests and related programmes and processes with a view to their continuous improvement. (11.34 Deforestation)

the promotion of sustainable production systems such as traditional methods of agriculture, agroforestry, forestry, range and wildlife *management*, which use, maintain or increase biodiversity (15.5 Biodiversity, Agenda 21)

- **PROMOTION OF TRADITIONAL METHODS OF FORESTRY THAT MAINTAIN OR INCREASE BIODIVERSITY**

" Take effective economic, social and other appropriate incentive measures to encourage the conservation of biological diversity and the sustainable use of biological *resources*, including the promotion of sustainable production systems, such as traditional methods of agriculture, agroforestry, forestry, range and wildlife *management*, which use, maintain or increase biodiversity (15.5 d Biodiversity, Agenda 21)

- **LIMITATION OF THE SOVEREIGN RIGHT TO EXPLOIT**

States have the sovereign right to exploit their own biological *resources* pursuant to their environmental policies, as well as the responsibility to conserve their biodiversity and use their biological resources sustainably, (15.3 Biodiversity, Agenda 21)

- **PRESERVATION OF 12% REPRESENTATIVE ECOSYSTEM**

- **ENVIRONMENTAL ASSESSMENT OF ALL ACTIVITIES THAT COULD HAVE SIGNIFICANT IMPACTS (INCLUDE FOREST ACTIVITIES)**

Ensure that relevant decisions are preceded by environmental impact assessments and also take into account the costs of any ecological consequences (7.42 Settlement, Agenda 21)

- **NEED TO DISCOURAGE OR PREVENT TRANSFER OF ACTIVITIES AND SUBSTANCES THAT CAUSE ENVIRONMENTAL DEGRADATION**

"States should effectively cooperate to discourage or prevent the relocation and transfer to other States of any activities and substances that cause severe environmental degradation or are found to be harmful to human health."(Principle 14 Rio Declaration)

2. BACKGROUND DISCUSSION RELATED TO A "DECLARATION OF FOREST PRINCIPLES"

Agenda 21, which was adopted by the global community, was all-inclusive of its examination of "sustainable development," the "Land Resources - Deforestation" document, however, is a narrow sectoral document. Principles related to the inherent worth of forest ecosystem, the sustainability of forest use, and the necessity of international ecologically sound standards must reflect the complexity and all-inclusiveness of many of the enunciated principles in Agenda 21, the Rio declaration as well as the fundamental ecologically sound approach to forests.

Given that " We have come to realize that threats to the biosphere, which sustains all life on earth, have changed in rate, magnitude and scale, to such an extent that inaction would be negligent. (Alternate Earth Charter, Global Forum, 1992), we propose the following:

Rather than a "Land resources: Deforestation" document which deals with forests in a narrow sectoral way, a comprehensive "Declaration of Forest Principles" is proposed. The following declaration is based on the "unofficial Land Resources: Deforestation", text from June 16, 1992). The complete text is printed here in 10 point plain. This text, however, has been expanded and altered: sections that are recommended for deletion are in *10-point italics*. Sections drawn from various sections of Agenda 21 (1992), the Rio Declaration (1992), World Charter of Nature (1982) and Preservation of Cultural and Natural Heritage (1972) are in 10 point plain underlined. Recommendations made by environmental groups are in **10 bold drawn from various recommendations, and comments and titles are in **12-point CAPITALS****

3. SECTION BY SECTION ANALYSIS OF "LAND RESOURCES: DEFORESTATION" DOCUMENT WITH SUGGESTED DELETIONS AND ALTERATIONS IN ORDER TO ACHIEVE A PROPOSED "DECLARATION OF FOREST PRINCIPLES" DOCUMENT COPY OF TEXT WITH ADDITIONS FROM ENVIRONMENTAL GROUPS AND FROM AGENDA 21 AND THE RIO DECLARATION.

LAND RESOURCES: DEFORESTATION

Non-legally binding [legally binding] authoritative statement of principles for a global consensus on the *management* conservation and sustainable development of all types of forests.

PREAMBLE

(a) The subject of forests is related to the entire range of environmental and development issues and opportunities including **the right to conservation of representative ecosystems, right to non-consumptive enjoyment of**

forests and the right to ecologically sound employment *the right to socio-economic development on a sustainable basis.*

b) The guiding objective of these principles is to contribute to the **conservation of forest ecosystems, and to the establishment of ecologically sound forest practices of the management, conservation and sustainable development of forests, and to provide for the setting aside of wilderness, for the preservation of significant unfragmented old growth systems, and for the establishment of international ecologically sound standards of true sustainability.** *their multiple and complementary function and uses.*

c) Forestry issues and opportunities should be examined in an holistic and balanced manner within the overall context of environment and development, taking into consideration **the mandate to set aside untouched wilderness areas, to preserve significant unfragmented old-growth forest ecosystems, as well as the non-consumptive and ecologically sound uses multiple functions and uses of forests,** including traditional uses, *and the likely economic and social stress when these uses are constrained or restricted, as well as the potential for development that sustainable forest management can offer.* It is also possible to increase the value of forests through non-damaging uses such as eco-tourism and the managed supply of genetic materials. Concerted action is needed in order to increase people's perception of the value of forests and of the benefits they provide. (11.22. Deforestation)

d) These principles reflect a first global consensus on forests. In committing themselves to the prompt implementation of these principles, countries also decide to keep them under assessment for their adequacy with regard to further international cooperation on forest issues **and for the establishment of international enforceable ecologically sound standards. These standards must give primacy to the understanding of the forest as a complex interacting ecosystem, including the "cradle to grave approach" assessment of all intrusions into the ecosystem.** Governments, in collaboration with industry and appropriate international organizations, should develop procedures for monitoring the application of the cradle to grave approach, including environmental audits (20.20 e Hazardous wastes)

e) These principles should apply to all types of forests, both natural and planted, in all geographic regions and climatic zones, including austral, boreal, sub-temperate, temperate, sub-tropical and tropical.

f) All types of forests embody complex and unique ecological processes **which are of intrinsic value in themselves (World Charter of Nature)** and which are the basis for their present and potential capacity to provide resources to satisfy human needs as well as environmental values and as such **their ecologically sound use sound management and their conservation** is of concern to the Governments of the countries to which they belong **[and to the world community]** and are of value to local communities and to the environment as a whole.

g) *Forests are essential to economic development and the maintenance of all forms of life.* **have intrinsic value and are essential to all forms of life**

h) **Even though** *Recognizing that the responsibility for forest management, conservation and sustainable development is in many States allocated among federal/national, state/provincial and local levels of government, each State, in accordance with its constitution and/or national legislation should pursue **international ecologically-sound standards** these principles at the appropriate level of government*

Principles/elements

1. a) *States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction and States have the sovereign right to exploit their own biological resources pursuant to their environmental policies, as well as the responsibility to conserve their biodiversity and use their biological resources sustainably, (15.3 Biodiversity, Agenda 21) and the responsibility to ensure that activities within their jurisdiction do not cause damage to the environment both within and beyond their own state, and providing that they do not violate internationally ecologically sound standards, and the responsibility to recognize the inherent worth of the forest ecosystem itself (World Charter of Nature), to promote the setting aside of undisturbed wilderness, and to allow the forest ecosystem to renew itself*

(b) **Recognizing the importance of preservation of forest ecosystem and the setting aside of undisturbed wilderness**, the agreed full incremental cost of achieving benefits associated with forest conservation and sustainable development requires increased international cooperation and should be equitably shared by the international community. **Due consideration should be given to the designating of an increased number of unfragmented forest ecosystems under the UN Convention for the Preservation of Cultural and Natural Heritage.**

2. (a) *States have the sovereign and inalienable right as well as the responsibility to conserve their biodiversity and use their biological resources sustainably, (15.3 Biodiversity) and the responsibility to ensure that activities within their jurisdiction do not cause damage to the environment both within and beyond their own state, and providing that they do not violate internationally ecologically sound standards , to utilize, manage and develop their forests in accordance with their development needs and level of socio-economic development and on the basis of national policies consistent with sustainable development and legislation, including the conversion of such areas for other uses within the overall socio-economic development plan based on rational land-use policies." Inappropriate and uncontrolled land uses are a major cause of degradation and depletion of land resources. Present land use often disregards the actual potentials, carrying capacities and limitations of land resources as well as their diversity in space. (14.34 Agriculture).*

Recognizing that since the term 'management' implies that we are in fact capable of truly managing forests in a sustainable way, and since we must recognize that the forest ecosystem is complex and indeterminate, and that many of our intrusions have unexpected consequences, that we should proceed with caution by observing and drawing upon the expertise evidenced in the few existing unfragmented original growth ecosystems.

(b) The precautionary principle is followed in all proposed logging activity because of the potential for logging activity to cause 'serious and irreversible' damage. Forest resources and forest lands should be preserved for their inherent value (World Charter of Nature) so as to leave open a full range of non-consumptive options.

Other Forests should be used as resources providing that ecologically sound practices are used for harvesting and restoring the forest resources should sustainably managed to meet the social, economic, ecological, cultural and spiritual human needs of present and future generations. These needs are for forest products and services, such as wood and wood products, water, food, fodder, medicine, fuel, shelter, employment, recreation, habitats for wildlife, landscape diversity, carbon sinks and reservoirs, and for other forest products. Appropriate measures should be taken to protect forests against harmful effects of pollution, including air-borne pollution, fires, pests and diseases, and from harmful logging practices and from harmful chemicals that are used for forest "management" in order to maintain their full multiple value. to leave open options for non-consumptive use.

(c) The provision of timely, arms-length reliable and accurate information on forests and forest ecosystems is essential for public understanding and informed decision-making and should be ensured.

(d) Governments should promote and provide opportunities for the participation in the establishing of terms of reference and throughout the decision-making process of interested parties, including local communities and indigenous people, industries, labour, non-governmental organizations and individuals, forest dwellers and women, in the development, implementation and planning of national forest policies. taking fully into consideration adherence to international ecologically sound standards. A distinction should be made between input from vested short-term economic interest for economic gain and long-term concern about the ecological commons.

- 2. (a) International ecological standards shall provide a framework for development and strengthening of conservation and sustainable development. National policies and strategies should provide a framework for increased efforts, including the development and strengthening of institutions and programmes for the management, conservation and sustainable development of forests and forest lands.**
- 3. Implementation of international ecologically sound standards.**

These standards shall apply to all forests on public and private lands, and should draw upon ecologically sound indigenous and traditional practice that have been demonstrated to preserve biodiversity.

b) International institutional arrangements, building on those organizations and mechanisms already in existence, as appropriate, should facilitate international cooperation in the field of forests.

c) All aspects of environmental protection and social and economic development as they relate to forests and forest lands should be integrated and comprehensive.

4. the vital role of all types of forests in maintaining the ecological processes and balance at the local, national, regional and global levels through, inter alia, their role in protecting fragile ecosystems, watersheds and freshwater *resources sources* and as rich storehouses of biodiversity ... **and International ecological sound guidelines shall be in place to ensure this vital role.**

-and the vital role of biological resources and sources of genetic material for biotechnology products, as well as photosynthesis, should be recognized, and international standards shall be in place as guidelines to ensure this vital role.

5 (a) **Developed states and companies shall be responsible in their own country and in their country of operation for restoring the land that had previously been destroyed through ecologically unsound logging practices and through ecologically unsound silviculture practices. In developing countries, international assistance shall be given to restore land destroyed through subsistence forestry.** National forest policies should recognize and duly support the identity, culture and the rights of indigenous people, their communities and other communities, and forest dwellers. Appropriate conditions should be promoted for these groups for them **to have a representative ecosystem preserved, access to independent arms-length research, as well as** an economic stake in forest use, perform economic activities, and achieve and maintain cultural identity and social organization, as well as adequate levels of livelihood and well-being, through, inter alia, those land tenure arrangements which serve as incentives for **the sustainability** *the sustainable management* of forests. **A distinction should be made between "forest dwellers" and forest exploiters (those who go into the forest primarily to exploit the forest as a resource). The practice of destroying forest lands for the growing of cash crops for external markets as part of the current model of development should be halted.**

b) The full participation of women in all aspects of *management, conservation* and sustainable development of forests should be actively promoted.

6. (a) All types of forests play an important role in meeting energy requirements through the provision of a renewable source of bio-energy;

particularly in developing countries, and the demands for fuel wood for household and industrial needs should be met through sustainable forestry *management*, afforestation and reforestation. *To this end, the potential contribution of plantations of both indigenous and introduced species care should be taken to resist the introducing of off-site planting for the provision of both fuel and industrial wood should be recognized.* **" Despite mounting efforts over the past 20 years, the loss of the world biological diversity, mainly from habitat destruction, over-harvesting, pollution and the inappropriate introduction of foreign plants and animals has continued. (15.3 Biodiversity, Agenda 21)**

b) National policies and programmes **in accordance with international ecologically sound standards** should take into account the relationship, where it exists, between the conservation, *management and* sustainable development of forests and all aspects related to the production, consumption, recycling and/or final disposal of forest products, **and that international trade agreement shall not require states to relax high environmental standards.**

(c) Decisions taken on the *management*, conservation and sustainable development of *forest resources* **forests should** benefit to the extent practicable from a comprehensive assessment of economic and non-economic values of forest goods and services and of the environmental costs and benefits. The development and improvement of methodologies for such evaluations should be promoted.

d) The role of planted forests and permanent agricultural crops as sustainable and environmentally sound sources of renewable energy and industrial raw material should be recognized, enhanced and promoted. The contribution to the maintenance of ecological processes, to offsetting pressure on primary/old-growth forest and to providing regional employment and development with the adequate involvement of local inhabitants should be recognized and enhanced.

(e) Natural forests also constitute a source of goods and services and their conservation; sustainable *management* development and use should be promoted.

7.(a) Efforts should be made to promote a supportive international economic climate conducive to sustained and environmentally sound development of forests in all countries, which include, inter alia, the promotion of sustainable patterns of production and consumption, the eradication of poverty, and the promotion of food security.

8.(a) Efforts should be undertaken towards the greening of the world. All countries, notably developed countries **in accordance with international ecologically-sound standards**, should take positive and transparent action towards reforestation, afforestation and forest conservation, as appropriate.

(b) Efforts to maintain and increase forest cover and forest productivity should be undertaken in ecologically, economically and socially sound ways through the rehabilitation, reforestation and re-establishment of trees and forests on unproductive, degraded and deforested lands, as well as through **allowing**

previously destroyed forests to regenerate themselves *the management of existing forest resources.*

(c) The implementation of national policies and programmes aimed at forest *management*, conservation and sustainable development, particularly in developing countries, should be supported by international financial and technical cooperation, **in accordance with International ecologically sound standards**, including through the private sector, where *appropriate*, **and should not violate principle 14 of the Rio Declaration., or the principles in the Biodiversity Convention.**

(d) Sustainable forest *management and use* should be carried out in accordance with national development policies **that do not violate international conventions such as Biodiversity as well as international ecologically-sound standards**, *and priorities and on the basis of environmentally sound national guidelines. In the formulation of such guidelines account should be taken, as appropriate, and if applicable, of relevant internationally agreed methodologies and criteria.*

(e) Forest *management conservation and use* should be integrated with *management of adjacent areas* so as to maintain ecological balance and sustainability *sustainable productivity.*

(f) National policies and/or legislation aimed *at management*, conservation and sustainable development of forests, should include the protection of ecologically viable representative or unique examples of forests, including primary/old-growth forests, cultural, spiritual, historical, religious and other unique valued forests of national importance; **these forests should be distributed widely throughout each state and throughout the world.**

(g) Access, **shall be required to comply with international ecologically sound standards**, to biological resources - including genetic material, shall be with due regard to the sovereign rights of the countries where the forests are located and to the sharing on mutually agreed terms of technology and profits from biotechnology products that are derived from these resources.

(h) National policies should ensure that environmental impact assessments should be carried out where actions are likely to have significant adverse impacts on important forest resources, and where such actions are subject to a decision of a competent national authority. **Conversely it must also be recognized that forest practices have and continue to have significant adverse impacts on the land and water base, and that the impact of forest practices must also be under the purview of environmental impact assessment. To determine the environmental impact, states shall apply international ecologically sound standards, established by an independent, arms-length research body, and**

Ensure that relevant decisions are preceded by environmental impact assessments and also take into account the costs of any ecological consequences (7.42 Settlement, Agenda 21)

9 (a) The efforts of developing countries, to strengthen the *management*, conservation and sustainable development of their forests *resources* should be supported by the international community taking into account the importance of redressing external indebtedness, particularly where aggravated by the net transfer of resources to developed countries, as well as

the problem of achieving at least the replacement value of forests through improved market access for forest products, especially processed products. In this respect, special attention should also be given to countries undergoing the process of transition to market economies. **No state shall be required to log a forest to service international debt or to comply with international trade regulations. Debt remission for preservation of significant forest areas should be instituted.** "States should effectively cooperate to discourage or prevent the relocation and transfer to other States of any activities and substances that cause severe environmental degradation or are found to be harmful to human health."(Principle 14, Rio Declaration)

(b) The problems that hinder efforts to attain the conservation and sustainable use of forests *resources and* stem from the lack of alternative options available to local communities, in particular the urban poor and poor rural populations who are economically and socially dependent on forests *and forest resources*, should be addressed by Governments and the international community.

(c) National policy formulation with respect to all types of forests **shall give primacy to the fulfillment of high international ecological standards and not compromise those long-term ecological principles for the sake of short-term economic gain, but rather attempt to convert ecologically unsound practices to ecologically sound practices.** *should take account of the pressures and demands imposed on forest ecosystems and resources from influencing factors outside the forest sector and inter-sectoral means of dealing with those pressures and demands should be sought.*

11. New and additional financial resources should be provided to developing countries to enable them to sustainably *manage*, conserve and develop their forests *forest resources*, including afforestation, reforestation and combating deforestation, forest and land degradation **through the use of ecologically sound practices and substances such as selective logging, safe alternative pest control method.**

12. In order to enable in particular developing countries to enhance their endogenous capacity and to better *manage*, conserve and develop their **forests forest resources**, the access to and transfer of environmentally sound technologies and corresponding know-how on favourable terms, including on concessional and preferential terms, as mutually agreed, in accordance with the relevant provisions of Agenda 21, should be promoted, facilitated, and financed, as appropriate, **and in accordance with principle 14 (anti-dumping principle) of the Rio Declaration, and in accordance with the precautionary principle.**

13 (a) Scientific **arms-length** research, forest inventories and assessment, carried out by national institutions, **in accordance with international ecologically-sound standards**, which take into account, where relevant, **wilderness**, biological, physical, social and economic variables, as well as the technological development and its application in the field of *sustainable forest management*, conservation and development, should be strengthened through effective modalities, including international cooperation. In this context, attention should also be given to research and development of

sustainably harvested non-wood products. (WHAT WOULD THIS INCLUDE? HUNTING, MEDICINES)

(b) National and where appropriate, regional and international institutional capabilities in, education, training, science, technology, economics, anthropology and social aspects of forests, **wilderness** and forest sustainability management *are* essential to the conservation and sustainable development of forests and should be strengthened.

(c) International exchange of information **on the results of the intrinsic worth of forest ecosystems, on significance of wilderness and on ecologically sound forest practices** *forest and forest management* research and development should be enhanced and broadened, as appropriate, making full use of education and training institutions, including those in the private sector. **The international community shall set up an independent body to determine the accuracy of the claims made by multinational forest companies, and to establish a set of international standards of ecologically sound forest practices.**

(d) Appropriate indigenous capacity and local knowledge regarding the conservation and sustainable development of forests should, through institutional financial support and in collaboration with the people in local communities concerned, be recognized, respected, recorded, developed and, as appropriate, introduced in the implementation of programmes, **and their input sought in the establishment of international standards of ecologically sound forest practices.** Benefits arising from the utilization of indigenous knowledge should therefore be equitably shared with such people.

14. (a) **Given the urgency of deforestation and soil degradation that was recognized by the global community in Agenda 21, fundamental environmentally sound principles must be given primacy in any trade negotiations.** *the Trade in forest products should be based on non-discriminatory and multilaterally agreed rules and procedures consistent with international trade law and practices. In this context, open and free international trade in forest products should be facilitated.*

(b) *reduction or removal of tariff barriers and impediments to the provision of market access and better prices for higher value-added forest products and their local processing should be encouraged to enable producer countries to better conserve and manage , sustain and allow for the renewal of their forests their renewable forest resources,* and the export of resources, such as raw logs, cants and wood chips, that detract from value-added forest production, must be discontinued.

(c) **Since true environmental costs, assessed by an independent environmental audit, have been ignored in the process of decision making about forest use, environment costs and benefits must be assessed.** Incorporation of environmental costs and benefits into market forces and mechanisms. In order to achieve forest conservation and sustainable development, should be encouraged both domestically and internationally, and

(d) **Forest conservation and sustainable development policies shall be given primacy and should not be compromised by economic policies** *should be integrated with economic, trade and other relevant policies.*

(e) Fiscal, trade, industrial, transportation, and other policies and practices that may lead to forest degradation should [**shall**] be avoided. Adequate policies, aimed at *management*, conservation and sustainable development of Sforests, including *where appropriate incentives for the conversion from ecologically unsound practices* should be encouraged.

15(a) Unilateral measures, obligations or agreements, to restrict and /or ban international trade in timber of other forest products should be removed or avoided, in order to attain long-term sustainable forest management

16. Pollutants, particularly air borne pollutants, including those responsible for acidic deposition, **that** are harmful to the health of forest ecosystems at the local, national regional and global levels should be controlled, **and the use of harmful pesticides in forestry should be reduced and eventually eliminated.**

Governments, in cooperation with relevant international organizations and programmes, should carry out national reviews, as appropriate, of previously accepted pesticides whose acceptance was based on criteria now recognized as insufficient or outdated and of their possible replacement with other pest control methods, particularly in the case of pesticides that are toxic, persistent and/or bio-accumulative. (19.55 b Toxic chemicals))

" Integrated pest *management*, which combines biological control, host plant resistance and appropriate far practices and minimizes the use of pesticides, is the best option of the future as it guarantees yields, reduces costs, is environmentally friendly and contributes to the sustainability of agriculture. (14.74 Agriculture)

"Promoting the use of environmentally less harmful pesticides and fertilizers and alternative methods for pest control, and considering the prohibition of those found to be environmentally unsound (17.28 i)

() **THAT** I wrote a position piece on Canada's ignoring international obligations for the Times Colonists

EXHIBIT

1992 CANADA IGNORES INTERNATIONAL ENVIRONMENTAL DOCUMENTS

Canada violates or ignores international environmental documents to which it has been a signatory while deluding the world community into thinking that it is genuinely concerned about the environment.

At the press conference given by Federal Minister of the Environment, Jean Charest at the UNCED conference in Rio, a representative of the United Nations introduced Charest as being from a country which was truly concerned about the environment. During the question period I indicated that " UNCED should be a time to dispel myths not perpetuate them and that

Canada is not an ecologically sound country and that we should be honest with the rest of the world

Evidence that could dispel the myth that Canada is truly concerned about the environment has been occurring for years throughout B.C. in the forest industry, and is occurring currently in the dispute in Clayoquot Sound.

Rather than the courts in Canada insisting on adherence to international environmental documents such as the World Charter of Nature (UN Resolution 37/7, 1982) or to the current Convention on Biological Diversity (1992), Canadian courts condemn those who strive to call for the adherence to international law (environmentalists), and condone those who ignore International Law. (industry).

For Example, Canada is a signatory of the World Charter of Nature, 1982 (UN resolution 37/7) which states the following:

11. Activities which might have an impact on nature shall be controlled, and the best available technologies that minimize significant risks to nature or other adverse effects shall be used; in particular;
 - a) all activities which are likely to cause irreversible damage to nature shall be avoided;
 - c) Activities which are likely to pose a significant risk to nature shall be preceded by an exhaustive examination; their proponents shall demonstrate that expected benefits outweigh potential damage to nature and where potential adverse effects are not fully understood, the activities should not proceed;

Have governments in Canada since 1982 "avoided" industrial activities such as ecologically unsound "logging practices" that have caused irreversible damage to nature.? Have governments in Canada called upon forest companies to not proceed with ecologically unsound practices whose adverse effects are not fully understood?

In 1992, Canada is now a signatory of the Convention on Biological Diversity which notes the following:

that it is vital to anticipate, prevent and attack the causes of significant reduction or loss of biological diversity at source.

also, where there is a threat of significant reduction or loss of biological diversity, lack of full scientific certainty should not be used as a reason for postponing measures to avoid or minimize such a threat

Is Canada reducing the loss of biological diversity at the source, when it is prepared to log old growth forests before it has carried out adequate non-arm's length research into the true biodiversity of the old growth forests? Is there not strong enough evidence in place that clear-cut logging has

destroyed biodiversity, yet we appear to wait for "scientific certainty" before we are prepared to avoid or minimize such a threat? By that time there may be very little biodiversity left.

At the Press Conference where Mulroney signed the Convention on Biological Diversity in Rio de Janeiro, I asked him " if the signing of this document would mean that the government of Canada would condemn ecologically unsound practices such as clear-cut logging that destroy biodiversity." He replied, "he did not want to deal with issues."

If Mulroney is willing to sign a document professing to adhere to the preservation of biodiversity, and if he is not willing to deal with the practices that contribute to the loss of biodiversity, then the Canadian public will have to bring this discrepancy between rhetoric and action to the attention of the international community..

The environmentalists who have continually been striving to preserve the little remaining old growth forests, and to call for the need to identify and do research into biodiversity are the ones who have been adhering to the principles enunciated in the United Nations' World Charter of Nature. They will also be the ones who are calling for the preservation of the old growth areas so that Canada will be able to adhere to the binding principles enunciated in the United Nations Convention on Biological Diversity. Yet it is those who act to prevent "irreversibility" that are prosecuted as criminals, and those who cause 'irreversibility" that are protected by Canadian courts.

() THAT, 1992, I wrote an affidavit for the court case to prevent Nuclear powered and nuclear arms capable vessels in greater Victoria Harbour I have analyzed statements in the following Government of Canada statutes and attempted to extract and categorize general principles underlying these statements:

The Atomic Energy Control Act, R.S. C A-19, S 1
The Emergency Preparedness Act, 1988, C 11.
The Canadian Environmental Protection Act, 1988, C 22.
The Environmental Contaminants Act, 1974-75-76, C 72.
The Fisheries Act, 1977, C 35
The Department of the Environment Act, R.S., C 14 (2nd Supp.), s2
The Government Organization Act 1979, C 13
The Hazardous Products Act, R.S., C H-3, S 1

In all the statutes, which I examined, dealing with either hazardous materials or the pollution caused by hazardous materials, importance is placed on the determination of the safety of the hazardous materials. And it is recognized that in order to determine safety, it is necessary to have information about the materials and their uses. This principle is enunciated in the following examples drawn from the statutes.

a) In section 11 (Disclosure) of the Hazardous Products Act, "disclosure of information is required where the Minister has reason to

believe that a product or substance may be dangerous... The Minister may send a written notice to the manufacturer of the product or substance requesting the manufacturer to disclose to the Minister the formula, composition or chemical ingredients of the product or substance and such other information in the possession of the manufacturer as the Minister deems necessary for the purpose of determining whether the product or substance is or is likely to be a danger to the health or safety of the public.”(The Hazardous Products Act. R.S., CH-3, S 1)

b) Pursuant to 7 (2) Of the Environment Contaminants Act “where the Minister of National Health and Welfare believes that a substance will constitute a significant danger to human health or the environment, the Minister may send a written notice to any person engaged in any commercial, manufacturing or processing activity involving the substance or any member of a classes of substances of which the substance is a member requiring that person to furnish the Minister with such information specified in the notice.” (The Environmental Contaminants Act. 1974-75-76, C 72)

c) Section 33. 1 of the Fisheries Act states the following:
“Every person who carries on or proposes to carry on any work or undertaking that results or is likely to result in
a) the deposit of a deleterious substance in water frequented by fish or in any place under any conditions where that deleterious substance or any other deleterious substance that results from the deposit of that deleterious substance may enter any such water, or
b) the alteration, disruption or destruction of fish habitat shall on the request of the Minister... (a) provide the Minister with such plans, specifications, studies, procedures, schedules, analyses, samples or other information relating to the work or undertaking and with such analyses, samples, evaluations, studies or other information relating to the water, place or fish habitat that is or is likely to be affected by the work or undertaking as will enable the Minister to determine
c) whether there is or is likely to be a deposit of a deleterious substance by reason...d) whether the work or undertaking results or is likely to result in any alternation, disruption or destruction of fish habitat.”
(Federal Fisheries, 1977, C. 35)

e) In section 5 Department of the Environment Act
“The Minister in exercising his powers and carrying out his duties and functions under section 4 shall...
5(ii) ensure that new federal projects, programs and activities are assessed early in the planning process for potential adverse effects on the quality of the natural environment and that a further review is carried out of those projects, programs, and

activities that are found to have probable significant adverse effects and the results thereof taken into account”,

f) Furthermore, in Section 2 of the Environmental Contaminants Act consideration is given to effects that are persistent and cumulative:

“(iii) the extent to which the substance or any class of substances of which it is a member can become dispersed and will persist in the environment.

(iv) the ability of the substance or of any class of substances of which it is a member to become incorporated and to accumulate in biological tissues and to cause biological change.” (The Environmental Contaminants Act. 1974-76)

8. That the principle is set out in the regulations related to the Atomic Energy Board Act that extreme precautions must be taken in the transport of atomic materials:

a) “*(2) Any person who transports or causes to be transported any radioactive material ...” (See Exhibit A for the list of stipulated regulations for atomic materials)

9. That the principle is expressed in the Emergency Preparedness Act that the government has a duty to make extensive provisions for civil emergency preparedness

() THAT in 1992 at Rio, I had some input into the NGO Forest Treaty COMING OUT OF NGO AT RIO

COMMENT

Note: This Forest treaty was negotiated between representatives from Non-Governmental Organizations of many nations from the South and the North, at the Global Forum in Rio de Janeiro, Brazil, during June 1992. The Global Forum was a conference held parallel to the United Nations Conference on Environment and Development (UNCED). The Treaty was negotiated over a period of six days of intense discussions using three working languages: Portuguese, Spanish and English. All decisions were arrived at by consensus and the participants in this Treaty-making process experienced deep feelings of community with each other. This Treaty is not being distributed throughout the world by various organizations. Those who are in general agreement with their Treaty, and are prepared to put it into practices, can formally endorse it and seek the endorsement of other individuals and organizations. The Green Web had two representatives into the NGO Forest Treaty negotiations. We estimate there was a core group of at least 30 people in the negotiations, with intermittent participation by many others.)

NGO TREATY ON FORESTS

The following definitions are provided for the purpose of this Treaty:

Natural forests are ecosystems dominated by trees or shrubs [growing] in an original or nearly original fashion through natural regeneration. This definition includes mangroves:

"Restore forests are forests planted, seeded, or otherwise restored in such a manner as to emulate the original natural forests of an area.

"Plantations" are crops of trees artificially established, primarily for specific commercial purposes.

Sustainable forest management means securing benefits for human needs while maintaining the structure, function, and integrity of ecosystems on a bioregional basis, incorporating in perpetuity complete forest successions in each bioregion.

"Colonists" are non-aboriginal and traditional people who have recently moved into an area

Native, indigenous and aboriginal peoples are those who have lived in relative harmony with the environment for many generations, and whose origins, as people, are in that area.

Traditional peoples are non-native populations who have established non-destructive relationships with their environmental and have lived there for generations

Preamble:

The undersigned Non-governmental Organizations

Recognizing the vital role of all types of forests in maintaining the ecological processes of the Earth; in protecting ecosystems, watersheds, freshwater resources, coastal areas, estuaries, and adjacent seas; as a rich storehouse of biodiversity; and in carbon fixation:

Recognizing also that all types of forests embody complex and unique ecological processes which are the basis of their present and potential capacity to provide resources to satisfy the biological needs of all forest dependent species, as well as environmental, cultural, historical, and spiritual values:

Believing that forestry issues and opportunities should be examined in a holistic manner, taking into consideration the multiple functions and uses of forest, including living space and cultural survival of the indigenous forest people

Recognizing that many traditional forest dwelling people have had their territories and their ability to pursue their historic cultural activities encroached upon or destroyed:

Noting that the world's forest ecosystems have been dangerously reduced and degraded during more than a century, and that in recent decades the rate of reduction and degradation has been accelerating due to many kinds of exploitation:

Noting also that the consumption of wood products commercially and for fuel wood is at a non-sustainable level and is being met from natural forests rather than from plantations, recycled materials, and other sources;

Noting further the leading part that national and transnational corporations play in degrading forest ecosystems during exploitation and in trading forest products, with minimum benefit to the people in the locality of origin, often displacing them in the process, and often causing social/economic environmental and cultural damage;

Observing that indigenous forest land-tenure systems are highly structured and defined, and are commonly overridden by law, political, and market interests, which reshape access to and control over forest resources:

Observing also that the concentration of power and control over natural resources has resulted in an increase of poverty and deprivation putting increased pressures on forest ecosystems;

Emphasizing that the concentration of property and usufruct of forest land and resources in the hands of a few owners and national and multinational corporations, is a major factor responsible for the deforestation and degradation of forests in many countries; and that this limits the ability of local people to influence the uses of the land:

Acknowledging that responsibility for forest management must be accepted by governments, local NGOs, business, and individuals, without prejudice to the rights of indigenous peoples:

Acknowledging also that indigenous territories including forests must be exclusively managed by indigenous and local people in cooperation with other interested sections of society shall be decided by indigenous and local people:

Declaring that all types of forest and especially wilderness forest have intrinsic values of their own and are essential for the conservation of biodiversity; and are a source of knowledge, inspiration, and spiritual renewal for humanity:

Assert that this treaty applies to all types of forests, restored forests, and plantations in all geographical and climatic zones:

And further assert that the purpose of this treaty is to ensure the conservation, rehabilitation, enhancement, enlargement, national regeneration, planting, protection and sustainable use of the world's forests, as in each case is appropriate to the particular ecosystem

Principles:

1.1. Forests are essential to life on Earth. The structure, function and integrity of ecosystems must be seen to have infinite value. Every form of forest life is unique and requires adequate habitat and protection.

2. Forests must be protected to supply the social, economic, ecological, cultural and spiritual needs of present and future generations, subject to maintenance of the integrity of soil, water, air and the conservation of biodiversity.

3. Policies in forest conservation shall include the full permanent protection of all forest ecosystem types, the restoration and/or recuperation of degraded or fragmented forests, and the sustainable management of areas under human use.

4. Forest policy must be developed with maximum public consultation and participating especially with local forest people and community groups, and the public must have the right to appear and enforce decisions made in the forestry sector.

5. Forests are the very life of many indigenous people, and therefore their traditional territories must be legally recognized, demarcated, and guaranteed.

6. Traditional forest knowledge and practices of indigenous people must be guaranteed.

7. The struggle for forest conservation cannot be separated from the struggle for agrarian reform in some countries, and the general principles of democratization, social justice and respect for the environment.

8. The rights of indigenous and traditional people who make a living from the non-destructive extraction of forest products (such as rubber tapping and nut picking) should be legally guaranteed in areas they have traditionally occupied. These extractive processes should be recognized, protected, and promoted as a form of sustainable forest management, to alleviate pressure on the forests, to benefit local economies, and to help the global environment.

9. Existing monoculture and exotic plantations which have been planted for timber production should be preferentially harvested in order to take the pressure off the cutting of natural forests. These plantations should generally be converted to mixed plantations of native species.

10 a. In order to maximize biological diversity, natural regeneration of trees should be employed wherever possible.

10b. The role of plantations, restored forests and tree crops (such as fruits and nuts) as sustainable and environmentally sound sources of renewable energy should be recognized, enhanced, and promoted. Plantations and rehabilitated forests can be a means of relieving commercial pressure on

primary or old-growth forests. No land presently under natural or restored forest should be converted to plantations.

10c. Plantation forestry should only occur on non-forested areas, degraded areas, and areas no longer able to support natural regeneration of the native forests, and that are not suitable for food crops. Plantations should not be subject to chemical or biological control or non-organic fertilizers.

10 d restoring forests and establishing plantations on degraded land can play an important role in providing regional employment and development for the benefit of local people, national economies, and the global environment. Before any plantation project is undertaken, environmental impact studies should be done to ensure there are no adverse effects on local economies or the environment.

11. Logging practices that *do not take into account* **cause** habitat destruction, soil erosion, loss of biomass, **loss of biodiversity**, [adverse cultural and economic effects,] or **that the securing of do not allow for** ecologically appropriate regeneration, must be internationally condemned.

12. Environmental costs and benefits *including economic, social, cultural and political values*, [**Environmental and social costs**] *should* be incorporated through green accounting into values put on forest resources by market forces and mechanisms and national accounting, and reflected in real prices, permit costs, and fiscal charges, in order to achieve sustainable uses of forests.

13. Government forest agencies should no sell, allocate, or otherwise dispose of forest products unless those transactions show a profit based on the real value of all assets used including trees, land, soil, water, in each forest area involved.

14. Recycling of wood products, especially paper, along with less wasteful logging and processing practices should play a significant part in protecting environmental values and in relieving pressure of demand for new wood.

] in 1991, I submitted, along with Andrew Gage, a revised complaint to the Ombudsman's office, and received an assurance that Steven Owen claimed that Canada would be implementing its undertakings derived from UNCED

() THAT in August, I wrote the following op-ed for the Times Colonist

EXHIBIT

Our international 'green' act is a hollow pretence

*Op ed in the times colonist
August, 1992*

Canada violates or ignores international environmental documents to which it has been a signatory while deluding the world community into thinking that it is genuinely concerned about the environment.

At a press conference given by federal Environment Minister Jean Charest at the United Nations Conference on Environment and Development (the Earth Summit) in Rio, a representative of the United Nations introduced Charest as being from a country which was truly concerned about the environment.

During the question period, I indicated the “UNCED should be a time to dispel myths, not perpetuate them, and that Canada is not an ecologically sound country and that we should be honest with the rest of the world.”

Evidence that could dispel the myth that Canada is truly concerned about the environment has been occurring for years throughout B.C. in the forest industry, and is occurring currently in the dispute in Clayoquot Sound.

Rather than the courts in Canada insisting on adherence to international environmental documents such as the World Charter of Nature (UN Resolution 37/7, 1982) or to the current Convention on Biological Diversity (1992), Canadian courts condemn those who strive to call for the adherence to international law (environmentalists) and condone those who ignore international law (industry).

For example, Canada adopted the World Charter of Nature, 1982 (UN resolution 37/7) which states:

“11. Activities which might have an impact on nature shall be controlled, and the best available technologies that minimize significant risks to nature or other adverse effects shall be used; in particular;

a. All activities which are likely to cause irreversible damage to nature shall be avoided;

c) Activities which are likely to pose a significant risk to nature shall be preceded by an exhaustive examination; their proponents shall demonstrate that expected benefits outweigh potential damage to nature and where potential adverse effects are not fully understood, the activities should not proceed.”

Have governments in Canada since 1982 “avoided” industrial activities such as ecologically unsound “logging practices that have caused irreversible damage to nature”?

Have governments in Canada called upon forest companies to not proceed with ecologically unsound practices whose adverse effects are not fully understood?

This year, Canada is a signatory of the Convention on Biological Diversity which notes:

“That it is vital to anticipate, prevent and attack the causes of significant reduction or loss of biological diversity at source.

“Also, where there is a threat of significant reduction or loss of biological diversity, lack of full scientific certainty should not be used as a reason for postponing measures to avoid or minimize such a threat.”

Is Canada reducing the loss of biological diversity at the source, when it is prepared to log old-growth forests before it has carried out adequate research into the biodiversity of the old-growth forests?

Is there not strong evidence that clearcut logging has destroyed biodiversity?

We appear to wait for "scientific certainty" before we are prepared to avoid or minimize such a threat. By that time, there may be very little biodiversity left.

At the press conference where Prime Minister Mulroney signed the Convention on Biological Diversity in Rio de Janeiro, I asked him "if the signing of this document would mean that the government of Canada would condemn ecologically unsound practices such as clearcut logging that destroy biodiversity."

He replied that he did not want to deal with issues.

If Mulroney is willing to sign a document professing to adhere to the preservation of biodiversity, and if he is not willing to deal with the practices that contribute to the loss of biodiversity, the public will have to bring this discrepancy between rhetoric and action to the attention of the international community.

The environmentalists who have been striving to preserve the little remaining old-growth forests, and stressing the need to identify and research biodiversity are the ones who have been adhering to the principles enunciated in the United Nations' World Charter of Nature. They will also be the ones who are calling for the preservation of the old-growth areas so that Canada will be able to adhere to the binding principles enunciated in the United Nations Convention on Biological Diversity.

Yet it is those who act to prevent "irreversibility" that are prosecuted as criminals. While those who cause "irreversibility" are protected by Canadian courts.

Joan Russow of the Ecological Rights Association attended the 1992 Earth Summit in Rio. She lives in Victoria.

Annex 3. FAX sent to Earth Council

1230 St Patrick St.
Victoria, B.C. V8S 4Y4
Canada,
604-598-2740
FAX 604-721-7767

Alisha Barcena,
Executive Director
Earth Council Organizing Committee
P.O. Box 323 - 1001 San Jose
Costa Rica
FAX (506) 55-2197
December, 1992

Dear Alisha

I attended the plenary session at ECO-Ed, "Building the capacity for change." At that session, in response to Keith Bezanon's comment that it would be foolhardy to rush into the implementation of Agenda 21, I raised the point that there were a number of principles from the UNCED documents that could be implemented immediately. I then selected a set of principles such as the "Precautionary principle," "the anti-dumping principle," and the "full life cycle analysis principle" to illustrate my point.

I was encouraged by your positive response to my approach of calling upon governments to translate their rhetoric into action. I believe I also mentioned in the plenary that I had designed and circulated a proclamation which I entitled "the UN Proclamation for translating rhetoric into action"; this proclamation was signed by 300 delegates from over 40 countries.

I attended both the New York Prep Com and the Earth Summit as a representative of the Whistler Foundation for a Sustainable Environment, and I attended the Global Forum as a representative of the ERA Ecological Rights Association. At the Global Forum I worked for two days on the final drafting of the NGO Earth Charter, and was part of a press conference where I presented the principles and compared these principles to those in the Rio Declaration.

For a workshop I gave at a UN Association Post Rio Conference in June, I did a content analysis of Agenda 21 and other UNCED Documents. I then decided that I would go through the documents and extract fundamental principles that we could call upon governments to implement. I was able to extract over 200 principles that I believe could be implemented immediately. Although I have been particularly interested in the NGO treaties that emerged from the global forum, I felt that it was also important to work with the documents that had been agreed to by global consensus by governments, and call upon them to adhere to the principles that they had agreed to. I have recently developed with my colleague Fred Knelman, a "Principle-adherence Report Card," and approached the Ministry of the Environment to do an assessment of Canada's adherence to these principles. (One problem that consistently concerned me during the UNCED process, was how Canada gives the impression that it is an ecologically sound country).

Since the Earth Summit, I have been co-instructing a course in Global Issues, in Environmental Studies, and working as a research assistant in the Department of Public Administration in an international project based at Harvard on "Social Learning related to Acid Rain, Ozone depletion and Global Warming. I have continued to develop educational material around the UNCED documents as well as from other international documents the course in "Global Issues." Some of the materials that I have been working on are the following:

1. A comparative examination of the Rio Declaration, NGO Earth Charter, and "An Alternative Charter" that was developed in 1991 by the ERA Ecological Rights Association.
2. An examination of the "Forest Principles" with the Conservation Chair of the Sierra Club and how these Forest principles violate sections of Agenda 21 and other documents.
3. A preparation of references to the Indigenous Rights for a presentation at a conference on "500 years later."
4. A Comparative examination of Principles from the UNCED documents and the principles from a proposed provincial charter for land use.

5. Developing educational material related to principle-based education, with an environmental educator
6. Prepared a life cycle analysis diagram of "Uranium," with Dr Fred Knelman, a physicist and specialist in the linking of civil and military use of uranium.
7. Prepared a series of diagrams revealing the complex interaction of the principles emerging from UNCED documents. This diagram will be the basis for an educational program and for the development of an "environmental auditing proposal."

I have also used the principles from UNCED in a series of briefs: a) to the ombudsman's office asking the office to inquire into how our Provincial government, B.C., will be undertaking to implement UNCED principles related to forestry, such as the requirement in the biodiversity section of Agenda 21, to carry out an environmental assessment of activities that could cause harm to biodiversity; b) to the water district for violation of the precautionary principle for allowing logging in the watershed; c) to the Federal Government for not carrying out an environmental assessment of the berthing of nuclear ships in the urban harbour of Victoria, d) re sewage treatment

I have also used the material from UNCED as a basis for a series of presentations: at ECO- Ed, I presented a paper entitled, "Mis-education through rhetoric: implications for global education", and I will be presenting a paper at the NARST (National Association of Research into Science Teaching) Conference in April on " Mis-education through industrial rhetoric: misinterpretation of UNCED.

I have found generally that the NGO community tends to dismiss the official documentation coming out of UNCED, and to focus on the treaties from the Global Forum. Although I believe that there are systemic constraints that prevented UNCED from going far enough, I believe very strongly in calling upon the governments to implement at least the principles agreed to in the documents.

I was most impressed with your presentation in the plenary and with the way you were able to address the issues raised by the IDRC, and I was excited to hear about the Earth Council.

For years I have been concerned about the destruction of the environment, the escalation of war, the violation of human rights the disregard for social justice and the perpetuation of inequity. At the same time that I have been addressing common security issues, I have been examining , through my academic work, the fragmentation of thought and the imposition of models on the complexity of thought. I am currently completing my doctorate in interdisciplinary studies. My dissertation is on the problem of expressing and communicating complexity.

I would be very interested in being involved in some way with the Earth Council. I am trilingual, English, French, and Spanish.

I am currently on the international Board of Consultants of the Whistler Foundation for a Sustainable Environment; on the Board of Directors of the Vancouver Island Human Rights Coalition; of the World Federalists, of the Vancouver Peace Society; and of the Forest Assembly. I am on the Education Committee of the Forest Caucus of the BCEN. I am co-founder of the ERA Ecological Rights Association whose purpose is to advocate the enshrining of ecological rights in National and International Charters. My role in most of these organizations has been to show the interdependence of issues, and to link local, and provincial concerns to global concerns.

Hope to hear from you soon.

Sincerely,
Joan

Joan Russow. I will be sending you a copy of some of the documents.

- **Disposal at source**

By the year 2000 to establish, as appropriate integrate programmes for tackling pollution at the source and at the disposal site, with a focus on abatement actions in all countries (6.41 c Protection of health) (see sovereignty)

" Governments should encourage industry to treat, recycle, reuse and dispose of wastes at the source of generation, or as close as possible thereto, whenever hazardous waste generation is unavoidable and when it is both economically and environmentally efficient for industry to do so." (20.13 f Hazardous wastes)

" Encourage countries to seek waste disposal solutions within their sovereign territory and as close as possible to the sources of origin that are compatible with environmentally sound and efficient management." (21.31 Solid wastes)
equal or more stringent standards of origin country
(" Wherever they operate, transnational corporations and other large-scale enterprises should be encouraged to introduce policies and make commitments to adopt standards of operation with reference to hazardous waste generation and disposal that are equivalent to or no less stringent than standards in the country of origin, and Governments are invited to make efforts to establish regulations requiring environmentally sound management of hazardous wastes." (20.30 Hazardous wastes)

- **Precautionary, anticipatory and life-cycle approaches**

"consider adopting policies based on accepted producer liability principles, where appropriate, as well as precautionary, anticipatory and life-cycle approaches to chemical management, covering manufacturing, trade, transport, use and disposal"
(19.50 a Toxic chemicals)

" Undertake concerted activities to reduce risks for toxic chemicals, taking into account the entire life cycle of the chemicals. These activities could encompass both regulatory and non-regulatory measures, such ... and the phasing out or banning of toxic chemicals that pose an unreasonable and otherwise unmanageable risk to the environment or human health and those that are toxic, persistent and bio-accumulative and whose use cannot be adequately controlled" (19.50 b toxic chemicals)

- **Need for foresight**

"Each country should develop the knowledge and practical skills to foresee and identify environmental health hazards, and the capacity to reduce the risks. Basic capacity requirements must

include knowledge about environmental health problems and awareness on the part of leaders, citizens and specialists..." (6.46 d Protection of health)

•Preventive approach

"A preventive approach, where appropriate, is crucial to the avoiding of costly subsequent measures to rehabilitate, treat and develop new water supplies." (18.45 Fresh water)

" undertake measures to prevent soil erosion and promote erosion-control activities in all sectors." (13.16 Fragile ecosystem)

" ...other areas of risk reduction encompass the prevention of chemical accidents, prevention of poisoning by chemicals and the undertaking of toxicovigilance and coordination of clean-up and rehabilitation of areas damaged by toxic chemicals." (19,47, Toxic chemicals)

" Governments should include in national planning and legislation an integrated approach to environmental protection, driven by prevention and source reduction criteria, taking into account the 'polluter pays' principle, and adopt programmes for hazardous waste reduction, including targets and adequate environmental control." (20.20 b Hazardous Wastes)

" A preventive waste management approach focused on changes in lifestyles and in production and consumption patterns offers the best change for reversing current trends" (21.7 Solid wastes)

"...could provide for prior environmental impact assessment, systematic observation and follow-up of major projects, including the systematic incorporation of results in decision-making" (17.6 d marine)

"...could provide for periodic assessment of the impacts of external factors and phenomena to ensure that the objectives of integrated management and sustainable development of coastal areas and the marine environment are met" (17.6 g Marine)

"it is necessary to conduct regular environmental assessment of the state of the environment of coastal and marine areas" (17.8 c Marine)

"A preventive approach, where appropriate,. is crucial to the avoiding of costly subsequent measures to rehabilitate treat and develop new water supplies." (18.45 Freshwater)

"Governments, in collaboration with industry and appropriate international organizations, should develop procedures for monitoring the application of the cradle to grave approach, including environmental audits" (20.20 e Hazardous wastes)

•Cradle-to-grave approach

"...taking into account the cradle-to-grave approach to the management of hazardous wastes, in order to identify options

for minimizing the generation of hazardous wastes, through safer handling, storage, disposal and destruction” (20.20 e Hazardous wastes)

• **Monitoring cradle to grave approach**

“Governments, in collaboration with industry and appropriate international organizations, should develop procedures for monitoring the application of the cradle to grave approach, including environmental audits” (20.20 e Hazardous wastes)

• **Culture of safety**

"to promote a 'culture of safety' in all countries, especially those that are disaster-prone, the following activities should be carried out: (7.60, Disasters)

• **Responsible care**

:"Industry should be encouraged to.." (19.51 Toxic chemicals))
"develop application of a 'responsible care' approach by producers and manufacturers towards chemical products, taking into account the total life cycle of such products” (19.51 b. Toxic chemicals))

"States should encourage industry to exercise environmentally responsible care through hazardous waste reduction and by ensuring the environmentally sound reuse, recycling and recovery of hazardous wastes, as well as their final disposal” (20.18 d Hazardous wastes)

• **Unacceptability of insufficient or outdated criteria of acceptance**

“Governments, in cooperation with relevant international organizations and programmes, should carry out national reviews, as appropriate, of previously accepted pesticides whose acceptance was based on criteria now recognized as insufficient or outdated and of their possible replacement with other pest control methods, particularly in the case of pesticides that are toxic, persistent and/or bio-accumulative.” (19.55 b Toxic chemicals))

• **Substitution of less harmful**

“... there are often alternatives to toxic chemicals currently in use. Thus risk reduction can sometimes be achieved by using other chemicals or even non-chemical technologies. The classic example of risk reduction is the substitution of harmless or less harmful substances for harmful ones. establishment of pollution prevention procedures and setting standards for chemicals in each environmental medium, including food and water, and in consumer goods, constitute another example of risk reduction” (19.45 Toxic chemicals)

" Reduce over-dependence on the use of agricultural chemicals through alternative farming practices, integrated pest management and other appropriate means" (19.50, Toxic chemicals)

•Reduction

" to reduce the generation of hazardous wastes, to the extent feasible, as part of an integrated cleaner production approach" (20.11 a Hazardous waste)

" Establishment of long-term programmes and policies including targets where appropriate for reducing the amount of hazardous waste produced per unit of manufacture" (20.12 d. Hazardous wastes)

•Minimization

" Integration of cleaner production approaches and hazardous waste minimizations in all planning and the adoption of specific goals; "(20.11a hazardous wastes)

Economics of prevention??? (20.11c Hazardous wastes)

" Promoting waste prevention and minimization as the principal objective of national waste management programmes" (21.14 Solid wastes)

"States, in cooperation with relevant international organizations, where appropriate, should a) promote policies and practical measures to minimize and limit, where appropriate, the generation of radioactive wastes and provide for their safe processing, conditioning, transportation and disposal" (22.4 a Radioactive wastes)

•Stabilization

"Establishment of an intermediate goal for the stabilization of the quantity of hazardous waste generated" (20.12. c Hazardous wastes)

GATT

(GATT Working group on Export of Domestically prohibited goods and other Hazardous substances report by the Chairman of the working Group (restricted) July 2 1991)

[Note that the only country which did not agree to this document] was the U.S. The U.S. submitted a "communication" proposing the following changes" ; the U.S. changes will be noted in Italics.]

Report by Chairman of the working group on Export of Domestically prohibited goods and another hazardous substances [note linking with " non-transference of goods that are harmful to the environment or to human health] principle in Rio Declaration

At present, although the attached text has been generally agreed by delegations, the country [US] making the reservation remains unable to accept it without amendments.

Decision on Products Banned or Severely Restricted in the Domestic Market

Preamble:

Desiring to further the objectives and principles of the GATT

Having regard to the provisions of the GATT as they apply to the products covered by this Decision;

Desiring further to encourage the development of international rules on trade in products that are banned or severely restricted in the domestic market of a contracting party, as well as hazardous wastes, on the grounds that they are dangerous to human, animal or plant life or health, or the environment;

Desiring further to ensure that such rules do not create unnecessary obstacles to international trade nor duplicate the work of other international organizations;

Recognizing the need for complementary action in GATT regarding trade in products covered by this Decision, while taking into account the important contribution that is being made by international organizations which have competence in the areas concerned.

Noting the importance of notification, information exchange systems, prior informed consent procedures and certification systems developed by other international organizations in exchanging information and in assisting contracting parties in deciding whether to permit importation of the products concerned.

Recognizing that every contracting party must assume full responsibility for decisions regarding its own imports, but that the co-operation of exporting contracting parties may be necessary in cases where the importing contracting party's control procedures are not yet fully developed;

Bearing in mind that no contracting party should be prevented from taking measures to ensure the quality of its export products, subject to the requirement that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between contracting parties where the same conditions prevail, or a disguised restriction on international trade;

Mindful of the need for governments to pay the fullest attention possible to the protection of the environment;

Hereby decide as follows:

Article 1

Coverage

1.1. for the purpose of this Decision

(i) A banned product means any product that has been:

(a) prohibited from sale or use, including those cases in which prohibition results from expiration of the approved period of use; or

(b) refused approval for sale or use; or

(c) withdrawn from sale or use

(ii) A severely restricted product means:
a product for which virtually all sales and /or uses have been banned but for which certain specific sales and/or uses remain authorized.

With regard to pharmaceuticals, this includes only those

(a) which are approved and subsequently subjected to restrictions that excluded their use in a substantial proportion of potential target population of patients having regard to its safety, and /or

(b) which contain a substance whose dangerous properties require extraordinarily narrow content limitations.

1.2. This Decision applies to products, substances and wastes (hereinafter referred to as " the products concerned") which are determined by a contracting party:

(i) to present serious and direct danger to human, animal or plant life or health or the environment in its territory, and which for that reason are banned or severely restricted in the domestic market of that contracting party by governmental regulatory action, except:

(a) fissionable and radioactive materials; and

(b) arms, ammunition and implements of war supplied directly or indirectly to a military establishment; or

(ii) to be hazardous and which for that reason are required to be disposed of in accordance with governmental regulatory action, except

(a) such wastes which as a result of being fissionable or radioactive, are subject to international control systems, including international instruments, applying specifically to fissionable or radioactive materials; and

(b) such wastes which derive from the normal operations of a ship, the discharge of which is covered by another international instrument.

1.3. The instruments adopted by the relevant international organizations relating to the products concerned are enumerated in Annex 1

Article 2

2.1. All measures taken to regulate and control international trade in the products concerned shall be applied:

(i) in accordance with the provisions of the General Agreement; and

(ii) for those contracting parties which are signatories to other agreements and Arrangements of GATT, in accordance with the provisions of such agreements and Arrangements to contracting parties which are signatories to them

2.2. Each contracting party shall ensure that the provisions of this Decision are not applied in such a way as to create unnecessary obstacles to international trade.

2.3. Nothing in this Decision shall affect the rights and obligations of signatories or participants under the international instruments enumerated in Annex 1

2.4. The question whether a contracting party, which is a signatory or participant of an international instrument enumerated in Annex 1, is applying the procedures therein, shall be determined by the body which, under that instrument, is competent to do so.

Article 3

Measures to be taken by Contracting Parties

3.1. Any contracting party adopting measures to ban or severely restrict in its domestic market any of the products concerned, should examine whether the reasons for such measures would also require the adoption of equivalent measures for exports of the same products.

3.2. However, Article 3.1. should not be construed in such a way as to affect in a discriminatory manner exports of contracting parties which have adopted different standards of health and environmental protection, or the prerogative of individual contracting parties to determine whether to allow, in their specific situations, the import and use of products which the exporting contracting party determines to be products concerned.

3.3. If the bans or severe restrictions referred to in Article 3.1. do not apply to exports of the products concerned, the contracting party shall promptly notify the GATT secretariat of such measures, as well as the reasons for which they were adopted. The GATT secretariat shall immediately forward such notifications to all enquiry points established under Article 5 (b).

3.4. Such a contracting party shall, at another contracting party's request, provide in relation to the products concerned information regarding potential hazardous effects and domestic regulations concerning their use, transport and labeling, including any relevant regulations adopted prior to the entry into force of this Decision.

3.5. The provisions of Article 3.3. shall not apply if the product concerned is covered by an international instrument enumerated in Annex 1 and the exporting contracting party is a signatory or a participant thereof.

Article 4.

Co-operation at International Level

4.1. Contracting parties which are signatories or participants of the international instruments enumerated in Annex 1, should sustain and make more effective such international co-operation, inter alia, by participating to the fullest extent possible in the activities undertaken in pursuance of these instruments. Other contracting parties should, where possible, become signatories or participants of such instruments.

4.2. Any contracting party that is a signatory or participant of an international instrument enumerated in Annex 1 should apply the procedures therein to regulate its trade in the products concerned in the manner foreseen by that instrument. Towards this end, such a contracting party should, as appropriate:

- (a) participate effectively in the systems for notification, exchange of information and registration in the relevant instruments;
- (b) participate in the Prior Informed Consent Procedures (PIC) procedure) in the relevant instruments;
- (c) participate in the Certification Schemes incorporated in the relevant instruments; and
- (d) co-operate in the work of international organizations for the further identification of products to which notification systems, prior informed consent procedures or certification schemes should apply

Article 5

Transparency and Publication Requirements

Each contracting party shall:

- a) publish promptly all laws, regulations, and administrative rulings insofar as they relate to international trade in the products concerned, in accordance with the provisions of paragraph 1 of Article X of the General Agreement;
- (b) establish or designate an enquiry point (s) from which the further information referred to in Article 3.3. could be obtained;
- (c) submit promptly to the GATT secretariat the name (s) of the bodies which shall act as the enquiry point (s)

1. Environmental representative indicated that this document was initiated by some of the African countries, and that there needs to be pressure from the African countries to reopen this discussion

~1993

1991-1993 NOTE RESPONSE OF STEVEN OWEN
COMPLAINT FILED BY JOAN RUSSOW AND ANDREW GAGE

MEETING WITH THE OMBUDSMAN: WHO INVESTIGATES THE INVESTIGATOR?

Often intact ecosystems that have been deserving of preservation or sensitive environmental areas that are worthy of protection have been irreversibly destroyed because it was deemed necessary for governments to pay compensation. In the past, compensation has been assessed purely from an economic basis without taking into consideration the true environmental costs. In the documents coming out of the Earth Summit there is a commitment to consider the true environmental costs, and to carry out a "full life cycle analysis" of industrial activity. In order to assess the environmental costs of the destruction of significant ecosystems and sensitive environmental areas one may need to examine the nature and extent of accumulated environmental harm cause by industrial activity over time, and carry out a full life cycle analysis of this activity. Over the years governments have entered into contracts, such as tree farm licensees, or industrial development permits, and as a result of either non-existent environmental protection or non-compliance/enforcement of current statutes and regulations, irreversible environmental damage has occurred.

In the past environmental damage was considered to be "collateral damage," a natural, inevitable and acceptable outcome of industrial growth. Now, there is the current acknowledgement by all levels of government of the importance of addressing environmental degradation. The international community has endorsed along with the principles mentioned above, the precautionary principle. In addition, the Federal Government has made an international commitment at the Earth Summit to comply with the following principles which require:

1. the carrying out of environmental impact assessments;
2. protecting of indigenous people from environmentally unsound, or socially or culturally inappropriate practices;
3. introducing the polluter-pay principle;

4. the undertaking of the life cycle analysis (See principles in Appendix).

THE COMPLAINT

Initially the complaint was submitted in September 1991; the complaint however was not seriously considered until December 1992. At the December 1992 meeting the original complaint was modified and the "investigator" agreed to investigate the following complaint

Submission to the Ombudsman's office
by Joan Russow and Andrew Gage

1. We request the Ombudsman's office to undertake an inquiry into what measures the British Columbian government will be undertaking to comply with principles from the UNCED documents. The following is a list of principles that could be examined. (See attached set of principles)

2. We request the Ombudsman's office to undertake to investigate the following implications resulting from possibly unfair administrative decisions:

Often intact ecosystems that have been deserving of preservation have been irreversibly destroyed because it was deemed necessary, if these ecosystems were to be withdrawn from an existing tree farm licence, for governments to pay compensation. In the past, compensation has been assessed purely from an economic basis without taking into consideration the true environmental costs. In order to assess the environmental costs of the destruction of significant ecosystems one may need to examine if damage to the natural environment within a significant ecosystem has occurred. Section 60 of the Forest Act does permit the suspension of licenses if environmental damage to the natural environment has occurred as a result of non-compliance with the Forest Act. The potential environmental costs of destroying significant ecosystems as a result of the Ministry of Forests not suspending tree farm licenses when there was evidence of destruction to the natural environment is necessary to include in the assessment of compensation. Although, often the companies that have contributed in the past to the destruction of significant ecosystems may not be the current holders of the specific tree farm licence in the area containing the significant ecosystem, most of the companies are still functioning in British Columbia. This investigation of the environmental costs would involve the whole province so that there would need to be a global assessment of environmental costs incurred by the companies, not a valley-to-valley assessment.

The complainants met with the senior "investigator" on February 5, 1993. At this meeting the senior investigator claimed to have investigated the

complaint. He first dealt the inquiry into B.C.'s compliance to specific principles agreed to in Rio. He indicated that he had contacted "senior officials" in the Ministry of Forests and the Department of Forestry, and that he was assured by them that the new Forestry Code would incorporate these principles and "even exceed world standards." When the complainants commented that one indication of world standards was the condemnation in European countries of "clear-cut practices," he responded that when comparing Canada with other countries it was important to consider the number of species that were logged here. When asked if "the senior officials" had agreed to include specific principles such as the requirement to conduct an environmental assessment review of any practice that could destroy biodiversity, and if they had agreed to carry out an environmental assessment review of practices such as clear-cut logging, he responded that it would not be fair to criticize the code because it was not yet completed. When asked if they had agreed to incorporate the precautionary principle, he admitted that he had not asked about the specific principles that had been included in the complaint. He then commented on how well the Ministry of Forests was carrying out its duties. The complainants responded that Cuthbert, the Deputy Minister of Forests had completely reversed the precautionary principle in the Sooke water basin by stating that, since there was no scientific certainty that logging would destroy the quality of the drinking water, we should continue to log in the watershed. The "investigator" from the ombudsman's office responded that the issue was not "whether to log in the watershed" but "how to log." One of the arguments that had been used by industry was the argument put forth by the "investigator"

The first part of complainants' request, although it included forestry, was not specifically confined to forestry. The long list of principles was directly related to environmental policy generally and specifically to the current decision to allow Alcan to proceed with the Kemano project. It was pointed out to the "investigator" that if the Canadian and British Columbian government permit Alcan to proceed with its project, Canada and British Columbia will be in violation of almost all of the principles that were included in the complaint. Harcourt, the Premier of B.C., held a press conference and claimed that the agreement with Alcan was "legally binding" and that breaking the agreement could cost B.C. taxpayers well over half a billion dollars in compensation to Alcan. If one reads the report by the lawyer, one becomes aware that the legal implications of the agreement are much more complex. The press release indicates that the B.C. government will carry out a "public review" of the impacts; this review is substantially different from an environmental assessment review of the impacts. In the former the project is allowed to proceed and the impacts are examined, whereas in the latter the project could be halted if it could be shown that significant adverse environmental effects could ensue. It was pointed out to the "investigator" that by not requiring an environmental assessment review, the government is allowing the spectre of compensation to detract from its commitments to environmental principles. No mention was made about carrying out a full life cycle analysis of the environmental impact of the process of producing aluminum, no mention of the precautionary principle, and no mention of the duty to native people (see principles in appendix).

The "investigator" then addressed the second part of the complaint, which was directly related to preservation of, and environmental harm to ecosystems, and the consideration of environmental costs in the assessing of compensation.

He informed the complainants that he had contacted Steven Owen, the former ombudsman of B.C. now the Commissioner of the CORE (Commission of Resources and Environment); a commission that is purported to be set up "to create world-leading standards for land use planning and allocation" (Annual Report, Ombudsman's Office, 1991, 89). Steven Owen assured him that the complaint was being looked after, and that "all the concerns of VINE Vancouver Island Network of Environmentalists" had been addressed. The complainants were aware of the criteria or preconditions for participation in the CORE process. One of these criteria was that there should be adherence to the fundamental principle that significant options that are purported to be considered should not be irreversibly destroyed while the process proceeds. To ensure compliance with this principle VINE stated as a precondition for participation more extensive set asides to fulfill the option for preservation should be made. After the meeting with the "investigator" the complainants contacted a spokesperson from VINE and the Conservation sector, and were informed that this condition has not yet been met.

Not only are significant unfragmented ecosystems which have been identified as being worthy of preservation, such as areas of Clayoquot, Walbran etc., still being logged, but also many significant ecosystems are being logged before they are even identified as being significant. One reason for not setting aside these significant ecosystems is again the raising of the spectre of compensation. The second part of the complaint to the ombudsman's office was to address the issue that the environmental harm that has occurred as a result of industry's not complying with the Forest Act, and as a result of the Ministry of Forests failure to suspend licenses when there was evidence that environmental harm has been caused by non-compliance with the Forest Act should be taken into consideration when there are claims by industry for compensation.

For years, environmental harm has occurred because of failure on the part of government to enforce its own legislation. It was pointed out to the "investigator" that the companies had been in non-compliance with their contractual obligations and with the Act by not protecting fish habitat. For years environmentalists and the Federal Ministry of Fisheries have been documenting violations of section 33 of the Fisheries act which states that it is a criminal offence to deposit deleterious substances, which could cause harm to fish habitat, into streams. In response to this statement of industry's violation of the Contractual obligations, the "investigator" commented that it was the responsibility of the Fisheries Department to take action. It was subsequently pointed out that Fisheries had been used as an example of the way in which industry had been in non-compliance with the Forest Act, and, to a certain extent through this non-compliance, been in violation with contractual obligations, and thus the Ministry of Forests had been remiss in not applying section 60 to suspend the forest licenses. And as a result, environmental harm had been occurring for years. He responded by stating

that "it was not practical to investigate past practices, and the industry had improved a lot" The "investigator" also made a comment that we always strive for the idyllic but have to be satisfied with less, and it is not practical to go back and investigate the environmental harm in the past, and he kept reiterating that although there had been problems with Forestry in the past, forest practices were improving. The complainants commented that if there is one place where it should be possible to go beyond the practical and discuss the rightness and fairness, it should be in the Ombudsman's office. The complainants then indicated how few significant ecosystems remain and that there was substantial evidence that forest practices, in particular clear-cut logging, continue to destroy biodiversity. He then responded "show me an example," which suggested either his commitment to investigate malpractice, or his challenge to come up with even one example.

At this point the complainants made a comment that if when he had started working in the Ombudsman's office, 9 1/2 years ago, he had taken the initiative to investigate non-compliance with the Forestry Act, which is part of the mandate of the Ombudsman office, there might have been many more intact ecosystems saved. The complaints then asked where they can go to have their questions addressed further: to the Ombudsman herself, and she said "I speak for the Ombudsman's office."

The complainants then responded that they would be going to the press, the "ultimate investigator", and he said remember to be farther questions are still to be asked: Is it possible to be fair, about the unfairness of the investigative process that is supposed to investigate unfairness, and "Who investigates the investigator?"

Environmentalists have been condemned as criminals by the courts for attempting to prevent irreparable harm to intact ecosystems, and they have been rejected by the "investigator", where do they turn for justice.

Joan Russow
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PRINCIPLES REFERRED TO IN THE COMPLAINT

PRINCIPLES OF MORAL SUASION AND LEGAL OBLIGATIONS

These principles are derived from documents, like Agenda 21 and the Rio Declaration, which are not legally binding or from the legally binding Biological Diversity Convention which was signed and ratified on December 4, 1992.

At the Earth Summit in Rio, in the document, Canada's National Report, submitted to the Conference, Canada gave the impression that Canadians observed their environmental responsibility as stewards of a vast and beautiful land, and as a people intimately connected to the environment, Canadians are aware of their environmental responsibilities. (Canada's National Report, Preface)

And further the section on the "quality of life", the Canadian government stated

“As a small population with a large land mass, Canadians have access to relatively unspoiled wilderness areas rich in wildlife ... Canada has an international reputation as a beautiful, safe and mostly unspoiled country.” (Canada's National Report, p.49)

If we continue to give the impression to the global community that we are concerned about the environment, then we should immediately act to live up to our international commitments whether or not they are or are not yet legally binding.

PRINCIPLES DRAWN FROM INTERNATIONAL DOCUMENTS

1. Prior-assessment-in-decision-making-principle

“Ensure that relevant decisions are preceded by environmental impact assessments and also take into account the costs of any ecological consequences” (Agenda 21,7.42)

2. Positive-duty-to protect-indigenous lands principle

“Recognition that the lands of indigenous people and their communities should be protected from activities that are environmentally unsound or that the indigenous people concerned consider to be socially and culturally inappropriate; recommendations” (Agenda 21, 16.3 ii)

3. Precautionary principle

" Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation." (Rio Declaration, 1992).

If Canada were to comply with this principle, then all threats of serious irreversible damage would cease or be mitigated. Compliance with this principle could mean that Canada shall cease logging in catchment areas from where communities derive their water. No longer would representatives from resource ministries be able to claim, "there is no scientific certainty that logging will cause harm, therefore we can log the catchment area. (Paraphrase of remark by Cuthbert from the Ministry of Forests)

4. Recognition of non-damaging use value principle

the implications of the harvesting of forest resources for the other values of the forest should be taken fully into consideration in the development of forest policies. It is also possible to increase the value of forests through non-damaging uses such as eco-tourism and the managed supply of genetic materials. Concerted action is needed in order to increase people's perception of the value of forests and of the benefits they provide. (Agenda 21, 11.22)

If Canada were to comply with this principle, it would give serious consideration to the economic value of non-damaging use prior to destroying this significant alternative. Compliance with this principle could mean that the courts could look unfavourably on those who claim that "irreparable harm " could be construed as loss of "damaging-use" jobs. Damaging use could then be perceived as bringing about not only irreparable harm but also a " loss of ecologically sound employment"~

5. Preventive, precautionary and anticipatory approach principle

"...apply preventive, precautionary and anticipatory approaches so as to avoid degradation of the main environment, as well as to reduce the risk of long-term or irreversible adverse effects upon it;" (Agenda 21, 17.23 a)

If Canada were to comply with these principles, then serious consideration would be given to avoid environmental degradation.

6. Preventive-to avoid costly corrective measures principle

"A preventive approach, where appropriate, is crucial to the avoiding of costly subsequent measures to rehabilitate treat and develop new water supplies." (Agenda 21, 18.45)

If Canada were to comply with this principle, then all real environmental costs would be assessed before a project, product or activities were authorized

7. Cradle to grave approach monitoring principle

"Governments, in collaboration with industry and appropriate international organizations, should develop procedures for monitoring the application of the cradle to grave approach, including environmental audits" (Agenda 21, 20.20 e)

If Canada were to comply with this principle, then a real environmental audit taking into consideration the environmental impacts at all stages of the production, circulation and disposal of the products (cradle to grave) would be done of industries whose actions could have potentially significant environmental impacts. This principle involves the recognition that

governments have the responsibility for monitoring through the cradle to grave approach.

8. Positive-duty-or-responsibility principle

“...the responsibility to conserve their biodiversity and use their biological resources sustainably, and to ensure that activities within their jurisdiction or control do not cause damage to the biological diversity of other states or of areas beyond the limits of national jurisdiction. ” (Agenda 21, 15.3)

If Canada were to comply with this principle Canada could fulfill this responsibility by seriously considering the conversion of activities that destroy biodiversity. Instead of condemning practices that the international community would condemn as being harmful to biodiversity such as clear-cut logging, broadcast burn, pesticide use, and plantations, Canada has not only granted injunctions against those who protest Canada's failure to fulfill its international responsibility. but also, has condemned and imprisoned those who defy the injunction. Canada, through its omitting to condemn practices that destroy biodiversity, is seriously jeopardizing its ability to comply with its legal commitment to the Biodiversity Convention, once it is ratified. Canada, through its omitting to condemn the industry's redefinition of "sustainability," "biodiversity," and "old growth" (see publications by Forest Industry) is allowing the perpetuation of those practices that could lead to the elimination of significant ecosystems required for the preservation of biodiversity.

9. Polluter pay principle

“Governments should include in national planning and legislation an integrated approach to environmental protection, driven by prevention and source reduction criteria, taking into account the 'polluter pays' principle, and adopt programmes for hazardous waste reduction, including targets and adequate environmental control” (Agenda 21,20.20 b)

If Canada were to comply with this principle, then Industry would be called upon immediately to pay for the cost of environmental clean-up. Compliance with this principle could require that the past and present pollution costs would have to be considered in the assessment of compensation in cases where industry has been closed down or displaced for environmental reasons. Also, more serious consideration might be given to conversion to non-damaging uses that would not entail subsequent environmental costs.

10 Prevention-through-effective-enforcement principle

“Effective prevention requires action through effective monitoring and the enforcement and imposition of appropriate penalties” (Agenda 21, 20.20)

If Canada were to comply with this principle, then Canada could either increase the budget for monitoring violations of existing international and national legislation. or could save monitoring and enforcement costs by insisting of ecologically sound initial practices. Compliance with this principle could result in i.e. strict enforcement of section 33 of the Fisheries Act. or in the ceasing of the perpetuation of "rectification of error syndrome" i.e., the initial harmful practice, which requires subsequent potentially harmful practices.

11. Not-transferring-environmentally-harmful-activities or substances principle

"States should effectively cooperate to discourage or prevent the relocation and transfer to other states of any activities and substances that cause severe environmental degradation or are found to be harmful to human health" (Principle 14, Rio Declaration)

If Canada were to implement this principle, the government would prevent the transfer by industry of any activities or substances that had been deemed unsafe in Canada. or unsafe in any country that has higher standards than those in Canada. Compliance with this principle could involve a full life cycle analysis of the environmental and health implications of the product or activity. Also, compliance with this principle could cause the transfer of health products and pesticides (those banned or restricted in Canada or in any other country) as well as the transfer of. uranium, ecologically unsound logging practices ...to cease.

12. Anticipatory and life-cycle-approach principle

"Consider adopting policies based on accepted producer liability principles, where appropriate, as well as precautionary, anticipatory and life-cycle approaches to chemical management, covering manufacturing, trade, transport, use and disposal" (Agenda 21, 19.50 a)

If Canada were to comply with this principle, the government would reveal the true-life cycle of each potentially harmful product or activity, so that the full environmental impact [or harm to human health, principle non-transferring...] of the product or activity could be understood. Compliance with this principle, could result in the full environmental impact of uranium mining; civil nuclear, current forest practices, resources extraction, pesticide use being done.

13. Environmental-impact-assessment principle

"Introduce appropriate environmental impact assessment procedures for proposed projects likely to have significant impacts upon biological diversity... and encourage the assessment of the impacts of relevant policies and programmes on biological diversity" (Agenda 21, 15.5 k)

If Canada were to comply with this principle, Canada would require an environmental impact assessment of industries and industrial practices that could have an impact on the conservation of biodiversity. Compliance with this principle could bring about the environmental assessment of forest practices (the provincial government has not agreed to extend environmental assessment to forest practices)

14. Promotion of arms-length-research principle

“Governments and institutions, in collaboration where necessary with appropriate international agencies and organizations, Universities and non-governmental organizations should undertake assessments and systematic observations of forests and related programmes and processes with a view to their continuous improvement.” (Agenda 21,11.34)

If Canada were to implement this principle, Universities would refuse research funding from major industries that contribute to environmental degradation because often this research funding has led either to selection of areas of research, nature of research, and final acceptance of research. Forest companies. would no longer have controlling influence into research conducted in faculties of Forestry.

“Ecological and human health affects measurable consequences of environmentally destructive model principle

Many of these problems have arisen from a development model that is environmental destructive and from a lack of protection. Ecological and human health effects are the measurable consequences... although the means to monitor them are inadequate or non-existent in many countries. There is a widespread lack of perception of the linkages between the development, management use and treatment of water resources and aquatic ecosystems.” (Agenda 21, 18.45)

Prohibition of harmful substances principle

“Considering the prohibition of those [harmful pesticides, fertilizers] found to be environmentally unsound” (Agenda 21, 17.28. i)

Replacement-of-safe-alternative principle

Governments should intensify research and development activities on cost-effective alternatives for processes and substances that currently result in the generation of hazardous wastes that pose particular problems for environmentally sound disposal or treatment, the possibility of ultimate phase-out of those substances that present an unreasonable or otherwise unmanageable risk and are toxic, persistent and bio-accumulative to be considered as soon as practicable. *???Emphasis should be given to*

alternatives that could be economically accessible to developing countries ???(Agenda 21, 20.13. c)

Promotion of phase-out-of-risk research principle

" States, with the cooperation of international organizations *where appropriate*, should encourage industry to promote and undertake research into the phase-out of the processes that pose the greatest environmental risk based on hazardous wastes generated. (Agenda 21, 20.18 b)

Foresight principle

"Each country should develop the knowledge and practical skills to foresee and identify environmental health hazards, and the capacity to reduce the risks. Basic capacity requirements must include knowledge about environmental health problems and awareness on the part of leaders, citizens and specialists... (Agenda 21, 6.46 d)

Culture of safety Principle

This principle involves the commitment to act to prevent rather than to [correct] "To promote a 'culture of safety' in all countries, especially those that are disaster-prone, the following activities should be carried out: (Agenda 21, 7.60)

Responsible-care-principle

Industry should be encouraged to develop application of a 'responsible care' approach by producers and manufacturers towards chemical products, taking into account the total life cycle of such products (Agenda 21, 19.51 b.)

Responsible-care-linked-to-life-cycle principle

This principle involves the recognition that responsible care is dependent upon revealing of life cycle of products

Industry should be encouraged to develop application of a 'responsible care' approach by producers and manufacturers towards chemical products, taking into account the total life cycle of such products (Agenda 21, 19.51 b.)

Concept of environmental care principle...

Empower community groups, non-governmental organizations and individuals to assume the authority and responsibility for managing and enhancing their immediate environment through participatory tools, techniques and approaches embodied in the concept of environmental care. (Agenda 21, 7.21. g)

Cradle to grave approach impact assessment principle

"Governments should take the lead in establishing and strengthening, as appropriate, national procedures for environmental impact assessment, taking into account the cradle-to-grave approach to the management of hazardous wastes, in order to identify options for minimizing the generation

of hazardous wastes, through safer handling, storage, disposal and destruction” (Agenda 21, 20.20 e)

“Entire-life-cycle risk reduction principle

This principle involves the recognition that only through examining the full life cycle of a product can the risk be reduced

“Risk reduction involves broad-based approaches to reducing the risks of toxic chemicals, taking into account the entire life cycle of the chemicals.” (Agenda 21,19.45,)

“Prior assessment of potential adverse impacts principle

“ Ensure prior assessment of activities that may have significant adverse impacts upon the marine environment;” (Agenda 21,17.23 b)

“Prior-assessment-in-decision-making-principle

Ensure that relevant decisions are preceded by environmental impact assessments and also take into account the costs of any ecological consequences” (Agenda 21,7.42)

“Standards-no-less-than country of origin principle

(“ Wherever they operate, transnational corporations and other large-scale enterprises should be encouraged to introduce policies and make commitments to adopt standards of operation with reference to hazardous waste generation and disposal that are equivalent to or no less stringent than standards in the country of origin, and Governments are invited to make efforts to establish regulations requiring environmentally sound management of hazardous wastes.” (Agenda 21,20.30)

“Minimize or avoid environmental damage principle

Adopt policies that minimize if not altogether avoid environmental damage, whenever possible” (Agenda 21, 7.42 a)

Substitution of less harmful principle

“...there are often alternatives to toxic chemicals currently in use. Thus, risk reduction can sometimes be achieved by using other chemicals or even non-chemical technologies. The classic example of risk reduction is the substitution of harmless or less harmful substances for harmful ones. establishment of pollution prevention procedures and setting standards for chemicals in each environmental medium, including food and water, and in consumer goods, constitute another example of risk reduction” (Agenda 21,19.45)

Positive-mandate-to- conserve principle

“ Establishing, expanding and managing, as appropriate to each national context, protected area systems, which includes systems of conservation units for their environmental, social and spiritual functions and values,

including conservation of forests in representative ecological systems and landscapes, primary old-growth forests, conservation and management of wildlife, nomination of world Heritage Sites under the World Heritage Conventions, as appropriate, conservation of genetic resources, involving in situ and ex situ measures and undertaking supportive measures to ensure sustainable utilization of biological resources and conservation of biological diversity and the traditional forest habitats of indigenous people, forest dwellers and local communities;" (Agenda 21, 11.15 b)

Positive-mandate-to-be-consistent with requirements of international law principle

" Governments... and consistent with the requirements of international law should, as appropriate Identify and evaluate the potential economic and social implications and benefits of the conservation and sustainable use of terrestrial and aquatic species in each country, building upon the results of country studies" (Agenda 21,15.6.)

Positive-long-term-research-into-biodiversity- in ecosystems principle

" Long-term research into the importance of biodiversity for the functioning of ecosystems and the role of ecosystems in producing good, environmental services and other values supporting sustainable development with particular reference to the biology and reproductive capacities of key terrestrial and aquatic species, including native, cultivated and cultured species? Observation and inventory techniques; ecological conditions necessary for biodiversity conservation and continued evolution; and social behaviour and nutrition habits dependent on natural ecosystems, where women play key roles. The work should be undertaken with the widest possible participation, especially of indigenous people and their communities, including women." (Agenda 21, 15.5 f,)

Promotion of environmentally sound technology research principle

"Promoting research and development in environmentally sound technologies" (Agenda 21, 4.18 b)

Assignment of responsibility principle

"Noting that the largest share of historical and current global emissions of greenhouse gases has originated in developed countries, that per-capita emissions in developing countries are still relatively low and that the share of global emissions originating in developing countries will grow to meet their social and development needs." (United Nations Framework Convention on Climate Change, 1992)

15. Limit access-of-industry-to-environmental-decision- making principle

In chapter 36 of Agenda 21, a very important distinction is made between promoting "education," promoting "public awareness," and promoting "training." It appears to be clear in Agenda 21 that non-governmental

organizations, community-based groups, women's groups and aboriginal groups are called upon to assist educational authorities in reorienting education. The role of industry is ascertained to be limited to specific areas of business and industrial and training programs.

" Educational authorities, with appropriate assistance of non-governmental organizations, including women's and indigenous peoples' organizations should promote all kinds of adult education programmes for continuing education in environment and development, basing activities around elementary/secondary schools and local problems. The authorities and industry should encourage business, industrial and agricultural schools to include such topics in their curricula. The corporate sector could include sustainable development in their education and training programmes." Agenda 21, section 36.5 l

In the section of Agenda 21 that addresses the "promoting of public awareness " industry is included not as the dispenser of "education" but as the recipient of needed education.

"Countries and regional organizations should be encouraged, as appropriate, to provide public environmental and development information services for raising the awareness of all groups, the private sector and particularly decision makers." (Agenda 21, section 36.10 c)

In the section of Agenda 21, that addresses the "promoting of training, an important role for industry is envisioned.

"To strengthen national capacities, in training, to enable governments, employers and workers to meet their environmental and development objectives and to facilitate the transfer and assimilation of new environmentally sound, socially acceptable and appropriate technology and know -how" (Agenda 21, 36.13 c)

If Canada were to implement this principle, the government would not include representatives from industry on Round Tables that are to determine the philosophical underpinnings of education. or Government would not prepare environmental material with an industry bias for the educational system ("All things Considered"). Canada could, however, encourage industry to be involved in job conversion to ecologically sound and socially acceptable practices.

"Promotion of alternative models of consumption to meet basic needs of humanity principle

to promote patterns of consumption and production that reduce environmental stress and will meet the basic needs of humanity” (Agenda 21, 4.7.a)

If Canada were to implement this principle, the government, institutions, industry, and individuals would cease promoting the traditional model of over-consumption. Compliance with this principle would mean that loss of jobs in consumptive areas could not be an excuse perpetuation the over-consumption model.

() **THAT in 1993** I met with Jag Maini, Minister of Forests, and discussed the document that I prepared;

EXHIBIT

RE-EXAMINATION OF THE FINAL "UNOFFICIAL" VERSION OF THE DOCUMENT "LAND RESOURCES; DEFORESTATION, (JUNE 16, 1992)" IN THE LIGHT OF COMMITMENTS MADE IN AGENDA 21, RIO DECLARATION, AND OTHER INTERNATIONAL DOCUMENTS; AS WELL AS IN THE LIGHT OF RECOMMENDATIONS MADE BY ERA ECOLOGICAL RIGHTS ASSOCIATION. WITH THE ASSISTANCE OF OTHER ENVIRONMENTAL GROUPS

() THAT IN 1993, I Gave a presentation on NAFTA

EXHIBIT

DRAFT: for discussion purposes only

"NAFTA: THE DISCREPANCIES BETWEEN THE ENVIRONMENTAL PROVISIONS IN NAFTA AND THE CANADIAN GOVERNMENT'S PUBLISHED INTERPRETATION OF THESE PROVISIONS

Prepared for presentation at a panel discussion on

NAFTA

by

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In all three countries, Canada, Mexico and the U.S., citizens and organizations are concerned about

- the misplacing of government priorities,
- the delusion of public process,
- the exploitation of the labour force,
- the inequitable distribution of resources,
- the disenfranchisement of the many,
- the violation of human rights and
- the denigration of social justice

In all three countries, citizens and organizations are also concerned about the unquestioned imperative to grow,

- the over-consumptive pattern of behavior,
- the relentless destruction of the environment, and
- the irreversible loss of ecological heritage

These concerned citizens look with justified trepidation at NAFTA

In this talk I will be examining the potential discrepancy between the stated environmental provisions in NAFTA and the Canadian Governments published interpretation of these provisions in the Canadian Environmental Review.

Background

Within Canada, United States and Mexico there are laws, policies, and regulations in place which appear to conserve, preserve and protect the environment;
yet industry is continually in non-compliance with these environmental provisions, and government is continually remiss in not requiring compliance.

The three countries negotiating the NAFTA all enunciate in their national legislation environmental provisions

Mexico

" Social liberalism therefore proposes a State that promotes and encourages private initiative, **but has the capability to firmly regulate economic activity and thus prevent the few**

from taking advantage of the many; a State that channels attention and resources towards meeting Mexicans' basic needs, is respectful of labor rights and union autonomy, and protects the environment." (Carlos Salinas de Gortare, Social Liberalism: Our Path, Mexico: On the Record. Vol. 1. No. 4 (March 1992)

In March 1988, Mexico enacted its General Law for Ecological Equilibrium and Environmental Protection. it is a comprehensive statute designed to ensure that there is an adequate legal basis for protecting the environment. Indeed, the law is based in large part on U.S. law and experience.
A central element of the 1988 law is the requirement for environmental impact assessments to be completed on all new investment projects, in both the public and private sectors. To ensure they comply with these requirements, many privately owned companies have already created special environmental offices to analyze the environmental impacts of proposed business activities (U.S. government publication] Free trade Negotiations with Mexico Environmental matters, p. 3) ARMS LENGTH RESEARCH

In Canada, the government claims that :

Canada's Green Plan is second to none in its comprehensive approach to a full range of environmental challenges, funding, accountability and provision for public involvement ," he [Mr. de Cotret] added.

Canada's Green Plan offers new policies, programs and standards to clean up, protect and enhance our land, water and air, our renewable resources, the Arctic, parks and wildlife, and to reduce waste generation and energy use. it also includes measures to maintain global environmental security, foster environmentally responsible decision -making and improve our emergency preparedness....

. (Government of Canada's release " Federal Government releases environmental green plan" December, 1990.)

Goal

to ensure that citizens today and tomorrow have clean air, water and land essential to sustaining human health and the environment....p. 1

INITIATIVES

• **Over the next five years, strengthen federal inspection, information exchange and investigation programs to better enforce environmental regulations**

In 1991, develop and adopt a comprehensive Code of Environmental Stewardship covering all areas of federal operations and activities. The Code will be complemented by a list of targets on issues ranging from waste generation to

contaminated sites clean-up and emission standards, establishment of an office of Environmental Stewardship and measures to ensure that federal purchasing policies and practices integrate environmental considerations. Implementation of the code will ensure that the activities and operations of the federal government meet or exceed the standards and practices it is recommending for others. (p. 21) Government of Canada's release " Federal Government releases environmental green plan" December, 1990.)

In the United States, President Bush stated that:

"We will ensure that our right to safeguard the environment is preserved in the NAFTA

- we will maintain the right to exclude any products that do not meet our health or safety requirements and we will continue to enforce those requirements
- we will maintain our right to impose stringent pesticide, energy conservation, toxic waste, and health and safety standards
- we will maintain our right , consistent with other international obligations, to limit trade in products controlled by international treaties (such as treaties on endangered species or protection of the ozone layer). [TWO OF THE VERY FEW INTERNATIONAL AGREEMENTS SIGNED BY THE US]

- Enhancement and Enforcement of Standards: we will seek a commitment to work together with Mexico to enhance environmental health and safety standards regarding produces and to promote their enforcement
- we will provide for full public and scientific scrutiny of any change to standards before they are implemented.
- we will provide for consultations on enhancing enforcement capability, inspection training, monitoring and verification (Response of the Administration to issues raised in connection with the negotiation of a north American Free trade agreement. May 1, 1991)p.p. 4, 5)

Response of the Administration to issues raised in connection with the negotiation of a north American Free trade agreement. May 1, 1991)

- we will consult on national environmental standards and regulations, and will provide an opportunity for the public to submit data on alleged non-compliance." (Response of the Administration to issues raised in connection with the negotiation of a north American Free trade agreement. May 1, 1991, p. 5)

YET the moment that either one of the three states attempts to "enhance" environmental protection the others call forth the spectre of the trade agreement GATT:

Each one of the three states involved has attempted to object to the other state's enhancing environmental standards and in each case GATT has supported the state seeking to object to high standards:

In Canada,

"The Canadian pulp and paper industry has urged Canada to challenge U.S. laws requiring the use of recycled fibre in newsprint. (Shrybman, 1991, p. 13) The Canadian government has argued that a U.S. environmental Protection Agency rule banning the use of all forms of asbestos violates the U.S. Canada FTA and GATT(Eric Christensen, "Pesticide Regulations and International Trade", Environment, Vol. 32. No. 9, November, 1990, p 45)

In the U.S.

"The U.S. recently proposed in GATT negotiations that nations be prevented from adopting domestic pesticide standards more stringent than international standards." (Eric Christensen, "Pesticide Regulation and International Trade", Mark Ritchie, "GATT, Agriculture and the Environment: The US Double Zero Plan, " The Ecologist, Vol. 20, No. 6, November, 1990, p. 214.)

"The U.S. based Non-Ferrous Metals Producers Committee is using the U.S.- Canada FTA to support its challenge to Canadian federal and provincial pollution control programs intended to reduce emissions from the Canadian smelting industry." (Shrybman "Selling the Environment Short: an environmental assessment of the first two years of free trade between Canada and the United States", Canadian Environmental Law Association, January, 1991, p. 13) (cited in Rolfe, Chris Environmental considerations regarding a possible Mexico-Canada Free trade Agreement for the West Coast environmental law association, February, 1991).

And in Mexico ...

When in 1990 the US. placed an embargo upon tuna products from Mexico, "Mexico complained that the tuna embargo was inconsistent with obligations owed to Mexico under GATT. The September 1991 report of a three-member panel of experts established pursuant to the third-party dispute settlement procedures of GATT determined that the American embargo on Mexican tuna, even though designed to conserve dolphins [s] was inconsistent with the GATT (McDorman, T. 1991, p. 2)

It would appear that, in all three countries (including states and provinces) there is not the political will required to seriously address the urgency of the environmental crisis.

Will the NAFTA perpetuate the current North American environmental situation of strong but not-enforceable legislation and regulations, will the NAFTA worsen the current North American environmental situation or could an alternative to the NAFTA lead to stronger enforcement of environmental legislation

From the press release on Friday May 21, it would appear that the three day talks on the side environmental accords failed because the U.S. negotiator demanded the standards be enforceable through trade sanctions.

In the absence of any further information about the current discussion about the parallel accord related to the environment, I will only be able to refer to the actual NAFTA agreement itself. A representative from the Ministry of Environment, who was part of the parallel accord information loop, indicated that the purpose of the parallel accord was primarily to clarify some of the environmental provisions, and address some of the concerns expressed about some of these provisions.

"NAFTA: THE DISCREPANCIES BETWEEN THE ENVIRONMENTAL PROVISIONS IN NAFTA AND THE CANADIAN GOVERNMENT'S PUBLISHED INTERPRETATION OF THESE PROVISIONS

"To make a comparison between the environmental provisions of NAFTA and the Canadian Government's published interpretation, I have extracted and compiled in this diagram, the provisions in the NAFTA related to the environment" (see NAFTA GRAPH) and linked them to the statements published by the Canadian Government in their publication NAFTA: Canadian Environmental Review, Oct. 1992.

In this diagram I have attempted through to document five categories of statements:

1. statements in the NAFTA related to the environment
2. Statements by the Canadian Government in the Canadian Environmental Review, October, 1992. Re: the environmental implications of the NAFTA
3. Focal points to pursue related to statements in the NAFTA
4. Focal points to pursue related to statements made by the Canadian Government
5. Systemic "whereases" and "notwithstandings" within the documents that would prevent the implementation of environmental measures.

The diagram was then divided into key areas that are interrelated "standards-related measures" , "technical regulations," "relation to other documents that protect and preserve the environment," "Risk assessment and appropriate levels of protection," investment: performance requirements.

It would appear that the NAFTA does have in writing provisions to protect the environment

The NAFTA appears to involve a series of discrepancies

I will attempt to examine the discrepancies within the NAFTA and the interpretation of these discrepancies by the Canadian government in its "Canadian Environmental Review" of NAFTA along with the interpretation, by the Canadian government in the Canada U.S. Free Trade Agreement

1. RELATION BETWEEN ENVIRONMENTAL PROVISIONS AND OBJECTIVES

The discrepancy between Environmental provisions which limit economic pursuits in the preamble and economic pursuits in the objectives which ignore the environment

Compare preamble to Objectives

PREAMBLE

The Government of Canada, the Government of the United Mexican States and the Government of the United States of America, **resolved to:**

STRENGTHEN the special bonds of friendship and cooperation among their nations;

CONTRIBUTE to the harmonious development and expansion of world trade and provide a catalyst to broader international cooperation;

CREATE an expanded and secure market for the goods and services produced in their territories;

REDUCE distortions to trade;

ESTABLISH clear and mutually advantageous rules governing their trade;

ENSURE a predictable commercial framework for business planning and investment;

BUILD on their respective rights and obligations under the *General Agreement on Tariffs and Trade* and other multilateral and bilateral instruments of cooperation;

ENHANCE the competitiveness of their firms in global markets;

FOSTER creativity and innovation, and promote trade in goods and services that are the subject of intellectual property rights;

CREATE new employment opportunities and improve working conditions and living standards in their respective territories;

UNDERTAKE each of the preceding in a manner consistent with environmental protection and conservation;

PRESERVE their flexibility to safeguard the public welfare;

PROMOTE sustainable development;

STRENGTHEN the development and enforcement of environmental laws and regulations; and

PROTECT, enhance and enforce basic workers' rights;

HAVE AGREED as follows:

Article 102: Objectives

1. The objectives of this Agreement, as elaborated more specifically through its principles and rules, including national treatment, most-favored-nation treatment and transparency, are to:

(a) eliminate barriers to trade in, and facilitate the cross-border movement of, goods and services between the territories of the Parties;

(b) promote conditions of fair competition in the free trade area;

(c) increase substantially investment opportunities in the territories of the Parties;

(d) provide adequate and effective protection and enforcement of intellectual property rights in each Party's territory;

(e) create effective procedures for the implementation and application of this Agreement, for its joint administration and for the resolution of disputes; and

(f) establish a framework for further trilateral, regional and multilateral cooperation to expand and enhance the benefits of this Agreement.

2. The Parties shall interpret and apply the provisions of this Agreement in the light of its objectives set out in paragraph 1 and in accordance with applicable rules of international law.

Canadian interpretation of the preamble and objectives
In the introduction to the Canadian Environmental Review the following statement is made, which suggests that the environmental provisions are part of the objective section of the NAFTA:

Environmental objectives addressed during the negotiations included the identification of sustainable development and environmental protection and conservation **as fundamental objectives of the NAFTA**

In the Canadian Government document, the Canada/ US Free Trade Agreement Synopsis, the Canadian government indicates the important role of the preamble

The preamble states the political commitment ...in entering into the Agreement. It records the shared aspirations of the two countries in concluding the Agreement and summarizes their aims and objectives. In other words, it is an agreed statement of intent which will guide the countries in implementing the provisions of the Agreement and in resolving disputes. ...the object and purpose of the Agreement (13)

ACTION: to require that to fully express the intent of the document the government should call for the inclusion of environmental provisions in the Objectives section

2.INTERNATIONAL COMMITMENTS AND STANDARDS

There is a discrepancy between the "retention of rights in other documents" (even though NAFTA, in the case of inconsistency unless otherwise indicated, prevails) and the Canadian Government unqualified assertion that Canada has "preserved these rights in agreements"

In Article 103 of NAFTA states that NAFTA shall prevail in the event of an inconsistency between NAFTA and other international agreements (unless otherwise provided)

Article 103

1. the Parties affirm their existing rights and obligations with respect to each other under the GATT and other agreement to which such Parties are party.

[note exceptions related to the environment in GATT Article XX(b) include environmental measures necessary to protect human, animal or plant life or health, and GATT Article XXg applies to measures relating to the conservation of living and non-living exhaustible natural resources]

2. in the event of any inconsistency between this agreement and such other agreements, this agreement shall prevail to the

extent of the inconsistency, except as otherwise provided in this agreement

However, in Article 903, it would appear that "rights in other documents" are retained:

Article 903 Affirmation of Agreement on Technical Barriers to Trade and Other agreements

Further to Article 103, the Parties affirm with respect to each other their existing rights and obligations relating to standards-related measures under GATT and all other international agreements including environmental and conservation agreements to which those Parties are party.

the Canadian government in its *Canadian Environmental Review* has indicated the following:

During the NAFTA negotiations, all three countries expressed the wish to retain their existing rights and obligations under those multilateral environmental and conservation agreements to which they have chosen to belong. The retention of these right was also assigned a high priority by the Canadian environmental organization in both their written and oral submissions to the government. Canada has preserved these rights in the NAFTA

ACTION: IT IS IMPORTANT TO DEMAND TO KNOW IF THE RETENTION OF RIGHTS IS NOT INCOMPATIBLE WITH THE NAFTA PREVAILING OVER THE INTERNATIONAL AGREEMENTS NOT SPECIFICALLY MENTIONED.

[NOTE: it is important to recognize the distinction between "standard" and "technical regulation".

Standard means a document approved by a recognized body that provides for common and repeated use, rules guidelines or characteristics for goods or related processes or production methods or for services or related operating methods, with which compliance is not mandatory.

Whereas, a "technical regulation" means a document which lays down goods or related processes or production methods or for services or related operating methods, including the applicable administrative provisions, with which compliance is mandatory]

3. EXTENT TO WHICH INTERNATIONAL AGREEMENTS WILL PREVAIL

There is a discrepancy between the extent to which international agreements prevail as mentioned in the NAFTA and the extent to which the Canadian government indicates these agreements will prevail.

In the NAFTA, the following is stated:

Article 104.1 obligations will prevail in
convention on International Trade in endangered Species of
Wild Fauna and Flora (1973)
the Montreal Protocol (1990)
Basel convention on the Control of trans-boundary Movement of
Hazardous Wastes and their disposal (1989)
Annex 104-1 Bilateral and Other Environmental and
conservation Agreements
1. The agreement between the Government of Canada and the
Government of the U.S. concerning the trans-boundary
Movement of Hazardous Waste, signed at Ottawa, October 18,
1986
2. The agreement between the U.S and Mexico on cooperation
for the Protection and improvement of the Environment in the
Border Area, 1983.

Article 104.1. (f) Any subsequent international environmental or
conservation agreement that the Parties agree shall be included,
the international agreement will prevail

The Canadian government through its Canadian Environmental Review
indicated:

the prevalence, in the event of inconsistency, of trade
obligations set out in international environmental and
conservation agreements over the NAFTA trade disciplines
(Intro, CER)

In other words these international environmental or conservation
agreements will take precedence over the NAFTA (CER find
page ref)

**ACTION: THAT CANADA INSIST IN HAVING ALL THE INTERNATIONAL
AGREEMENTS RATIFIED BY CANADA INCLUDED IN THIS AGREEMENT
AND THAT THESE INTERNATIONAL AGREEMENT SHOULD TAKE
PRECEDENCE OVER THE NAFTA [UNLESS THE ENVIRONMENTAL
PROVISIONS IN THE NAFTA ARE STRONGER] AS STATED IN THE
CANADIAN GOVERNMENT'S INTERPRETATION OF NAFTA.
INTERNATIONAL AGREEMENTS SHALL INCLUDE MORAL
COMMITMENTS ARISING OUT OF INTERNATIONAL DOCUMENTS SUCH
AS UN CONVENTION FOR THE PRESERVATION OF CULTURAL AND
NATURE (1972), AND UNCED DOCUMENTS SUCH AS THE RIO
DECLARATION AND AGENDA 21 IN WHICH THE GLOBAL COMMUNITY
AGREED TO FUNDAMENTAL PRINCIPLES SUCH AS THE
PRECAUTIONARY PRINCIPLE, THE NON-TRANSFERENCE OF HARMFUL
SUBSTANCES OR ACTIVITIES AND THE REQUIREMENT OF A FULL LIFE
CYCLE ANALYSIS OF SUBSTANCES AND ACTIVITIES.**

4. STANDARDS-RELATED MEASURES

Discrepancy between "shall work jointly to enhance" and "shall to the greatest extent practicable, make compatible" in the NAFTA, and "forbids downward harmonization," "mandate upward harmonization" in the Canadian government's interpretation of NAFTA

Article 906 Compatibility and Equivalence

1. Recognizing the crucial role of standards-related measures in achieving legitimate objectives, the parties shall, in accordance with this chapter, work jointly to enhance the level of safety and of protection of human, animal and plant life and health, the environment and consumers.

Note "legitimate objectives" have been defined in article 9.5 as

- a) safety
- b) protection of human, animal or plant life or health; the environment or consumers
- c) sustainable development

ARTICLE 906 Compatibility and Equivalence

2. Without reducing the level of safety or of protection of human, animal or plant life or health, the environment or consumers, without prejudice to the rights of any Party under this Chapter, and taking into account international standardization activities, the Parties shall to the greatest extent practical, make compatible their respective standards-related measures

In the Canadian Government publication "Canadian Environmental Review" it is stated:

Standards enhancement

NAFTA would do more than forbid downward harmonization it obligates parties to work towards upward harmonization (CER, 19)

Environmental objectives addressed during the negotiations included...co-operation, on a continental basis, on the enhancement of environmental standards and their enforcement (Intro, CER)

Significant as it would in effect establish the highest current standards of the three parties (CER, 19)

ACTION: to call upon the Canadian government to have incorporated in the NAFTA the "forbidding of downward harmonization" and the "obligating to work towards upward harmonization"

5. ALLOCATION OF BURDEN IN RELATION TO STANDARDS

Discrepancy between burden of establishing inconsistency within a chapter as indicated in NAFTA and The placement of the burden of proof in the whole document on the nation challenging an environmental standard of another country as indicated in the Canadian interpretation of the document.

Article 914 Technical consultations

4. The parties confirm that a party asserting that a standards-related measure of another party is inconsistent with this chapter shall have the burden of establishing the inconsistency

The Canadian Government in its Canadian Environmental Review stated:

Environmental objectives addressed during the negotiations included...placement of the burden of proof in a dispute on any nation challenging an environmental standard of another country. (Intro, CER)

and reaffirmed in the body of the text

"Furthermore, should Canada adopt an environmental standard under these international agreement, the burden of proof would be with any country challenging the provision (CER, 14)

It is only on page 22 that the actual text is presented

ACTION: TO ENSURE THAT IN ANY DOCUMENT RELATED TO THE ENVIRONMENT, THE BURDEN OF PROOF SHOULD LIE NOT ONLY ON THE COUNTRY THAT OBJECTS TO THE HIGHER STANDARD BUT ALSO TO THE INDUSTRY THAT SEEKS TO INTRUDE INTO THE ECOLOGICAL COMMONS

6. RELATION BETWEEN ACTION OF ENVIRONMENTAL MEASURES AND INVESTMENT

The discrepancy between "recognizing inappropriateness" **should not waive** "**may request consultations**" as indicated in the NAFTA and "a commitment to refrain" in the Canadian government's analysis of the document

In the NAFTA Article 1114 (2) discourages the relaxing of environmental measures

In Article 1114 (2), Environmental Measures, the NAFTA states: The Parties recognize that it is **inappropriate to encourage** investment by relaxing domestic health, safety or environmental measures. Accordingly, a **Party should not waive** or otherwise derogate from, or offer to waive or otherwise derogate from, such measures as an encouragement for the establishment, acquisition, expansion or retention in its territory of an investment of an investor. If a Party considers that another

Party has offered such an encouragement, it **may request consultations** with the other Party and the two Parties shall consult with a view to avoiding any such encouragement

In the Intro of the Canadian Governments, "Canadian Environment Review", the environmental objectives is presented as being "a commitment to refrain"

Environmental objectives addressed during the negotiations included acceptance of a commitment that government refrain from offering derogation from generally applicable environmental measures for the purpose of encouraging an investment

ACTION : CALL UPON THE CANADIAN GOVERNMENT TO DEMONSTRATE TRUE COMMITMENT BY CHANGING "SHOULD" TO "SHALL"

Because of all these potential discrepancies between the NAFTA and the Canadian Governments interpretation of NAFTA, I would like to make the following recommendation

RECOMMENDATION:

GIVEN:

EITHER THE GOVERNMENT OF CANADA HAS MISINTERPRETED OR MISREPRESENTED ENVIRONMENTAL SECTIONS IN NAFTA, IN THEIR OCTOBER, 1992 ENVIRONMENTAL REVIEW, OR THE NAFTA HAS CHANGED AND IN THAT CASE IT WOULD BE NECESSARY TO HAVE ANOTHER ENVIRONMENTAL ASSESSMENT REVIEW OF THE ENVIRONMENTAL IMPLICATIONS OF NAFTA

THE CANADIAN GOVERNMENT NOT RATIFY THE DOCUMENT UNTIL THE STRONGER INTERPRETATION THAT HAS BEEN PRESENTED TO THE CANADIAN PUBLIC THROUGH THE GOVERNMENT INTERPRETATION OF THE DOCUMENT BECOME AN INTEGRAL PART OF THE ACTUAL DOCUMENT

THE CANADIAN GOVERNMENT NOT RATIFY THE DOCUMENT BECAUSE IT FALLS SHORT OF THE CANADIAN GOVERNMENT'S INTERPRETATION OF THE DOCUMENT.

() THAT IN 1992, I prepared for a presentation at a Post-UNCED workshop organized by the United Nations Association of Victoria, July, 1992

For a presentation for the AGM of United Nations Association of Victoria I did a content analysis of the IAEA Documents at UNCED to

accompany" **Seductive devices, doctrines, dogmas, strategies and fallacies of the IAEA by Dr Fred Knelman and Joan Russow**

- **The "blatant misrepresentation or expedient omission" device**

This device involves the convenient exclusion of any part that could be detrimental to one's position.

The IAEA through expedient omission (possibly for advantageous "clarification") has left out a significant section in Agenda 21 which does not include nuclear energy in the list of "safe" technologies for the future. To "clarify" Agenda 21, the IAEA in its UNCED document stated the following:

The UNCED Agenda 21 notes the need for a transition to environmentally sound energy systems, which will entail major changes in the patterns of energy production and consumption (IAEA Document, p.5, 1992)

In the Atmosphere chapter of Agenda 21, the following [safe] and sound technologies are advocated:

"...cooperate to increase the availability of capacity, capabilities and relevant technologies ...for utilizing and producing environmentally [safe and] sound renewable energy resources, such as solar, wind, geothermal, hydro-power and biomass,... Each resource should be utilized in a manner that ... minimizes environmental stress and health impacts, " (Section 9. Subsection 9 g Agenda 21, 1992)

Thus, we see that in the Energy section of Agenda 21, Nuclear energy is not mentioned as being one of the [safe] or sound technology.

- **The "co-opted terms" strategy**

This strategy involves the stipulating of a new definition for a term that would jeopardize one's own argument.

In the Rio Declaration the following precautionary principle was advocated:

"Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation." (Rio Declaration, 1992).

In the following statement, the IAEA redefines the important precautionary principle that was agreed to in the Rio Declaration, 1992.

“The basic principles for radiation protection and safety in all applications and activities in nuclear science and technology are precautionary” (IAEA Document , p. 2, authors emphasis)

The Rio principle, however, if enacted and truly adhered to, would bring about a moratorium on new nuclear power plants while phasing out currently existing ones.

- **The "comparison of convenience" device**

This device involves the narrowing down of alternatives so that whatever aspect is compared will appear favourable to the proposed alternative.

In the following statement from the IAEA document, the IAEA narrows the alternatives used for comparison to those which would appear to be favourable within the terms of reference of their comparison. Thus, for example, they compare the relatively low volume of nuclear wastes to the much larger volume of wastes from fossil fuels. However, it is the volume of wastes multiplied by their toxicity that is significant. Merely comparing volumes is a "comparison of convenience." The same false comparison is used to compare fuel requirements for the same energy output.

“A nuclear plant would require 27 tonnes of slightly enriched uranium each year, which corresponds to a few truckloads. The corresponding quantity of natural uranium is 160 tonnes. a coal fired plant would need 2.6 million tonnes of coal each year... which corresponds to the load carried by 5 trains, each transporting 1400 tones every day an oil fired plant would require 2 million tonnes of fuel oil per year, which is about 10 supertanker loads.” (IAEA document, 1992, p.12)

The nuclear establishment never fails to compare coal and nuclear as competing energy sources, always claiming the inherent superiority of nuclear . Usually this is accomplished by failing to include the entire fuel cycle over its full life of impacts, social and environmental. They conveniently exclude "safety" factors," "production of wastes," "disposability of wastes," "degree of potential for bioaccumulation,;" lifetimes of wastes, toxicity and proliferation problems associated with nuclear wastes.

“Yet no bombs are built of coal, no terrorist is interested in hijacking coal or in the clandestine acquisition of coal weapons, coal plants do not have to be decommissioned and mothballed after some 30 to 50 years of operation, their hazardous wastes do not have to be guarded for 100,000 years, coal dust is easier to contain than radon and coal plants do not require liability subsidies by acts of parliament” (Knelman, 1992)

- **The "lull and lure of the technological fix" syndrome**

(the "misleading assurance" device or the fallacy of "technological omnipotence")

This syndrome, device or fallacy involves the revealing of the seriousness of the problem and the offering of a "solution" which is usually worse than the problem

The proponents of a potentially dangerous act indicate that they recognize the danger and focus on one area for which they can offer a technological fix

In the following statement from the Radioactive Wastes section of Agenda 21, into which it appears that the IAEA had input, the following situation is recognized:

“Annually about 200,000 m³ of low-level and intermediate-level waste and 10,000 m³ of high-level waste (as well as spent nuclear fuel destined for final disposal) is generated worldwide from nuclear power production. These volumes are increasing as more nuclear power units are taken into operation, nuclear facilities are decommissioned and the use of radionuclides increases. The high level waste contains about 99 percent of the radionuclides and thus represents the largest radiological risk.” (Agenda 21, Radio Active wastes, 21.1.).

In the IAEA document the authors affirm the certainty of the technological fix.

“There is nevertheless a consensus among experts that safe geological disposal of high level wastes, including spent nuclear fuel, is technically feasible.” (IAEA Document, p.17)

The view of experts in the field is that safe technological solutions exist for managing the waste. (IAEA Document, 1992, p. 15)

Knelman (1992) points out that:

“The assumption behind the notion of permanent disposal of High level wastes deep in a stable geological formation is false because this assumption relies on the mistaken belief that anything we do technologically can be permanent This assumption of permanence is particularly false when we are dealing with the lithosphere over some 100,000 years and when we must first disturb the geological structure by digging a very deep hole. AECL(Atomic Energy of Canada Limited) has dug a deep hole near Lac du Bonnet in Manitoba which is totally inappropriate for such so-called "permanent" disposal. For one thing you must, in all events, avoid water. Yet, The AECL hole must be soaked Walt Patterson, a nuclear critic described this AECL research as follows: A drunk has lost his keys and is discovered by a police officer crawling around a street light. When questioned, the drunk admitted that he had lost his keys in front of a dark building, a block away. When asked why the

drunk was then searching around the street light, the drunk said " you see, officer, the light is better here" and as Dr Martin Resnikoff, an expert on geological waste disposal has put it " the earth does not stand still. In other words, experts in the relevant fields do not agree." (Knelman, 1992, in progress)

- **The "rhetoric of notwithstanding clause" doctrine.**

This doctrine allows for the indulging in strong statements about deep concern and the need for significant change and then including a notwithstanding clause that negates the strong statement.

In the Rio declaration (1992) there is a strong statement about third world dumping:

“States should effectively cooperate to discourage or prevent the relocation and transfer to other States of any activities and substances that cause severe environmental degradation or are found to be harmful to human health. (Principle 14 Rio Declaration,” (1992)

There are, however, disturbing "notwithstanding clauses" that appear such as in the following statements:

“Develop regulatory and non-regulatory measures and procedures aimed at preventing the export of chemicals that are banned, severely restricted, withdrawn or not approved for health or environmental reasons, *except when such export has received prior written consent from the importing country or is otherwise in accordance with the PIC procedure*; (Section 19. subsection 53” , (Agenda 21, 1992)

In the following statement in the IAEA document, the IAEA energetically adopts the spirit of the " rhetoric of notwithstanding clauses"

“The IAEA in 1990 promulgated a Code of Practice on the International Trans-boundary Movement of Radioactive Waste as a basis for harmonization of national legislation and policies. The code lays down the conditions and principles for international waste transfers, such as that movement must be made in a manner consistent with the international safety standards, that there must be prior notification and consent of the sending, receiving and transit States, and that each State involved should have a regulatory authority...”(IAEA Document, 1992, p. 20

- **The "flamboyant absurdity" doctrine or dogma**

This doctrine or dogma carries the concerns of one's opponents to the point where the regulations governing the opponents concerns should become the standard by which other potentially lesser concerns will be addressed.

The IAEA appears to advocate that, what is considered to be the most dangerous industry, just because it is dangerous, has developed stringent standards, and that they who contribute to possibly the greatest uncontrollable hazard are the ones who should assist the community in dealing with other hazards.

“The basic principles for radiation protection and safety in all applications and activities in nuclear science and technology are precautionary and are so well founded in science and so widely accepted that they are now also being regarded as a source of guidance in controlling pollutants and impacts arising from other human activities. Their wider application would undoubtedly contribute towards sustainable development.” (p.2)

• **The "justification through dire consequences of alternatives" device**

This device involves the revealing of the dire consequences of the current practices and offering one own practice as the salvation for the problem

In the following statement the IAEA cites the dire consequences of the other alternatives to justify their proposed alternative:

“The problem of acid rain, which is linked to emissions from the burning of fossil fuels, has been recognized for decades..... the primary concern about the continued and increasing use of fossil fuels is the problem of CO₂ emission and the potential impact on world climate..... World conference on the Changing Atmosphere... need to reduce CO₂ emission (IAEA document, p. 5)
climate change in connection with fossil fuels” (p. 9)

• **The "benevolent outcome exploitation" strategy**

This strategy involves the selection of the outcome which the opposition to the proposed alternative would advocate and the subsequent attempt to demonstrate that the proposed alternative, which the opposition would condemn, would be the best way of achieving that outcome.

In the following statements from the IAEA document, the IAEA focuses on the desired outcomes of reducing acid rain and limiting greenhouse gas to justify the selection of their proposed alternative:

“Several governments have already made commitments to reduce carbon emission, while recognizing that this will be hard to achieve except through drastic policy decisions in the energy sector.” (IAEA Document, 1992, p.6)

“Nuclear power plants in normal operations cause very little environmental detriment and are beneficial when they replace plants which would emit CO₂, SO₂, and NO₂ (p. 12). In this respect they would help to reduce acid rain and limit greenhouse gas emissions” (IAEA Document 1992 , p. 12)

To accomplish the above, IAEA and other nuclear proponents are recommending the construction of some 4000 to 5000 new commercial nuclear power plants. The combination of the multi- trillion cost and the time required for construction renders this proposal no less than bewildering. By the 6 to 10 year period required for construction, other sources of climate-altering gases would wipe out all gains. Secondly at 1/7th to 1/10th the above cost, a much greater reduction in CO₂ and other climate-altering gases can be achieved through simple available conservation and efficiency measures.

• **The "flaunting and condoning of the vicious circle principle" strategy**

This strategy is best explained by the economic principle that "bad money drives out good." is The opportunity costs of nuclear power are unacceptable and prohibitive. Thus, the money spent to subsidize nuclear power is at the expense of the funds required to solve the energy problem with safe alternatives, and consequently, because the research into alternatives will not be effectively carried out, the safe alternatives will not be able to adequately replace the non-renewable forms of energy.

“In the 1992 report to UNCED, following was stated:
Nuclear energy has safety risks associated with the entire uranium cycle, from mining through processing to the ultimate disposal of high-level radioactive wastes. In addition, there are safety risks associated with the reactors used to generate electricity from uranium . And the use of fossil fuel to drive conventional thermal generation produces carbon dioxide and waste heat. (Canada's National report UNCED p. 46- 47)
From a domestic consumption point of view, the least environmentally damaging energy option is energy efficiency.”
(Canada's National report UNCED p. 47)

Despite the above statement, the document concludes::

“New, cleaner technologies such as solar energy may help, but the hard fact is that to a large extent we will have to rely on either thermal, hydro, or nuclear energy in the future. In addition, energy projects for both export and domestic supply provide jobs and economic wealth to the country, and are especially

important in some regions of Canada" (p. 47. Canada's National report UNCED June, 1992, authors' emphasis)

The Canadian government has invoked the "vicious circle principle" by cutting subsidies to conservation efficiency and renewals. Canada is thus playing an important role in facilitating this not too hidden agenda by using many strategies, devices, doctrines, etc.

CONCLUSION:

The " nukespeak" and the seductive devices, strategies, syndromes used by the Nuclear Industry involve the language of delusion and distortion. Hopefully, through the continued revealing and categorizing of these words of delusion we could, in some small way, counteract the impact of the not too-hidden-agenda of the IAEA, and the rest of the nuclear establishment and their government supporters.

() THAT IN 1992 Prior to UNCED
I worked on an Earth Charter

EXHIBIT

() THAT in June 1992, I drafted an alternative composite Earth Charter

EXHIBIT

1992 EARTH CHARTER

to enshrine the following individual ecological rights

- the right to a safe ecosystem
- the right to expect that the government will foster and encourage the moral and ethical responsibilities concomitant with the protection of the right to a safe ecosystem and to an ecological heritage
- the right to require the disallowing of acts that could contribute to ecological irreversibility
- the right to demand that the government take immediate actions to address the urgent potentially irreversible environmental situation even though the action may interfere with the pursuit of short-term economic privileges
- the right to prevent the government or industry from satisfying short term economic wishes that would compromise the satisfaction of long-term ecological needs of future generations
- the right to expect the government not to abandon high national environmental standards to comply with international economic agreements
- the right to have the government give the environment, primacy in decision making

- the right to require governments to approach the ecosystem as the interdependence of principles that need to be in place if there is to be a solution (unacceptability of "short term" solutions based on fragmentation of the problem)
- the right to demand the preservation of significant ecosystems and that significant is not dependent on the notion of "collectibles" i.e., that if there is already an ecosystem preserved in one district would prevent a similar ecosystem from being protected in another district.
- the right to demand the reduction and elimination of destruction of the habitat by ecologically unsound economic practices
- the right to demand that restrictions be placed on aesthetic or medicinal uses of fauna that could lead to species impoverishment
- the right to demand the government to suspend any activity by Multinational Corporations that could cause environmental degradation through ecologically unsound practices.
- the right to demand national control over the safety of products and over national standards related to ecologically sound practices in accordance with proposed international standards.
- the right to demand that if a product or an activity is engaged in as a result of the falsification of data, or inadequate non-arm's length research that that product should be immediately taken off the market and the activity should be suspended
- the right to demand the government to condemn and disallow the exporting of products or services that are deemed to be unsafe in a country where there may be high restrictions or regulations to other countries with more relaxed regulations (because of their inability to test these products and because of their economic need prevents them from paying for more expensive and safer substitutes)
- the right to demand that "caution should be exercised when there is doubt about the impact of development
- the right to demand that ecologically sound principles drive industry not industry driving principles
- the right to have the onus of proof shifted from those opposing the intervention "having to demonstrate that the intervention will cause harm" to those advocating the intervention "having to demonstrate that their intervention will not cause harm.
- the right to ensure that remuneration should only be paid for work that is ethical (i.e., that it does not contribute to ecological irreversibility or ecological privation)
- the right to demand the government to assess the full environmental impact of any intervention that may cause environmental harm to the ecosystem
- the right to demand the government to resist the temptation of accepting non-ecologically sound projects because funds from these projects could be allocated for humanitarian projects (including job creation)
- the right of public to full disclosure about ecological consequences of an intervention
- the right of the public to have input into the decision-making process at the time of meaningful alternatives: a) at the time of formulation of the terms of reference and at the time when a decision is made about an environmental assessment review is to be made; b) continually throughout the proposed

- project; c) at any time where there is significant public concern about the environmental impact of the project
- the right to require the government to disallow the rationalizing away of potentially harmful impact on the ecosystem through the guise of altruism or necessity
 - the right to require the government to disallow projects where accidents, though unlikely, could be so disastrous that irreversible harm would occur to the environment.
 - the right to require the government to prohibit the production of weapons of mass destruction and work towards the control over other weapons and towards eventual disarmament.
 - the right to demand the government to reduce and eliminate use of harmful pesticides
 - the right to require the government to disallow acts contributing to ecological irreversibility in all lands including those of private ownership and those whose ownership is under dispute

EARTH CHARTER

We are the Earth, the people, plants and animals; the rains and the oceans; the breath of the forests and the life of the sea

All life is interconnected and interdependent in ways that will never be fully understood through science

In our quest to see ourselves as separate and even above the web of life we have imperiled the delicate balance

We have contaminated the air, water and soil and driven wild things to extinction, dammed rivers, torn down ancient forests, poisoned the rains and ripped holes in the sky

We have come to realize that the traditional consumptive patterns of development have contributed to poverty, to the inequitable distribution of resources, to over-consumption, to the violation of human rights and to the potentially irreversible degradation of the ecosystem

We have come to realize that the threats to the biosphere which sustains all life on this planet have increased in rate, magnitude and scale that inaction is negligent. The international community has enough information about the pending state of ecological irreversibility that it must act immediately.

WE DECLARE THE FOLLOWING PRINCIPLES TO GUIDE HUMANITY TO AN EQUITABLE AND ECOLOGICALLY SOUND FUTURE

- The ecosystem of which we are a part shall be protected and preserved; ecologically unsound patterns of development shall be condemned and the inequity of development must be addressed and rectified. The mandate to limit growth must prevail

- The precautionary principles shall be extended to require those who wish to intervene in the ecological commons to have to justify their intervention and demonstrate the safety of their intervention. The full environmental costs shall be considered in any proposed development project that may cause ecological harm
- Development activities that benefit the few while compromising the biological inheritance, and quality of life of the many must be condemned as being inherently and ethically wrong
- Most of the third world debt was accumulated as a result of development that was inequitable and detrimental to the ecosystem; remedial and restorative measures shall be undertaken to address the inequity and ecological harm. The third world debt shall be forgiven and redirected for the purpose of addressing inequity and of restoring the ecosystem. While all are responsible for improving environmental quality, those who disproportionately consume the majority of the Earth's resources and pollute the natural environment shall bear the bulk of the costs of ecological restoration and protection.
- States shall not have the sovereign right to exploit resources within their territories. All actions within states must comply with high international ecological standards
- International ecological standards shall be in place so that no short-term individual pursuit of self-interest, or short sighted national or international regulations (GATT) could jeopardize the environment. The purpose of these standards is to address the individual and multinational pursuit of self-interest and to prevent the consumption and exploitative use of the environment and not to penalize local communities that wish to function in an interdependent way with the ecosystem. The economic development necessary to eliminate poverty shall not be a mandate to abuse the environment for either short-term gain or economic growth.
- The international community shall condemn and shall disallow the exporting of products deemed to be unsafe in a state where there are advanced testing procedures to other states with less advanced testing procedures. No products or activities shall be transferred to other states if their transfer could cause harm to health or to the ecosystem.
- The continued build-up of the military complex must cease, and the use of military forces as a means of resolving conflict must be rejected. A radical reduction of the military budgets of the world must occur, and the funds released for ecological and humanitarian purposes. The decision-making process shall be clearly defined, transparent, accessible and equitable. Criteria in decision making shall be revealed, and the public and affected communities should be involved at the time of formulation of the terms of reference and throughout the process
- Behaviour and attitudes rather than countries should be categorized as "developed, " "developing" or "underdeveloped." The contribution of those people who have been "truly developed" in that they have succeeded in living in interdependence with the ecosystem shall be recognized and their advice sought

Composite Earth Charter

**Compiled from sections of the Rio Declaration; the Earth Charter (NGO); and the alternative Earth Charter prepared by the ERA: Ecological Rights Association
by Joan Russow and David White.**

Type legend

Rio Declaration. plain and underlined

NGO Earth Charter plain and not underlined

Charter of interdependence: Italics

Alternate Earth Charter: bold

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COMPOSITE EARTH CHARTER

EARTH CHARTER (NGO) AND RIO DECLARATION and **Alternate Earth Charter**

Preamble

We are the Earth, the people, plants and animals; the rains and the oceans; the breath of the forests and the life of the sea (NGO Charter)

All life is interconnected and interdependent in ways that will never be fully understood through science

In our quest to see ourselves as separate and even above the web of life we have imperiled the delicate balance

We have contaminated the air, water and soil and driven wild things to extinction, dammed rivers, torn down ancient forests, poisoned the rains and ripped holes in the sky (charter of Interdependence, Suzuki)

We have come to realize that the traditional consumptive patterns of development have contributed to poverty, to the inequitable distribution of resources, to over-consumption, to the violation of human rights and to the potentially irreversible degradation of the ecosystem

We have come to realize that the threats to the biosphere which sustains all life on this planet have increased in rate, magnitude and scale that inaction is negligent. The international community has enough information about the pending state of ecological irreversibility that it must act immediately.

Principles

1.

The Earth's ecosystem shall be conserved, protected and restored [We agree to respect, encourage, protect and restore Earth's ecosystems to ensure biological and cultural diversity]

States shall cooperate in a spirit of global partnership to conserve, protect and restore the health and integrity of the Earth's ecosystem. (Principle 6)

The ecosystem of which we are a part shall be protected and preserved; ecologically unsound patterns of development shall be condemned and the inequity of development must be addressed and rectified. The mandate to limit growth must prevail

the right to expect that the government will foster and encourage the moral and ethical responsibilities concomitant with the protection of the right to a safe ecosystem and to an ecological heritage

- **the right to require the disallowing of acts that could contribute to ecological irreversibility**
- **the right to demand that the government take immediate actions to address the urgent potentially irreversible environmental situation even though the action may interfere with the pursuit of short-term economic privileges**
- **the right to require governments to approach the ecosystem as the interdependence of principles that need to be in place if there is to be a solution (unacceptability of "short term" solutions based on fragmentation of the problem)**
- **the right to demand the preservation of significant ecosystems and that significant is not dependent on the notion of "collectibles" i.e., that if there is already an ecosystem preserved in one district would prevent a similar ecosystem from being protected in another district.**
- **the right to demand the reduction and elimination of destruction of the habitat by ecologically unsound economic practices**

2.

We recognize our diversity and our common partnership. We respect all cultures and

[affirm the rights of all people to basic environmental needs]

The rights of all to a safe environment shall be enshrined and enforced internationally, nationally, and locally in legislation, and

3.

Poverty affects us all.

All states and all people shall cooperate in the essential task of eradicating poverty as an indispensable requirement for [sustainable development], in order to decrease the disparities in standards of living and better meet the needs of the majority of the people of the world.

[We agree to alter [unsustainable] patterns of production and consumption to ensure the eradication of poverty and to end the abuse of Earth.] **The fundamental principle which calls for limiting growth shall be internationally adhered to. Current patterns of overconsumption shall be reduced and eventually eliminated, and efforts shall be made to stabilize population**

To achieve sustainable development and a higher quality of life for all people, states should shall reduce and eliminate unsustainable patterns of production and consumption (Principle 8)

Development activities that benefit the few while compromising the biological inheritance, and quality of life of the many must be condemned as being inherently and ethically wrong

This must include a recognition of the role of debt and financial flows from the South to the North

The third world debt shall be forgiven and these additional funds shall be transferred to ecologically sound, humanitarian project.

and opulence and corruption as primary causes. We shall emphasize and improve the endogenous capacity for technology creation and development. States should cooperate to strengthen endogenous capacity-building for sustainable development by improving scientific understanding through exchanges of scientific and technological knowledge, and by enhancing the development, adaptation, diffusion and transfer of [ecologically sound non obsolete] technologies, including new and innovative technologies. (Principle 9)

Attempts to eradicate poverty should not be a mandate to abuse the environment and attempts to protect or restore the environment should not ignore basic human needs

4.

States shall not have the sovereign right to exploit resources within their territories. All actions within states must comply with high international ecological standards

We recognize that national barriers do not generally conform to Earth's ecological realities. National sovereignty does not mean sanctuary from our collective responsibility to protect and restore Earth's ecosystems.

States have ...the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other states or of areas beyond the limits of national jurisdiction (principle 1)

Trade practices and transnational corporations must not cause environmental degradation and should **[shall] be** controlled in order to achieve social justice, equitable trade and [solidarity] with ecological principles.

International ecological standards shall be in place so that no short-term individual pursuit of self-interest, or short sighted national or international regulations (GATT) could jeopardize the environment. The purpose of these standards is to address the individual and multinational pursuit of self-interest and to prevent the consumption and exploitative use of the environment and not to penalize local communities that wish to function in an interdependent way with the ecosystem. The economic development necessary to eliminate poverty shall not be a mandate to abuse the environment for either short-term gain or economic growth.

the right to prevent the government or industry from satisfying short term economic wishes that would compromise the satisfaction of long-term ecological needs of future generations

- **the right to expect the government not to abandon high national environmental standards to comply with international economic agreements**
- **the right to have the government give the environment, primacy in decision making**

5

we [reject] **Governments must cease the buildup of military force** [the buildup] and use of military force and the use of economic pressure as means of resolving conflict.

- **the right to require the government to prohibit the production of weapons of mass destruction and work towards the control over other weapons and towards eventual disarmament.**

States shall resolve all their environmental disputes peacefully and by appropriate means in accordance with the Charter of the United Nations. (Principle 26)

We commit ourselves to pursue genuine peace, which is not merely the absence of war but includes the eradication of poverty, the promotion of social justice, **human and social rights** and [economic], spiritual, cultural and ecological well-being.

Peace, development and environmental protection are interdependent and indivisible (principle 25)

Warfare is inherently destructive of sustainable development. States shall therefore respect international law providing protection for the environment in times of armed conflict and cooperate in its further development, as necessary. (Principle 24)

The continued build-up of the military complex must cease, and the use of military forces as a means of resolving conflict must be rejected. A radical reduction of the military budgets of the world must occur, and the funds released for ecological and humanitarian purposes.

6.

We agree to ensure that decision-making processes and their criteria are clearly defined, transparent, explicit, accessible and equitable.

the right of the public to have input into the decision-making process at the time of meaningful alternatives: a) at the time of formulation of the terms of reference and at the time when a decision is made about an environmental assessment review is to be made; b) continually throughout the proposed project; c) at any time where there is significant public concern about the environmental impact of the project

Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. (Principle 10)
Effective access to judicial and administrative proceedings, including redress and remedy shall be provided. (Principle 10)

In order to achieve sustainable development, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it (Principle 4)

Those whose decisions or activities may affect the environment must first prove the absence of harm.

the right to have the onus of proof shifted from those opposing the intervention "having to demonstrate that the intervention will cause harm" to those advocating the intervention "having to demonstrate that their intervention will not cause harm.

the right to demand that "caution should be exercised when there is doubt about the impact of development

In order to protect the environment, the precautionary approach shall be widely applied by States [according to their capabilities]. Where there are threats of serious or irreversible damage [where there may be adverse environmental effects), lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation. (Principle 15) **The precautionary principles shall be extended to require those who wish to intervene in the ecological commons to have to justify their intervention and demonstrate the safety of their intervention. The full environmental costs shall be considered in any proposed development project that may cause ecological harm**

Environmental impact assessment, as a national instrument, shall be undertaken for proposed activities [that may] that are likely to have a significant adverse impact on the environment [and are subject to a decision of a competent national authority]. Significant adverse impact shall be

determined by reference to international ecological standards (principle 17)

• Those likely to be affected, particularly populations in the South and those in subjugation within existing States, should have free access to information and effectively participate in the decision-making processes.

The special situation and needs of developing countries, particularly the least developed and those most environmentally vulnerable, shall be given special priority. International actions in the field of environment and development should also address the interests and needs of all countries (Principle 6)

7

States, institutions, corporations and peoples are unequal in their contribution to environmental harm, experience of ecological degradation and ability to respond to environmental destruction. While all are responsible for improving environmental quality, those who have expropriated or consumed the majority of Earth's resources or who continue to do so must cease such expropriation or reduce such consumption and must bear the costs of ecological restoration and protection by providing the majority of financial and technological resources.

The developed countries acknowledge the responsibility that they bear in the international pursuit of sustainable development in view of the pressures their societies place on the global environmental and of the technologies and financial resources they command (principle 7)

8.

Women constitute over half of Earth's human population. They are a powerful source for change. They contribute more than half the effort to human welfare. Men and women agree that women's status in decision-making and social processes must equitably reflect their contribution. We must shift from a society dominated by men to one which more accurately reflects the valued contributions of men and women to human and ecological welfare.

Women have a vital role in environmental management and development. Their full participation is therefore essential to achieve sustainable development (Principle 20)

22

Indigenous people and their communities, and other local communities, have a vital role in environmental management and development because of their knowledge and traditional practices. States should recognize and duly support their identify, culture and interests and enable their effective participation in the achievement of sustainable development. (Principle 22)

We recognize the special place of Earth's Indigenous Peoples, their territories, their customs and their unique relationship to Earth. (Preamble). **Indigenous peoples shall be given the right to self-government, and all states shall settle indigenous peoples land rights**

• the right to demand that restrictions be placed on aesthetic or medicinal uses of fauna that could lead to species impoverishment

- the right to demand the government to suspend any activity by Multinational Corporations that could cause environmental degradation through ecologically unsound practices. •

11

the right to demand national control over the safety of products and over national standards related to ecologically sound practices in accordance with proposed international standards.

States shall enact effective environmental legislation. Environmental standards, and priorities should reflect the environmental and developmental context to which they apply. (Principle 11) **International ecological standards shall be established as a basis for national and local standards.**

13

States shall develop national law regarding liability and compensation for the victims of pollution and other environmental damage. States shall also cooperate in an expeditious and more determined manner to develop further international law regarding liability and compensation for adverse effects of environmental damage caused by activities within their jurisdiction or control to areas beyond their jurisdiction (Principle 13)

14

States should (shall) effectively cooperate to discourage or prevent the relocation and transfer to other states of any activities and substances that cause severe environmental degradation or are found to be harmful to human health

the right to demand the government to condemn and disallow the exporting of products or services that are deemed to be unsafe in a country where there may be high restrictions or regulations to other countries with more relaxed regulations (because of their inability to test these products and because of their economic need prevents them from paying for more expensive and safer substitutes)

the right to demand that if a product or an activity is engaged in as a result of the falsification of data, or inadequate non-arm's length research that that product should be immediately taken off the market and the activity should be suspended

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National authorities should [shall] endeavour to promote the internalization of environmental costs and the use of economic instruments, taking into account the approach that the polluter should[shall] in principle, bear the cost of pollution, with due regard to the public interest [and without distorting international trade and investment] (Principle 16)

18

States shall immediately notify other States of any natural disasters or other emergencies that are likely to produce sudden harmful effects on the environment of those States. Every effort shall be made by the international community to help States so afflicted (principle 18)

States shall be obliged to refrain from any activity that could potentially cause environmental harm

States shall provide prior and timely notification and relevant information to potentially affected States on activities that may have a significant adverse trans-boundary environmental effect and shall consult with those States at an early stage and in good faith. (Principle 19)

21

The creativity, ideals and courage of the youth of the world should be mobilized to forge a global partnership in order to achieve sustainable development and ensure a better future for all. Principle 21)

Principle 23

The environmental and natural resources of people under oppression, domination and occupation shall be protected

• the right to demand that ecologically sound principles drive industry not industry driving principles

Behaviour and attitudes rather than countries should be categorized as "developed, " "developing" or "underdeveloped," The contribution of those people who have been 'truly developed" in that they have succeeded in living in interdependence with the ecosystem shall be recognized and their advice sought

• the right to demand the government to reduce and eliminate use of harmful pesticides

• the right to require the government to disallow acts contributing to ecological irreversibility in all lands including those of private ownership and those whose ownership is under dispute

() THAT in July, 1992, I performed a content analysis of the almost 800-page Agenda 21 that was agreed to at UNCED and sent the content analysis to Noel Brown the Secretary General of UNEP

EXHIBIT

A VERY PRELIMINARY CONTENT ANALYSIS OF THE RIO DECLARATION AND OF SECTIONS 1-22 OF AGENDA 21 AND (JUNE 30, 1992) AND EXTRACTION OF PRINCIPLES OF ACTION

Note 1 I brought home the 800 page document and did a content analysis of the documents: **Note 2.** this content analysis was done on the documents that were distributed at Rio prior to the resolution of the bracketed sections. When a section was in brackets, which indicates that a section is still under discussion, the brackets will be indicated. The categories used in the content analysis reflect significant aspects of the global environmental situation. The statements selected under each category were selected because they were assessed to be ones that ,if implemented, would bring about the needed changes . All the statements in Agenda 21 and the Rio Declaration were adopted by consensus by the member states of the United Nations at UNCED. More analysis has to be done particularly for issues that pertain specifically to the "developing" countries.

Note: Phrases in italics are those that appear to weaken the statements

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QUALIFICATIONS OF "SOVEREIGN RIGHT TO EXPLOIT RESOURCES
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- Culture of safety
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1. INTRODUCTION

Although there were systemic constraints which prevented UNCED from addressing the urgency of the global situation, there were many significant acknowledgments and principles which emerged from UNCED.

systemic Constraints preventing change

The following "systemic constraints," appear to have prevented the global community from addressing the urgency:

- the continued willingness to enshrine the sovereign right to exploit natural resources.
- the unwillingness to move beyond sovereign barriers to international environmental governance
- the failure to recognize that the situation is so urgent that international environmental governance and standards have to be necessary
- the refusal of states to accept the rule of international law
- the reluctance to establish stringent international environmental standards and technological regulations
- the unwillingness of states to allow for a stringent monitoring program
- the reluctance to recognize that the urgency of the current global situation requires the summoning up of the international political will to move from "should" to "shall"
- the obsession with consensus which may lead to the lowest common denominator rather than striving through collaboration for the highest tenable principles
- the decision making process being conceived as an arena of competing interests
- the designation of failure made by those states, institutions and individuals who do not even live up to the moderate principles established by consensus
- the reluctance to redefine what constitutes development in an ecologically sound way
- the revelation of a problem and the presentation of a solution which could have more disastrous or equally disastrous consequences as the problem (nuclear)
- the continued justification and rationalization about the use of ecologically unsound practices in the guise of technological fixes
- the condoning of technological fixes suggested as solutions:
- the continued condoning of research and development into rectifying the harm done through ecologically unsound practices rather than discontinuing ecologically unsound practices(the Green Revolution syndrome)
- the presence and use of international short term economic regulations which justify the abandoning by sovereign states of high ecological standards. (present in GATT regulations, and evident in Chapter 2 of Agenda 21 "Social and Economic Dimensions.")
- the reluctance of GATT to consider the applicability of any chapters other than Chapter 2
- the persistence of the situation whereby the power to prevent environmental harm or to preserve environmental heritage resides in

those whose interest it is to benefit economically from the environment. and that in whose interest it is to benefit economically from the environment tend to ignore ecologically sound practices

- the persistence of the co-option, often through government funding, of groups, whose role should be to act as the conscience of the official decision makers
- the persistence of the situation where those who should be speaking out are constrained because of professional commitments, and where those who are willing to speak out are not heard because the press fails to report their statements
- the sanctioned use of "words of delusion" that either delude the public into thinking that what is unsafe, is safe, or delude the public into thinking that there is the political will to eliminate unsafe practices.
- the sanctioned use of loophole vague terms like "as appropriate" or of loophole provisions like *without prejudice to international trade principles*. For example in the following section on consumption They should therefore review the purchasing policies of their agencies and departments so that they may improve, where possible, the environmental content of government procurement policies, *without prejudice to international trade principles*. (4.23, Consumption)
- the sanctioned use of the "notwithstanding clause" device. This device allows for the indulging in strong statements about deep concern and the need for significant change and then including a notwithstanding clause that negates the strong statement.

" Implement, as a matter of urgency, *in accordance with country-specific conditions and legal systems*, measures to ensure that women and men have the same right to decide freely and responsibly on the number and spacing of their children and have access to the information, education and means, as appropriate, to enable them to exercise this right *in keeping with their freedom, dignity and personally held values, taking into account ethical and cultural considerations*. (3..8 j Combating Poverty)

- the sanctioned use of oxymorons like "the environmentally sound management of hazardous wastes" (20.22 Hazardous wastes) or "the promoting the safe and environmentally sound management of radioactive wastes" (Chapter 22 Radioactive wastes)
- the sanctioned use of term like "harmonizing" which usually leads not the highest tenable principles but to the lowest common denominator
- the unwillingness to redefine development in terms of ecologically sound practices; such as
 - (i) the degree to which a state has been able to integrate with the ecosystem through ecological sound practices causing its human activity to have little deleterious impact on the environment
 - ii) The degree to which there is an equitable distribution of resources
 - iii) the extent to which a state refrains from contributing to global ecological or military harm
 - iv)The degree of condemnation, and avoidance of over-consumption

- v) the ability to minimize the human impact on the environment through stabilization of population
- vi) the degree of compliance with the enshrining of positive rights (right to ecologically sound work, to food, to shelter as well as with negative rights)
- (vii) the ability to live within the carrying capacity of the ecosystem; in which case the US could possibly be the least developed

- the stereotyping of countries into categories of "developed, underdeveloped, and developing" rather than designating behaviours and attitudes as being "developed, underdeveloped and developing";
- the simplistic distinction between North (environment) and South (development)
- the presumption that technological transfer should always pass from "North" to "South"
- the reluctance to deal with essential issues such as the link between "Nuclear civil reactors and Nuclear Arms Industry" or the Link between Poverty and lack of universal " secondary" as well as "primary" health care system (3.6. e Combating Poverty)
- the reluctance to address the environmental degradation caused by military operations
("Systemic Constraints preventing change," Russow J. & White, D. in progress)

PART 1: CONTENT ANALYSIS

Acknowledgements and principles, from UNCED, that could facilitate change

Although many of the above constraints appear to have influenced the ability of the global community to address the urgency of the global situation, there are many internationally adopted acknowledgements and principles arising out of UNCED that do express the global condemnation of ecologically unsound practices.

In general the NGO community has concentrated on the 40 treaties emerging from the Global Forum, and have, recognizing the limitations of the formal negotiating process, neglected to examine the documents emerging from the formal proceedings at the Rio Centro. Although the 40 treaties make a significant contribution to addressing the urgency of the current global situation, and are worthy of continued distribution and commitment; the NGO, the general public and professional groups can use the globally agreed to principles contained in the official UNCED documents as moral suasion to ensure that as a minimum states undertake to fulfill the principles agreed to at Rio.

I have attempted to do a content analysis of the significant acknowledgements and principles that have emerged from the Rio Declaration and from Agenda 21, the two documents from UNCED that were adopted through global consensus at Rio. The Rio Declaration which is a precursor to an Earth Charter enunciates certain principles which though not binding could be of strong moral suasion. Agenda 21 delineates certain acknowledgements of the current global situation and advocates actions which though not binding also could be of strong moral suasion.

Agenda 21 is divided into distinct sections and chapters dealing with the following issues:

Section I Social and economic dimensions

1. Preamble
2. International cooperation to accelerate sustainable development in developing countries and related domestic policies
3. Combating poverty
4. Changing consumption patterns
5. Demographic dynamics and sustainability
6. Protecting and promoting human health conditions
7. Promoting sustainable human settlement development
8. Integrating environment and development in decision-making

Section II Conservation and management of resources for development

9. Protection of the atmosphere
10. Integrated approach to the planning and management of land resources
11. Combating deforestation
12. Managing fragile ecosystems: combating desertification and drought
13. Managing fragile ecosystems: sustainable mountain development
14. Promoting sustainable agriculture and rural development
15. Conservation of biological diversity
16. Environmentally sound management of biotechnology
17. Protection of oceans, all kinds of seas, including enclosed and semi-enclosed seas, and coastal areas and the protection, rational use and development of their living resources
18. Protection of the quality and supply of freshwater resources: application of integrated approaches to the development, management and use of water resources
19. Environmentally sound management of toxic chemicals, including prevention of illegal international traffic in toxic and dangerous products
20. Environmentally sound management of hazardous wastes, including prevention of illegal international traffic in hazardous wastes
21. Environmentally sound management of solid wastes and sewage-related issues
22. Safe and environmentally sound management of radioactive wastes

Section III Strengthening the role of major groups (chapter topics not listed in this paper)

Section IV Means of Implementation (chapter topics not listed in this paper)

(Organizational structure of Agenda 21)

0. OVERVIEW:

A VERY PRELIMINARY CONTENT ANALYSIS OF THE RIO DECLARATION AND OF SECTIONS 1-22 OF AGENDA 21 AND (JULY 5, 1992)

STATEMENTS THAT MIGHT BE USEFUL AS MORAL SUASION TO ENSURE THAT COUNTRIES ACT IN ACCORDANCE WITH THE COMMITMENTS MADE THROUGH GLOBAL CONSENSUS AT THE EARTH SUMMIT

Note: unless otherwise indicated all references are to Agenda 21

The following content analysis is primarily an attempt to get beyond the fragmentation of the global problem into distinct issues, to find fundamental principles that could be used as an indication of true global concern about the environment. It must be stressed that this content analysis is very preliminary and it was prepared as background material for a series of presentations, briefs, submissions to Constitutional debate and as background material for a university course on global issues. It is only circulated as a beginning attempt to find possible ways of using documents (Rio Declaration and particularly Agenda 21) that have been globally adopted by consensus. In this content analysis, statements are quoted verbatim because the delegates and eventually the state leaders agreed to specifically worded statements. If the principles enunciated from UNCED are to be used effectively, it would seem that the original wording and not a paraphrase of the principles would be necessary.

1. RECOGNITION OF NEED TO QUALIFY THE "SOVEREIGN RIGHT TO EXPLOIT RESOURCES

1.1. PROVIDING CONSERVATION OF BIODIVERSITY AND BIOLOGICALLY SUSTAINABLE USE

" At the same time, it is particularly important in this context to stress that States have the sovereign right to exploit their own biological resources pursuant to their environmental policies, as well as the responsibility to conserve their biodiversity and use their biological resources sustainably, and to ensure that activities within their jurisdiction or control do not cause damage to the biological diversity of other states or of areas beyond the limits of national jurisdiction. " (15.3 Biodiversity)

"Governments at the appropriate level, with the support of relevant international and regional organizations, should promote the following activities in conformity with international agreements or arrangements on biological diversity, as appropriate" (Biotechnology, 16.7)

1.2. PROVIDING NO DAMAGE OR ENDANGER LOCAL ECOSYSTEMS

"Acceleration of technology acquisition, transfer and adaptation by developing countries to support national activities that promote food security, through the development of systems for

substantial and sustainable productivity increases that do not damage or endanger local ecosystems.

2. RECOGNITION AND DELINEATION OF BASIC NEEDS.

" Governments should establish measures that will directly or indirectly set up an effective primary health care and maternal health care system accessible to all " (3.7.e Combating Poverty)

" undertake activities aimed at the promotion of food security and, where appropriate, food self-sufficiency within the context of sustainable agriculture" (3.7.l Combating Poverty)

" Consider making available lines of credit and other facilities for the informal sector and improved access to land for the landless poor so that they can acquire the means of production and reliable access to natural resources." (3.7.o Combating Poverty)

" provide the poor with access to fresh water and sanitation" (3.7.p Combating Poverty)

"provide the poor with access to primary education."(3.7.q Combating Poverty)

"... the provision of a safe water supply and sanitation and the promotion of a safe food supply and proper nutrition. Particular attention should be directed towards food safety, with priority placed on the elimination of food contamination; comprehensive and sustainable water policies to ensure safe drinking water and sanitation to preclude both microbial and chemical contamination; and promotion of health education...education and appropriate services regarding responsible planning of family size... values... ." (6.3. Protecting and promoting health)

" Access to safe and healthy shelter is essential to a person's physical, psychological, social and economic well-being and should be a fundamental part of national and international action. The right to adequate housing as a basic human right is enshrined in the Universal Declaration of Human rights and the International Covenant on Economic, Social and Cultural rights." (7.6, Settlement)

"The improvement of human health is one of the most important objectives of development."

"The deterioration of environmental quality, notably air, water and soil pollution owing to toxic chemicals, hazardous wastes, radiation and other sources, is a matter of growing concern. ..Malnutrition, poverty, poor human settlements, lack of

good-quality potable water and inadequate sanitation facilities add to the problems of communicable and non-communicable diseases. As a consequence, the health and well-being of people are exposed to increasing pressures.” (16.12 Biotechnology)

“Water is a finite resource, essential for the sustenance of life on earth” (18.2 Freshwater)

“water is needed in all aspects of life” (18.6 fresh water

“freshwater resources are an essential component of the earth's hydrosphere and an indispensable part of all terrestrial ecosystems. (18.7 Fresh water)

“Priority must be given to the sustenance of land/water ecosystems, with particular attentions to wetlands and biodiversity, and the satisfaction of basic human needs for drinking-water, health protection and food security.” (18.8. Fresh water)

“One in three people in the developing world still lacks these two (safe drinking-water and sanitation) more basic requirements for health and dignity.” (18.58 Freshwater)

3. ACKNOWLEDGEMENT AND ASSESSMENT OF GLOBAL URGENCY

- **Extent and scope of urgency**

“Humanity stands at a defining moment in history. We are confronted with a perpetuation of disparities between and within nations, a worsening of poverty, hunger, ill health and illiteracy, and the continuing deterioration of the ecosystems on which we depend for our well-being. ...” (1.1 Preamble)

- **Poverty and inequity**

“The eradication of poverty and hunger, greater equity in income distribution and human resources development remain major challenges everywhere. The struggle against poverty is the shared responsibility of all countries” (3.1 combating poverty)

- **Extent of Unsustainable consumption**

[one of the most serious problems now facing the planet is that associated with historical patterns of unsustainable consumption and production, leading to environmental degradation, aggravation of poverty and imbalances in the development of countries.] (4.3 Changing consumption patterns)

- **Increase in global population**

"The growth of world population and production combined with unsustainable consumption patterns places increasingly severe stress on the life-supporting capacities of our planet..."(5.2, Demographic dynamics)

- **Linking of population and over-consumption**

["Health and development are intimately interconnected. both insufficient development leading to poverty and inappropriate development resulting in over-consumption, coupled with an expanding world population, can result in severe environmental health problems in both developing and developed nations."]

6.1 Health

- **Extent of air, water and land pollution**

" In many locations around the world the general environment (air, water, and land), workplaces and even individual dwellings are so badly polluted that the health of hundreds of millions of people is adversely affected. This is, inter alia, due to past and present developments in consumption and production patterns and lifestyles, in energy production and use, in industry, in transportation etc. with little or no regard for environmental protection." (6.40, Protection of health)

- **Nature of inequity between "developed" and "undeveloped" states**

" In industrialized countries, the consumption patterns of cities are severely stressing the global ecosystem, while settlements in the developing world need more raw material, energy, and economic development simply to overcome basic economic and social problems." (7.1. Settlement)

"...It is estimated that at the present time, at least 1 billion people do not have access to safe and healthy shelter and that if appropriate action is not taken, this number will increase dramatically by the end of the century and beyond." (7.6, Settlement)

" The rising costs of urban land prevent the poor from gaining access to suitable land. In rural areas, unsustainable practices, such as the exploitation of marginal lands and the encroachment on forests and ecologically fragile areas by commercial interests and landless rural populations, result in environmental degradation, as well as in diminishing returns for impoverished rural settlers" (7.28, Settlement)

- **Extent of trans-boundary air pollution**

" Trans-boundary air pollution has adverse health impacts on humans and other detrimental environmental impacts, such as

tree and forest loss and the acidification of water bodies...” (9.22, Atmosphere)

- **Increased depletion of Earth's stratosphere**

" Analysis of recent scientific data has confirmed the growing concern about the continuing depletion of the Earth's stratospheric ozone layer by reactive chlorine and bromine from man-made CFC's, halons and related substances. While the 1985 Vienna Convention for the Protection of the Ozone Layer and the 1987 Montreal Protocol on Substances that Deplete the Ozone Layer (as amended in London in 1990) were important steps in international action, the total chlorine loading of the atmosphere of ozone-depleting substances has continued to rise. This can be changed through compliance with the control measures identified within the Protocol “(9.19 Atmosphere)

- **Possible reduction of resilience of ecosystem to climatic variation because of loss of biological diversity**

" The loss of biological diversity may reduce the resilience of ecosystems to climatic variations and air pollution damage. Atmospheric changes can have important impacts on forests, biodiversity, and freshwater and marine ecosystems, as well as on economic activities, such as agriculture.” (9.16 Atmosphere)
cross link with clear cut

- **Increased deforestation and land degradation**

"Forests worldwide have been and are being threatened by uncontrolled degradation and conversion to other types of land uses, influenced by increasing human needs; agricultural; expansion, and environmentally harmful mismanagement, including, for example, lack of adequate forest-fire control and anti-poaching measures, unsustainable commercial logging, overgrazing and ... the impacts of loss and degradation of forests are in the form of soil erosion; loss of biological diversity, damage to wildlife habitats and degradation of watershed areas, deterioration of the quality of life and reduction of the options for development.” (11.12. Deforestation)

- **Urgent need for conservation**

"The present situation calls for urgent and consistent action for conserving and sustaining forest resources. The greening of suitable areas, in all its component activities, is an effective way of increasing public awareness and participation in protecting and managing forest resources. It should include the consideration of land use and tenure patterns and local needs and should spell out and clarify the specific objectives of the different types of greening activities” (11. 13, Deforestation)

see quote on original proposal for UNCED

- **Increased desertification**

“Desertification affects about one sixth of the world's population, 70% of all drylands, amounting to 3.6 billion hectares, and one quarter of the total land areas of the world. The most obvious impact of desertification, in addition to widespread poverty, is the degradation of 3.3 billion hectares of the total area of rangeland, constituting 73 per cent of the rangeland with a low potential for human and animal carrying capacity decline in soil fertility and soil structure on about 47 per cent of the dryland areas constituting marginal rainfed cropland; and the degradation of irrigated cropland, amounting to 30 % of the dryland areas with a high population density and agricultural potential.” (12.2. Desertification)

- **Increased loss and degradation of mountain ecosystems**

“Mountain ecosystems are, however, rapidly changing. They are susceptible to accelerated soil erosion, landslides and rapid loss of habitat and genetic diversity. On the human side, there is widespread poverty among mountain inhabitants and loss of indigenous knowledge. As a result, most global mountain areas are experiencing environmental degradation.” (13.1. Fragile ecosystems)

- **Increased watershed deterioration**

"There are serious problems of ecological deterioration in these watershed areas. ... In many areas this is accompanied by excessive livestock grazing, deforestation and loss of biomass cover.”(13.13 Fragile ecosystems)

- **Increased ignoring of carrying capacity of land**

" Inappropriate and uncontrolled land uses are a major cause of degradation and depletion of land resources. Present land use often disregards the actual potentials, carrying capacities and limitations of land resources as well as their diversity in space.” (14.34 Agriculture)

- **Increased poverty and malnutrition**

"Poverty and malnutrition are already endemic in many regions. The destruction and degradation of agricultural and environmental resources is a major issue” (14.35 Agriculture)

- **Acute land degradation**

"Land degradation is the most important environmental problem affecting extensive areas of land in both developed and developing countries. The problem of soil erosion is particularly acute in developing countries, while problems of salinization,

waterlogging, soil pollution and loss of soil fertility are increasing in all countries. "(14.44 Agriculture)

- **Acute threat to genetic diversity**

" Plant genetic resources for agriculture are an essential resource to meet future needs for food. Threats to the security of these resources are growing, and efforts to conserve, develop and use genetic diversity are underfunded and understaffed...(14.54 Agriculture)

- **Overuse of chemicals**

"Chemical control of agricultural pests has dominated the scene, but its overuse has adverse effects on farm budgets, human health and the environment..."(14.74 Agriculture)

- **Loss of biodiversity through ecologically unsound practices**

" Despite mounting efforts over the past 20 years, the loss of the world' biological diversity, mainly from habitat destruction, over-harvesting, pollution and the inappropriate introduction of foreign plants and animals has continued." (15.3 Biodiversity)

- **Increased deterioration of the environment through anthropogenic actions**

"The improvement of human health is one of the most important objectives of development. The deterioration of environmental quality, notably air, water and soil pollution owing to toxic chemicals, hazardous wastes, radiation and other sources, is a matter of growing concern. ..Malnutrition, poverty, poor human settlements, lack of good-quality potable water and inadequate sanitation facilities add to the problems of communicable and non-communicable diseases. As a consequence, the health and well-being of people are exposed to increasing pressures." (16.12 Biotechnology)

- **Extent of environmental damage from waste accumulation**

" The environment is threatened in all its biotic and abiotic components: animals, plants, microbes and ecosystems comprising biological diversity; water, soil and air, which form the physical components of habitats and ecosystem; and all the interactions between the components of biodiversity and their sustaining habitats and ecosystem. With the continued increase in the use of chemicals, energy and non-renewable resources by expanding global population, associated environmental problems will also increase. Despite increasing efforts to prevent waste accumulation and to promote recycling, the amount of environmental damage caused by over-consumption, the quantities of waste generated and the degree of unsustainable land use appear likely to continue growing." (16.22 Biotechnology)

- **Nature of marine environment degradation**

" Degradation of the marine environment can result from a wide range of sources. Land-based sources contribute 70% of marine pollution, while maritime transport and dumping-at-sea activities contribute 10 % each." (17.19. Marine)

- **Extent of vulnerability of marine environment to change**

" The marine environment is vulnerable and sensitive to climate and atmospheric changes." (17.101, marine)

"Small increases in sea level have the potential of causing significant damage to small islands and low-lying coasts" (17.102 Marine)

- **increased erosion and soil loss in river basins**

" Poor land-use management, including deforestation and non-sustainable agriculture, mining and urbanization, could lead to a considerable increase in erosion problems and related soil loss in the river basins. The sedimentation in large reservoirs may have serious adverse effects downstream by reducing the quantity of natural nutrients available to agricultural land and coastal waters. .. Acidification of surface waters and groundwaters due to atmospheric deposition of air pollutants can lead to depletion of freshwater living resources and thereby contribute to the loss of biodiversity." (18.3 Freshwater)

- **Increased impact of global climate changes**

"Global climate changes could also have an impact on freshwater resources and on the availability of those resources, and through sea-level rise and atmospheric pollution, threaten coastal aquifers and small island ecosystems." (18.7, Fresh water)

- **Increased loss of Freshwater quality through ecologically unsound products and practices**

" Freshwater is a unitary resource. Long-term development of global freshwater requires holistic management of resources and a recognition of the inter-connectedness of the elements related to freshwater and freshwater quality. There are few regions of the world that are still exempt from the problems of loss of potential sources of freshwater supply, degraded water quality and pollution of surface and groundwater sources. Major problems affecting the water quality of rivers and lakes arise, in variable order of importance according to different situations, from inadequately treated domestic sewage, inadequate controls on the discharges of industrial waste waters, loss and destruction of catchment areas, ill-considered siting of agricultural practices. This gives rise to the leaching of nutrients and pesticides. Aquatic ecosystems are disturbed and living

freshwater resources are threatened. ...Erosion, degradation, deforestation and desertification have led to increased land degradation, and the creation of reservoirs has, in some cases, resulted in adverse effects on ecosystems. Many of these problems have arisen from a development model that is environmentally destructive and from a lack of protection. Ecological and human health effects are the measurable consequences... although the means to monitor them are inadequate or non-existent in many countries. There is a widespread lack of perception of the linkages between the development, management use and treatment of water resources and aquatic ecosystems. A preventive approach, where appropriate, is crucial to the avoiding of costly subsequent measures to rehabilitate, treat and develop new water supplies." (18.45 Fresh water)

• **Continued lack of basic requirements**

"One in three people in the developing world still lacks these two (safe drinking water and sanitation) basic requirements for health and dignity." (18.58 Fresh water)

• **Increased impact of population growth and industrialization**

"Rapid urban population growth and industrialization are putting severe strains on the water resources and environmental protection capabilities of many cities" (18.67, Fresh water)

• **Continued impact of mismanagement and overexploitation**

"Soil erosion, mismanagement and overexploitation of natural resources and acute competition for water have all influenced the extent of poverty, hunger and famine in the developing countries. Soil erosion caused by overgrazing of livestock... Most often, the development of irrigation schemes is supported neither by environmental impact assessments identifying hydrologic consequences within watersheds of interbasin transfer..." (18.76, Fresh water)

• **Potential outcome of climate change**

"There is uncertainty with respect to the prediction of climate change at the global level. Although the uncertainties increase greatly at the regional, national and local levels, it is at the national level that the most important decisions would need to be made. Higher temperatures and decreased precipitation would lead to decreased water supplies and increased water demands; they might cause deterioration in the quality of freshwater bodies, putting strains on the already fragile balance between supply and demand in many countries. Even where precipitation might increase, there is no guarantee that it would occur at the time of year when it could be used; in addition there might be a likelihood of increased flooding. Any rise in sea-level will often cause the intrusion of salt water into estuaries, small

islands and coastal aquifers and the flooding of low-lying coastal areas; this puts low-lying countries at great risk.” (18.93 Fresh water)

- **Continuous degradation of human health and the environment**

"Human health and environmental quality are undergoing continuous degradation by the increasing amount of hazardous wastes being produced. There are increasing direct and indirect costs to society and to individual citizens in connection with the generation, handling and disposal of such wastes." (20.9 Hazardous waste)

- **Unprecedented Increase in environmentally persistent wastes**

"Unsustainable patterns of production and consumption are increasing the quantities and variety of environmentally persistent wastes at unprecedented rates. The trend could significantly increase the quantities of wastes produced by the end of the century and increase quantities four to fivefold by the year 2025." (21.7 Solid wastes)

- **Increased generation of nuclear wastes**

"Annually about 200,000 m³ of low-level and intermediate-level waste and 10,000 m³ of high-level waste (as well as spent nuclear fuel destined for final disposal) is generated worldwide from nuclear power production. These volumes are increasing as more nuclear power units are taken into operation, nuclear facilities are decommissioned and the use of radionuclides increases. The high-level waste contains about 99 percent of the radionuclides and thus represents the largest radiological risk." (22.1. Radioactive wastes)

- **Continued trafficking in toxic and dangerous products**

"Illegal traffic in toxic and dangerous products (toxic and dangerous products are those that are banned, severely restricted, withdrawn or not approved for use or sale by governments in order to protect public health and the environment). see resolutions 42/183 and uu/226 (19.67 Toxic chemicals)"
"(21.28 Solid wastes)

- **Continued non-provision for basic sanitation**

by the end of the century, over 2.0 billion people will be without access to basic sanitation, and an estimated half of the urban population in developing countries will be without adequate solid waste disposal services. As many as 5.2 million people, including 4 million children under five years of age, die each year from waste-related diseases. The health impacts are particularly severe for the urban poor.

4. CONDEMNATION OF ECOLOGICALLY UNSOUND PRACTICES OR OUTCOMES

4.1. PRODUCTS

•radiation,

"The improvement of human health is one of the most important objectives of development. The deterioration of environmental quality, notably air, water and soil pollution owing to toxic chemicals, hazardous wastes, radiation and other sources, is a matter of growing concern. ..Malnutrition, poverty, poor human settlements, lack of good-quality potable water and inadequate sanitation facilities add to the problems of communicable and non-communicable diseases. As a consequence, the health and well-being of people are exposed to increasing pressures." (16.12 Biotechnology)

•Chemicals

"To increase the use of integrated pest, disease and crop management techniques to eliminate overdependence on agrochemicals, thereby encouraging environmentally sustainable agricultural practices" (16.2 c Biotechnology)

"Examination of the implications of the withdrawal of subsidies and the possible use of other economic instruments to reflect the environmental costs associated with unsustainable use of agrochemicals " (16.6 b Biotechnology)

"Develop applications to minimize the requirement for unsustainable synthetic chemical input and to maximize the use of environmentally appropriate products, including natural products "(16.25, Biotechnology)

•CFC's

" Protection of the atmosphere can be enhanced ...replacing chlorofluorocarbons and other ozone-depleting substances with appropriate substitutes, as well as by reducing wastes and by-products." (9.13, Atmosphere)

•Greenhouse gases

the objectives of this programme area are: reducing atmospheric pollution or limiting anthropogenic emissions of greenhouse gases

•Loss of biodiversity

" ...the uncontrolled introduction of exotic plant and animal species..."(11.15 G Deforestation)

" Despite mounting efforts over the past 20 years, the loss of the world' biological diversity, mainly from habitat destruction, over-harvesting, pollution and the inappropriate introduction of foreign plants and animals has continued." (15.3 Biodiversity)

4.2. PRACTICES

•Development models

"Many of these problems have arisen from a development model that is environmentally destructive and from a lack of protection. Ecological and human health effects are the measurable consequences... although the means to monitor them are inadequate or non-existent in many countries. There is a widespread lack of perception of the linkages between the development, management use and treatment of water resources and aquatic ecosystems."

(18.45 Fresh water)

•Consumptive patterns

"Achieving the goals of environmental quality and sustainable development will require efficiency in production and changes in consumption patterns in order to emphasize optimization of resource use and minimization of waste. In many instances, this will require reorientation of existing production and consumption patterns that have developed in industrial societies and are in turn emulated in much of the world." (4.15 Changing consumption patterns)

[While poverty largely results in certain kinds of environmental stress one of the most serious problems now facing the planet is that associated with historical patterns of unsustainable consumption and production, leading to environmental degradation, aggravation of poverty and imbalances in the development of countries] (4.3.

"Measures to be undertaken at the international level for the protection and enhancement of the environment must take fully into account the current imbalances in the global patterns of consumption and production" (4.4 Changing consumption patterns)

[Special attention should be paid to the demand for natural resources generated by unsustainable consumption and to the efficient use of those resources consistent with the goal of minimizing depletion and reducing pollution. Although consumption patterns are very high in certain parts of the world, the basic consumer needs of a large section of humanity are not being met. This inequitable distribution of income and wealth results in excessive demands and unsustainable lifestyles among the richer segments, which place immense stress on the environment. The poorer segments, meanwhile, are unable to meet food, health care, shelter and educational needs. Change consumption patterns will require a multi-pronged strategy focusing on demand, meeting the basic needs of the poor, and reducing wastage and the use of finite resources in the production process.] 4.5 note: section put in brackets by U.S. " States should pay special attention to efficient use of natural

resources consistent with the goal of minimizing depletion and reducing pollution. This would help countries to meet their peoples food health care shelter and educational needs. The poor suffer from environmental degradation that can deepen the problem of development in particular as they struggle with agricultural problems and problems of health, hygiene which are endemic to the poor. At time environmental degradation caused by the consumptive patterns of others can intensify the environmental problem the poor face. Poverty is closely linked to environmental stress.” (U.S Suggestion for alternative to 4.5)

" Developing countries should seek to achieve sustainable consumption patterns in their development process, guaranteeing the provision of basic needs for the poor, while avoiding those unsustainable patterns, particularly in industrialized countries, generally recognized as unduly hazardous to the environment, inefficient and wasteful in their development processes. This requires enhanced technological and other assistance from industrialized countries..." (4.8 c Changing consumption patterns)

Inadequate sewage treatment (see marine 17.28)

"promoting primary treatment of municipal sewage discharged to rivers, estuaries and the sea, or other solutions appropriate to specific sites" (17.28 e Marine)

5. PROPOSALS OF STRONG MEASURES TO PREVENT ECOLOGICALLY UNSOUND PRACTICES AND TO ADDRESS INEQUITY

ECOLOGICALLY UNSOUND PRACTICES

"...Considering the prohibition of those(harmful pesticides, fertilizers) found to be environmentally unsound." (17.28. i marine)

" eliminating the emission or discharge of organohalogen compounds that threaten to accumulate to dangerous levels in the marine environment." (17.28 Marine)

“And the phasing out or banning of toxic chemicals that pose an unreasonable and otherwise unmanageable risk to the environment or human health and those that are toxic, persistent and bio-accumulative and whose use cannot be adequately controlled.” 19.50 b Toxic chemicals)

"Governments should intensify research and development activities on cost-effective alternatives for processes and substances that currently result in the generation of hazardous wastes that pose particular problems for environmentally sound disposal or treatment, the possibility of ultimate phase-out of those substances that present and unreasonable or otherwise unmanageable risk and are toxic, persistent and bio-

accumulative to be considered as soon as practicable. *Emphasis should be given to alternatives that could be economically accessible to developing countries* (20.13. c hazardous wastes)

" States, with the co-operations of international organizations *where appropriate*, should encourage industry to promote and undertake research into the phase-out of the processes that pose the greatest environmental risk based on hazardous wastes generated." (20.18 b Hazardous wastes)

INEQUITY

" The United Nations system, through its relevant organs, organizations and bodies, in cooperation with Member States and with appropriate international and non-governmental organizations, should make poverty alleviation a major priority and should promote international cooperation to address the root causes of poverty"
(3.10.e. Combating Poverty)

" to promote patterns of consumption and production that reduce environmental stress and will meet the basic needs of humanity"
(4.7.a Changing Consumption Patterns)

" to develop a better understanding of the role of consumption and how to bring about more sustainable consumption patterns."(4.7.b Changing Consumption Patterns)

6. CALL FOR INTERNATIONAL STANDARDS PRINCIPLES

6.1. INTERNATIONAL STANDARDS

"To develop and apply pollution control and measurement technologies for stationary and mobile sources of air pollution and to develop alternative environmentally [safe and] sound technologies;" (see trans-boundary) (9.24 a Atmosphere)

" As a first step towards the goal of providing adequate shelter for all, all countries should take immediate measures to provide shelter to their homeless poor, while the international community and financial institutions should undertake actions to support efforts of the developing countries to provide shelter to the poor." (7.9. Settlement)

" Not later than the year 2000, to improve and implement plant protection and animal health services, including mechanism to control the distribution and use of pesticides, and to implement the International Code of Conduct on the Distribution and Use of Pesticides"(14.75 a Agriculture)

" Promote cooperation between the parties to relevant international conventions and action plans with the aim of

strengthening and coordinating efforts to conserve biological diversity and the sustainable use of biological resources.” (15.8 e. biodiversity)

“Strengthen support for international and regional instruments, programmes and action plans concerned with the conservation of biological diversity and the sustainable use of biological resources.” (15.8 f Biodiversity)

" The aim of this programme area is to ensure safety in biotechnology development, application, exchange and transfer through international agreement on principles to be applied on risk assessment and management," *** (16.33 Biotechnology)

" Compile update and develop compatible safety procedures into a framework of internationally agreed principles to be applied on safety in biotechnology [as a basis for the development of an international agreement...](16.35 c Biotechnology)

" to produce guidelines for *acceptable* exposure for a greater number of toxic chemicals, based on peer review and scientific consensus distinguishing between health or environment based exposure limits and those relating to socio-economic factors." (19.13 b.Toxic chemicals)

" Develop an internationally agreed upon code of principles for the management of trade in chemicals, recognizing in particular the responsibility for making available information on potential risks and environmentally sound disposal practices if those chemicals become wastes, in cooperation with governments and relevant international organizations and appropriate agencies of the United Nations system" (19.51 Toxic chemicals)

" A relevant and competent United Nations organization should take the lead, in cooperation with other organizations, to develop guidelines for estimating the costs and benefits of various approaches to the adoption of cleaner production and waste minimization and environmentally sound management of hazardous wastes, including rehabilitation of contaminated sites" (see 1991 Nairobi meeting and Basel Convention) (20.13. j, Hazardous wastes)

"To facilitate the assessment of impacts and risks of hazardous wastes on human health and the environment by establishing appropriate procedures, methodologies, criteria and / or effluent-related guidelines and standards" (20.22 g Hazardous Wastes)

"International organizations should provide assistance to member states in assessing the health and environmental risks resulting from exposure to hazardous wastes, and in identifying

their priorities for controlling the various categories or classes of wastes” (20.27 Hazardous wastes)

“There is a need to harmonize the procedures and criteria used in various international and legal instruments. There is also a need to develop or *harmonize* existing criteria for identifying wastes dangerous to the environment and to build monitoring capacities.” (20.33 Hazardous wastes)

"To facilitate and strengthen international cooperation in the environmentally sound management of hazardous wastes, including control and monitoring of trans-boundary movements of such wastes, including wastes for recovery, by using internationally adopted criteria to identify and classify hazardous wastes and to harmonize relevant international legal instruments.” (2034 a Hazardous wastes)

" Promote the development of clear criteria and guidelines, within the framework of the Basel Convention and regional conventions, *as appropriate*, for environmentally and *economically sound* operation in resource recovery, recycling reclamation, direct use of alternative uses and for determination of acceptable recovery practices, including recovery levels where feasible and appropriate, with a view to preventing abuses and false presentation in the above operations.” (20.35 e Hazardous wastes)

"States, in cooperation with relevant international organizations, where appropriate, should ...b) *support efforts within IAEA to develop and promulgate radioactive waste safety standards or guidelines and codes of practices as an internationally accepted basis for the safe and environmentally sound management and disposal of radioactive wastes;*” (22.4 Radioactive wastes)

“Many of these problems have arisen from a development model that is environmental destructive and from a lack of protection. Ecological and human health effects are the measurable consequences... although the means to monitor them are inadequate or non-existent in many countries. There is a widespread lack of perception of the linkages between the development, management use and treatment of water resources and aquatic ecosystems”.
(18.45 Fresh water)

7. ECOLOGICAL SOUND ALTERNATIVE VISIONS, AND PRACTICES (SEE SECTION ON ACKNOWLEDGEMENT AND ASSESSMENT OF GLOBAL URGENCY FOR SUPPORT FOR A NEW VISION)

7.1. GENERAL PRINCIPLES

• **Governments should take the lead**

"Governments themselves also play a role in consumption, particularly in countries where the public sector plays a large role in the economy and can have a considerable influence on both corporate decisions and public perception. They should therefore review the purchasing policies of their agencies and departments so that they may improve, where possible, the environmental content of government procurement policies, *without prejudice to international trade principles.*" (4.23, Consumption)

• **Ethics must be considered** (also 16.16 a and b)

"Governments at the appropriate level, with the assistance of international and regional organizations, academic and scientific institutions and the pharmaceutical industry, should taking into account appropriate safety and ethical considerations (16.14, biotechnology)

Establish and enforce screening , systematic sampling and evaluation procedures for drugs and medical technologies, with a view to barring the use of those that are unsafe for the purposes of experimentation; ensure that drugs and technologies relating to reproductive health are safe and effective" [and take account of ethical considerations] (16.14 c, Biotechnology)

• **self-sufficiency is essential** (CHECK)

" Promote pilot plans and projects consisting of electrical, mechanical and thermal power (gasifiers, biomass, solar driers, wind-pumps and combustion systems) that are appropriate and likely to be adequately maintained." (14.95 a. Agriculture)

"..to meet regional or national needs for comprehensively trained personnel capable of using advanced technology to reduce the 'brain drain' from developing to developed countries... ." (16.11 c, Biotechnology)

7.2. INSTRUMENTAL PRINCIPLES

7.2.1. PRECAUTIONARY PRINCIPLE

"Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation." (Rio Declaration, 1992).

7.2.2. VARIATIONS OF PRECAUTIONARY PRINCIPLE

"All energy sources will need to be used in ways that respect the atmosphere and the environment as a whole" (9.6. Atmosphere)

["Particularly relevant is the inclusion of prevention programmes rather than relying solely on remediation and treatment"] (6.1, Protecting and promoting human health)

" It is necessary to, inter alia apply preventive and precautionary approaches in project planning and implementation including prior assessment and systematic observations of the impacts of major projects" (17.5 d Marine areas)

- **Environmental considerations at design stage**

"States should encourage industry to develop schemes to integrate the cleaner production approach into design of products and management practices" (20.18, Hazardous wastes)

- **Disposal at source**

"By the year 2000 to establish, as appropriate integrate programmes for tackling pollution at the source and at the disposal site, with a focus on abatement actions in all countries" (6.41 c Protection of health) (see sovereignty)

" Governments should encourage industry to treat, recycle, reuse and dispose of wastes at the source of generation, or as close as possible thereto, whenever hazardous waste generation is unavoidable and when it is both economically and environmentally efficient for industry to do so" (20.13 f Hazardous wastes)

" Encourage countries to seek waste disposal solutions within their sovereign territory and as close as possible to the sources of origin that are compatible with environmentally sound and efficient management." (21.31 Solid wastes)
equal or more stringent standards of origin country
(" Wherever they operate, transnational corporations and other large-scale enterprises should be encouraged to introduce policies and make commitments to adopt standards of operation with reference to hazardous waste generation and disposal that are equivalent to or no less stringent than standards in the country of origin, and Governments are invited to make efforts to establish regulations requiring environmentally sound management of hazardous wastes." 20.30 Hazardous wastes)

- **Precautionary, anticipatory and life-cycle approaches**

"consider adopting policies based on accepted producer liability principles, where appropriate, as well as precautionary, anticipatory and life-cycle approaches to chemical management, covering manufacturing, trade, transport, use and disposal" (19.50 a Toxic chemicals)

" Undertake concerted activities to reduce risks for toxic chemicals, taking into account the entire life cycle of the chemicals. These activities could encompass both regulatory and non-regulatory measures, such ... and the phasing out or

banning of toxic chemicals that pose an unreasonable and otherwise unmanageable risk to the environment or human health and those that are toxic, persistent and bio-accumulative and whose use cannot be adequately controlled” (19.50 b toxic chemicals)

•Need for foresight

"Each country should develop the knowledge and practical skills to foresee and identify environmental health hazards, and the capacity to reduce the risks. Basic capacity requirements must include knowledge about environmental health problems and awareness on the part of leaders, citizens and specialists..."(6.46 d Protection of health)

•Preventive approach

"A preventive approach, where appropriate, is crucial to the avoiding of costly subsequent measures to rehabilitate, treat and develop new water supplies." (18.45 Fresh water)

" undertake measures to prevent soil erosion and promote erosion-control activities in all sectors." (13.16 Fragile ecosystem)

" other areas of risk reduction encompass the prevention of chemical accidents, prevention of poisoning by chemicals and the undertaking of toxicovigilance and coordination of clean-up and rehabilitation of areas damaged by toxic chemicals." (19,47, Toxic chemicals)

"Governments should include in national planning and legislation an integrated approach to environmental protection, driven by prevention and source reduction criteria, taking into account the 'polluter pays' principle, and adopt programmes for hazardous waste reduction, including targets and adequate environmental control" (20.20 b Hazardous Wastes)

" A preventive waste management approach focused on changes in lifestyles and in production and consumption patterns offers the best change for reversing current trends" (21.7 Solid wastes)

•Polluter pay principle

"Governments should include in national planning and legislation an integrated approach to environmental protection, driven by prevention and source reduction criteria, taking into account the 'polluter pays' principle, and adopt programmes for hazardous waste reduction, including targets and adequate environmental control "(20.20 b Hazardous Wastes)

" Governments should ...(b) apply the 'polluter pays' principle, where appropriate, by setting waste management charges at rates that reflect the costs of providing the service and ensure that those who generate the wastes pay the full cost of disposal in an environmentally safe way" (21.42 b Solid wastes)

•Environmental costs

“Adopt policies that minimize if not altogether avoid environmental damage, whenever possible” (7.42 a Settlement)
social costs of environmental

[Continue research and other work aimed at developing methodologies and criteria for incorporating the social costs of the environmental and other impacts caused by industrial production, as well as the treatment and disposal of wastes generated, into the prices of the final products;] (9.15 d)

" a lack of awareness of the environmental costs incurred by sectorial and macroeconomic policies and hence their threat to sustainability” (14.7 a. agriculture)

(It is necessary to (17.5 Marine) " promote the development and application of methods, such as national resources and environmental accounting, that reflect changes in value resulting from uses of coastal and marine areas, including pollution, marine erosion, loss of resources and habitat destruction”

“Governments, in collaboration with industry and appropriate international organizations, should develop procedures for monitoring the application of the cradle to grave approach, including environmental audits” (20.20 e Hazardous wastes)

• Environmental assessment review

" develop appropriate pollution control technology on the basis of risk assessment and epidemiological research for the introduction of environmentally sound production processes and suitable safe mass transport” 6.42. a) i. Protection of health)

“Ensure that relevant decisions are preceded by environmental impact assessments and also take into account the costs of any ecological consequences” (7.42 Settlement)

" Develop improve and apply environmental impact assessments to foster sustainable industrial development” (9.15 b. Atmosphere)

" Introduce appropriate environmental impact assessment procedures for proposed projects likely to have significant impacts upon biological diversity... and encourage the assessment of the impacts of relevant policies and programmes on biological diversity” (15.5 k Biological diversity)

" Development of public education programmes directed at decision makers and the general public to encourage awareness and understanding of the relative benefits and risks of modern

biotechnology, according to ethical and cultural considerations.”
(16.16 b, Biotechnology)

" There is a need for further development of internationally agreed principles on risk assessment and management of all aspects of biotechnology which should build upon those developed at the national level.” (16.32 Biotechnology)

" The aim of this programme area is to ensure safety in biotechnology development, application, exchange and transfer through international agreement on principles to be applied on risk assessment and management,” *** (16.33 Biotechnology)

" develop processes to reduce waste generation, treat waste before disposal and make use of biodegradable materials”
(16.25 Biotechnology)

" a precautionary and anticipatory rather than a reactive approach is necessary to prevent the degradation of the marine environment. This requires inter alia, the adoption of precautionary measures, environmental impact assessments, clean production techniques, recycling, waste audits and minimization, construction and/or improvements of sewage treatment facilities, quality management criteria for the proper handling of hazardous substances, and a comprehensive approach to damaging impacts from air, land and water” (17.22. Marine)

States, in accordance with the provisions of the United Nations convention on the Law of the Sea on protection and preservation of the marine environment, commit themselves, in accordance with their policies, priorities and resources, to prevent, reduce and control degradation of the marine environmental so as to maintain and improve its life-support and productive capacities”. : (17.23 Marine)

To this end, it is necessary to

" apply preventive, precautionary and anticipatory approaches so as to avoid degradation of the main environment, as well as to reduce the risk of long-term or irreversible adverse effects upon it”; (17.23 a Marine)

" Ensure prior assessment of activities that may have significant adverse impacts upon the marine environment;” (17.23 b Marine)

" as concerns other sources of pollution, priority actions to be considered by States may include” (17.29 Marine)

" promoting risk and environmental impact assessments to help ensure an acceptable level of environmental quality” (17.29 b Marine)

"could provide for prior environmental impact assessment, systematic observation and follow-up of major projects, including the systematic incorporation of results in decision-making" (17.6 d marine)

"could provide for periodic assessment of the impacts of external factors and phenomena to ensure that the objectives of integrated management and sustainable development of coastal areas and the marine environment are met" (17.6 g Marine)
"it is necessary to conduct regular environmental assessment of the state of the environment of coastal and marine areas" (17.8 c Marine)

"A preventive approach, where appropriate,. is crucial to the avoiding of costly subsequent measures to rehabilitate treat and develop new water supplies." (18.45 Freshwater)

"Governments, in collaboration with industry and appropriate international organizations, should develop procedures for monitoring the application of the cradle to grave approach, including environmental audits" (20.20 e Hazardous wastes)

"In order to promote and strengthen international cooperation in the management, including control and monitoring, of trans-boundary movements of hazardous wastes, a precautionary approach should be applied." (20.33 Hazardous wastes)

"States, in cooperation with relevant international organizations, where appropriate, should ...b) encourage the London Dumping convention to expedite work to complete studies on replacing the current voluntary moratorium on disposal of low-level radioactive wastes at sea by a ban, taking into account the precautionary approach, with a view to taking a well informed and time decision on the issue "(22.5 Radioactive wastes)

" Governments should take the lead in establishing and strengthening, as appropriate, national procedures for environmental impact assessment, taking into account the cradle-to-grave approach to the management of hazardous wastes, in order to identify options for minimizing the generation of hazardous wastes, through safer handling, storage, disposal and destruction" (20.20 e Hazardous wastes)

" Governments, according to their capacities and available resources and with the cooperation of the United Nations and other relevant organizations, as appropriate, should promote and support the integration and operation, at the regional and local levels as appropriate, of institutional and interdisciplinary groups that collaborate, according to their capabilities, in activities oriented towards strengthening risk assessment, risk

management and risk reduction with respect to hazardous wastes” (20.25 a Hazardous wastes)

•**Cradle-to-grave approach**

“...taking into account the cradle-to-grave approach to the management of hazardous wastes, in order to identify options for minimizing the generation of hazardous wastes, through safer handling, storage, disposal and destruction...” (20.20 e Hazardous wastes)

• **Monitoring cradle to grave approach**

“Governments, in collaboration with industry and appropriate international organizations, should develop procedures for monitoring the application of the cradle to grave approach, including environmental audits” (20.20 e Hazardous wastes)

•**Full life cycle care**

"[promote efficient use of materials and resources, taking into account all aspects related to life cycles of products.] "9.15 e

"risk reduction involves broad-based approaches to reducing the risks of toxic chemicals, taking into account the entire life cycle of the chemicals.” (19.45, Toxic chemicals)

•**Culture of safety**

"to promote a 'culture of safety" in all countries, especially those that are disaster-prone, the following activities should be carried out:" (7.60, Disasters)

•**Responsible care**

Industry should be encouraged to (19.51 Toxic chemicals))
"develop application of a 'responsible care' approach by producers and manufacturers towards chemical products, taking into account the total life cycle of such products” (19.51 b.Toxic chemicals))

"States should encourage industry to exercise environmentally responsible care through hazardous waste reduction and by ensuring the environmentally sound reuse, recycling and recovery of hazardous wastes, as well as their final disposal” (20.18 d Hazardous wastes)

•**Unacceptability of insufficient or outdated criteria of acceptance**

“Governments, in cooperation with relevant international organizations and programmes, should carry out national reviews, as appropriate, of previously accepted pesticides whose acceptance was based on criteria now recognized as insufficient or outdated and of their possible replacement with other pest control methods, particularly in the case of pesticides

that are toxic, persistent and/or bio-accumulative.” (19.55 b Toxic chemicals))

•Substitution of less harmful

“...there are often alternatives to toxic chemicals currently in use. Thus risk reduction can sometimes be achieved by using other chemicals or even non-chemical technologies. The classic example of risk reduction is the substitution of harmless or less harmful substances for harmful ones. establishment of pollution prevention procedures and setting standards for chemicals in each environmental medium, including food and water, and in consumer goods, constitute another example of risk reduction.” (19.45 Toxic chemicals)

" Reduce over-dependence on the use of agricultural chemicals through alternative farming practices, integrated pest management and other appropriate means” (19.50, Toxic chemicals)

•Reduction

" to reduce the generation of hazardous wastes, to the extent feasible, as part of an integrated cleaner production approach” (20.11 a Hazardous waste)

" Establishment of long-term programmes and policies including targets where appropriate for reducing the amount of hazardous waste produced per unit of manufacture” (20.12 d. Hazardous wastes)

•Minimization

" Integration of cleaner production approaches and hazardous waste minimizations in all planning and the adoption of specific goals; ”(20.11a hazardous wastes)

Economics of prevention??? (20.11c Hazardous wastes)

" Promoting waste prevention and minimization as the principal objective of national waste management programmes” (21.14 Solid wastes)

"States, in cooperation with relevant international organizations, where appropriate, should a) promote policies and practical measures to minimize and limit, where appropriate, the generation of radioactive wastes and provide for their safe processing, conditioning, transportation and disposal” (22.4 a Radioactive wastes)

•Stabilization

“Establishment of an intermediate goal for the stabilization of the quantity of hazardous waste generated ”(20.12. c Hazardous wastes)

7.2.3. REORIENTATION OF PRACTICES

" training will be required to reorient current waste management practices to include waste reuse and recycling" (21.26 Solid waste)

•Polluter pay principle

" Governments, *according to their capacities and available resources* and with the cooperation of the UN and other relevant organization, *as appropriate* should make recommendations to the appropriate forums or establish or adapt norms, including the *equitable* implementation of the polluter pays principle" (20.39 b Hazardous wastes)

• tax rebates

" Applying economic and regulatory instruments, including tax incentives, to support the principle that generators of wastes pay for their disposal" (21.25 Solid wastes)

•Penalties

Effective prevention requires action through effective monitoring and the enforcement and imposition of appropriate penalties" (20.40 Hazardous wastes)

" Develop appropriate national enforcement programmes to monitor compliance with such legislation, detect and deter violations through appropriate penalties and give special attention to those who are known to have conducted illegal traffic in hazardous wastes and to hazardous wastes that are particularly susceptible to illegal traffic" (20.43 b Hazardous wastes)

7.2.4. MANDATE TO CHANGE CONSUMPTIVE PATTERNS OF DEVELOPMENT AND TO ADDRESS INEQUALITY

" Programs should: Contain a long-term strategy aimed at establishing the best possible conditions for sustainable local, regional and national development that would eliminate poverty and reduce the inequalities between various population groups. It should assist the most disadvantaged groups -- in particular, women, children and youth within those groups - refugees and people under occupation. The groups will include poor smallholders, pastoralists, artisans, fishing communities, landless people, indigenous communities, migrants and the urban informal sector." (3.5. c Combating Poverty)

" The focus here is on specific cross-cutting measures - in particular, in the areas of basic education, primary/maternal health care, and the advancement of women." (3.6. Combating poverty)

" governments [at the appropriate level] ... should "implement policies and programmes that will discourage inappropriate and polluting land-use practices and promote sustainable utilization

of terrestrial and marine resources and environmentally sound land-use practices" (9.18 a Atmosphere)

" Environmentally sound waste management must go beyond the mere safe disposal or recovery of wastes that are generated and seek to address the root cause of the problem by attempting to change unsustainable patterns of production and consumption." (21.4 Solid wastes)

7.2.5. MANDATE TO CONSERVE

" the conservation, sustainable management and enhancement, where appropriate, of all sinks for greenhouse gases;" (9.17 ii Atmosphere) re: forests

"the conservation and sustainable use of natural and environmental resources" [in particular in agriculture and forestry sectors] (9.17 iii now 9.20 iii but substantially changed Atmosphere)

"to ensure sustainable management and, where appropriate conservation of existing and future forest resources;" (11.14 c Deforestation)

" Establishing, expanding and managing, as appropriate to each national context, protected area systems, which includes systems of conservation units for their environmental, social and spiritual functions and values, including conservation of forests in representative ecological systems and landscapes, primary old-growth forests, conservation and management of wildlife, nomination of world Heritage Sites under the World Heritage Conventions, as appropriate, conservation of genetic resources, involving in situ and ex situ measures and undertaking supportive measures to ensure sustainable utilization of biological resources and conservation of biological diversity and the traditional forest habitats of indigenous people, forest dwellers and local communities;" (11.15 b., Deforestation)

An integrated approach is needed for conserving, upgrading and using the nature resource base of land, water, plant, animal and human resources..."(13.13 Fragile ecosystems)

" The priority must be on maintaining and improving the capacity of higher potential agricultural lands to support an expanding population However, conserving and rehabilitating the natural resources on lower potential lands in order to maintain sustainable man/land rations is also necessary. "(14.3 Agriculture)

" Objectives are... to prepare and implement comprehensive policies and programmes leading to the reclamation of degraded

lands and the conservation of areas at risk, as well as improve the general planning, management and utilization of land resources and preserve soil fertility for sustainable agricultural development.” (14.45 b. Agriculture)

"Governments.. should strengthen and establish national land-resources data banks, including identification of the location, extent and severity of existing land degradation, as well as areas at risk, and relate the progress of the conservation and rehabilitation programmes launched in this regard; ” (14.47 b Agriculture)

" Develop priority conservation and rehabilitation programmes with advisory services to Governments and regional organizations.” (14.48 a Agriculture)

" The primary objective is to safeguard the world's genetic resources while preserving them to use sustainably. This includes the development of measures to facilitate the conservation and use of plant genetic resources networks of in situ conservation areas and use of tools such as collections and germ plasma banks. ”(14.55 Agriculture)

" The objectives and activities in this chapter of Agenda 21 are intended to improve the conservation of biological diversity and the sustainable use of biological resources. ”(15.1 Biodiversity)

" take effective economic, social and other appropriate incentive measures to encourage the conservation of biological diversity and the sustainable use of biological resources, including the promotion of sustainable production systems such as traditional methods of agriculture, agroforestry, forestry, range and wildlife management, which use, maintain or increase biodiversity ”(15.5 Biodiversity)

" Governments... and consistent with the requirements of international law should, as appropriate Identify and evaluate the potential economic and social implications and benefits of the conservation and sustainable use of terrestrial and aquatic species in each country, building upon the results of country studies” (15.6. Biodiversity)

" Promote the use of biotechnologies relevant to the conservation and scientific study of biological diversity and the sustainable use of biological resources” (16.25 j Biotechnology)

" conservation and restoration of altered critical habitats” (17.6 h.Marine)

"taking action to ensure respect of areas designated by coastal states, within their exclusive economic zones, consistent with international law, in order to protect and preserve rare or fragile ecosystems, such as coral reefs and mangroves;" (17.31 v Marine)

["Adequate new and additional financial resources are indispensable for the effective utilization and protection of freshwater resources..."] (18.13 Fresh water)

"Fisheries of inland waters should be so managed as to maximize the yield of aquatic food organisms in an environmentally sound manner. This requires the conservation of water-quality and quantity, as well as of the functional morphology of the aquatic environment". (1878 Freshwater)

7.2.6. ACTIVITIES ADJACENT TO PROTECTED, PRESERVED OR CONSERVED AREAS

" Promote environmentally sound and sustainable development in areas adjacent to protected areas with a view to furthering protection of these areas" (15.5. Biological diversity)

7.2.7.RESTORATION REHABILITATION AND RECOVERY

" Promote the rehabilitation and restoration of damaged ecosystems and the recovery of threatened and endangered species" (15.5 h Biological diversity)

8. PROMOTING OF ECOLOGICAL ALTERNATIVES

- Ecotourism

" the implications of the harvesting of forest resources for the other values of the forest should be taken fully into consideration in the development of forest policies. It is also possible to increase the value of forests through non-damaging uses such as eco-tourism and the managed supply of genetic materials. Concerted action is needed in order to increase people's perception of the value of forests and of the benefits they provide. (11.22.Deforestation)

"to promote more comprehensive use and economic contribution of forest areas by incorporating eco-tourism into forest management and planning." (11.23 d Deforestation)

"Promote the formulation of environmentally sound and culturally sensitive tourism programmes as a strategy for sustainable development of urban and rural settlements and as a way of

decentralizing urban development and reduction discrepancies among regions;" (7.21 e Settlement)

" to promote income-generating activities, such as sustainable tourism,... in particular to protect the livelihood of local communities and indigenous people" (13.15. b, fragile ecosystems)

" consider undertaking pilot projects that combine environmental protection and development functions with particular emphasis on some of the traditional environmental management practices or systems that have a good impact on the environment "(13.21.a Fragile ecosystem)

•energy

"cooperate to increase the availability of capacity, capabilities and relevant technologies--recognizing that technology includes biotechnology--in developing countries for utilizing and producing environmentally [safe and] sound renewable energy resources, such as solar, wind, geothermal, hydropower and biomass, including wood-fuel resource. Each resource should be utilized in a manner that fosters sustainable development and minimizes environmental stress and health impacts, emphasizing the need for easily available, cleaner burning, smoke-free household fuel." (9.9 g Atmosphere)

"objectives are ... Not later than the year 2000, to initiate and encourage a process of environmentally sound energy transition in rural communities, from unsustainable energy sources, to structures and diversified energy sources by making available alternative new and renewable sources of energy"(14.94 a Agriculture)

" Promote pilot plans and projects consisting of electrical, mechanical and thermal power (gasifiers, biomass, solar driers, wind-pumps and combustion systems) that are appropriate and likely to adequately maintained." (14.95 a. Agriculture)

•transportation

"to plan and develop [safe and] more efficient and less polluting transportation systems, especially mass transit to support economic development efforts in an environmentally [safe and] sound way, giving special attention to urban and metropolitan areas." (9.11.b Atmosphere)

•biodegradable materials

" develop processes to reduce waste generation, treat waste before disposal and make use of biodegradable materials" (16.25 Biotechnology)

- **minimization of use of hazardous chemicals including pesticides**

" Integrated pest management, which combines biological control, host plant resistance and appropriate farm practices and minimizes the use of pesticides, is the best option for the future as it guarantees yields, reduces costs, is environmentally friendly and contributes to the sustainability of agriculture." (14.74 Agriculture)

"Promoting the use of environmentally less harmful pesticides and fertilizers and alternative methods for pest control, and considering the prohibition of those found to be environmentally unsound" (17.28 i)

"In the agricultural area, integrated pest management, including the use of biological control agents as alternatives to toxic pesticides, is one approach to risk reduction" (19.46 Toxic Chemicals)

9. ESTABLISHMENT OF DATA BASE AND CRITERIA FOR RESEARCH AND RECOGNITION OF NEED FOR ECOLOGICALLY SOUND RESEARCH PROPOSALS

"The objective of this programme area is to undertake research to determine the effects of increased ultraviolet radiation resulting from stratospheric ozone layer depletion on the Earth's surface, and on plant and animal life in affected regions, as well as its impact on agriculture and to develop, as appropriate, strategies aimed at mitigating its adverse effects." (14.103 Agriculture)

" Long-term research into the importance of biodiversity for the functioning of ecosystems and the role of ecosystems in producing good, environmental services and other values supporting sustainable development with particular reference to the biology and reproductive capacities of key terrestrial and aquatic species, including native, cultivated and cultured species; ? observation and inventory techniques; ecological conditions necessary for biodiversity conservation and continued evolution; and social behaviour and nutrition habits dependent on natural ecosystems, where women play key roles. The work should be undertaken with the widest possible participation, especially of indigenous people and their communities, including women. " (15.5 f, Biological diversity)

" Governments, according to their capacities and available resources and with the cooperation of the United Nations and other relevant organizations, and industries, as appropriate, should significantly increase financial support for cleaner technology research and development programmes including the use of biotechnologies." (20.18 a Hazardous wastes)

"Governments, municipalities and local authorities, with appropriate international cooperation, should undertake research on critical subjects such as low-cost, low-maintenance waste-eater treatment systems; safe sludge disposal options, industrial waste treatment; and low-technology, ecologically safe waste disposal options" (21.37 Solid wastes)

LAND TENURE

14.46

RESEARCH INTO ENVIRONMENTALLY SOUND TECHNOLOGIES

"promoting research and development in environmentally sound technologies" (4.18 b Changing consumption patterns)
- "encouraging the environmentally sound and sustainable use of renewable natural resources". (4.18 e Changing consumption patterns)

" in rural areas, unsustainable practices, such as the exploitation of marginal lands and the encroachment on forests and ecologically fragile areas by commercial interests and landless rural populations, result in environmental degradation, as well as in diminishing returns for impoverished rural settlers." (7.28 2.Settlement)

" "strengthen the role of appropriate international research and training institutes such as the Consultative Group on International Agricultural Research Centers (CGIAR) and the International Board for Soil Research and Management, as well as regional research centres, such as the Woodland Mountain institutes and International Centre for Integrated Mountain Development, is undertaking applied research relevant to watershed development;" (13.18 a Fragile ecosystems)

" strengthen and establish research in the public domain on PGRFA evaluation and utilization, with the objectives of sustainable agriculture and rural development in view;" (14.58 b, Agriculture)

9.2. SUPPORT FOR ARMS LENGTH RESEARCH

"Governments and institutions, in collaboration where necessary with appropriate international agencies and organizations, Universities and non-governmental organizations should undertake assessments and systematic observations of forests and related programmes and processes with a view to their continuous improvement". (11.34 Deforestation)

9.3. NEED FOR INDEPENDENT BODIES

"Institutional reforms and capacity-building will be indispensable if countries are to be able to quantify and mitigate waste-related pollution activities to achieve this objective should include;

creating and strengthening independent environmental control bodies at the national and local levels. International organizations and donors should support needed upgrading of manpower skills and provision of equipment.” (21.39 Solid wastes)

10 RECOGNITION OF NEED FOR PARTICIPATION IN DECISION MAKING (needs to be examined)

10.1. DECENTRALIZATION OF RESPONSIBILITY PARTICIPATION OF COMMUNITY GROUPS ...

" Empower community groups, non-governmental organizations and individuals to assume the authority and responsibility for managing and enhancing their immediate environment through participatory tools, techniques and approaches embodied in the concept of environmental care.” (7.21. g Settlement)

" The aim of this programme area is to ensure safety in biotechnology development...including the widest possible public participation and taking account of ethical considerations.” (16.33. Biotechnology)

“It is necessary to ...”(17.5. marine) "provide access, as far as possible, for concerned individuals, groups and organizations to relevant information and opportunities for consultation and participation in planning and decision -making at appropriate levels” (17.5 f)

11. PROPOSALS FOR ACCESS TO INFORMATION (needs to be examined)

RIGHT TO KNOW

"Industry should be encouraged to: (19.51, toxic chemicals) " adopt, on a voluntary basis, community right-to-know programmes based on international guidelines, including sharing of information on causes of accidental and potential releases and means of preventing them and reporting on annual routine emissions of toxic chemicals to the environment in the absence of host county requirements.” (19.51 c Toxic chemicals)

" Governments should encourage industries to be transparent in their operations and provide relevant information to the communities that might be affected by the generation, management and disposal of hazardous wastes” (20.14 f Hazardous wastes)

ACCESS TO INFORMATION

“It is necessary to ...”(17.5. marine) "provide access, as far as possible, for concerned individuals, groups and organizations to

relevant information and opportunities for consultation and participation in planning and decision -making at appropriate levels” (17.5 f)

" Governments, international and regional organizations and industry should facilitate and expand the dissemination of technical and scientific information dealing with the various health aspects of hazardous wastes, and promote its application;" (20.24, a Hazardous wastes)

NOTIFICATION PROCEDURES

“ Incorporate the notification procedure called for in the Basel Convention and relevant regional conventions, as well as in their annexes, into national legislation” (20.35 a Hazardous wastes)

12. PROPOSALS FOR ENVIRONMENTAL EDUCATION

" encourage education and awareness-raising programmes at the local, national, sub-regional and regional levels concerning energy efficiency and environmentally [safe and] sound energy system;" (9.9 j)

" Development of public education programmes directed at decision makers and the general public to encourage awareness and understanding of the relative benefits and risks of modern biotechnology, according to ethical and cultural considerations.” (16.16 b, Biotechnology)

" Promote the introduction of marine environmental protection topics into the curriculum of marine studies programmes; ”(17.41 b)

" educate communities about the pollution-related impacts of the use of fertilizers and chemicals on water-quality, food safety and human health;"(18.87 d vi Fresh water)

" to make information available to governments and to the general public on the effects of hazardous wastes, including infectious wastes, on human health and the environment ”(20.22 i Hazardous wastes)

“Governments, according to their capacities and available resources and with the cooperation of the United Nations, other organizations and non-governmental organizations, should collaborate in developing and disseminating educational materials concerning hazardous wastes and their effects on environment and human health, for use in schools, by women's groups and by the general public” (20.29 a Hazardous wastes)

“Countries should incorporate within school curricula, where appropriate, the principles and practices of preventing and minimizing wastes and material on the environmental impacts of waste” (21.15 Solid wastes)

In chapter 36 of Agenda 21, a very important distinction is made between promoting "education," promoting "public awareness," and promoting 'training." It appears to be clear in Agenda 21 that non-governmental organizations, community-based groups, women's groups and aboriginal groups are called upon to assist educational authorities in reorienting education. The role of industry is ascertained to be limited to specific areas of business and industrial and training programs.

" Educational authorities, with appropriate assistance of non-governmental organizations, including women's and indigenous peoples' organizations should promote all kinds of adult education programmes for continuing education in environment and development, basing activities around elementary/secondary schools and local problems. The authorities and industry should encourage business, industrial and agricultural schools to include such topics in their curricula. The corporate sector could include sustainable development in their education and training programmes." (Agenda 21, Chapter 36.5 I)

In the section of Agenda 21 that addresses the " promoting of public awareness " industry is included not as the dispenser of "education" but as the recipient of needed education.

" Countries and regional organizations should be encouraged, as appropriate, to provide public environmental and development information services for raising the awareness of all groups, the private sector and particularly decision makers." (Agenda 21, section 36.10 c)

In the section of Agenda 21, that addresses the "promoting of training, an important role for industry is envisioned.

“ To strengthen national capacities,... in training, to enable governments, employers and workers to meet their environmental and development objectives and to facilitate the transfer and assimilation of new environmentally sound, socially acceptable and appropriate technology and know -how” (Agenda 21, 36.13 c)

13. RIGHTS OF INDIGENOUS PEOPLES

UNCED Documents Sections from Agenda 21

“Indigenous people and their communities have an historical relationship with their lands and are generally descendants of the original inhabitants of such lands. In the

context of this chapter the term "lands" is understood to include the environment of the areas which the people concerned traditionally occupy. Indigenous people and their communities represent a significant percentage of the global population. They have developed over many generations a holistic traditional scientific knowledge of their lands, natural resources and environment. Indigenous people and their communities shall enjoy the full measure of human rights and fundamental freedoms without hindrance or discrimination. Their ability to participate fully in sustainable development practices on their lands has tended to be limited as a result of factors of an economic, social and historical nature. In view of the interrelationship between the natural environment and its sustainable development and the cultural, social, economic and physical well-being of indigenous people, national and international efforts to implement environmentally sound and sustainable development should recognize, accommodate, promote and strengthen the role of indigenous people and their communities." (Agenda 21, 16.1)

" In full partnership with indigenous people and their communities, Governments and, where appropriate, intergovernmental organizations should aim at fulfilling the following objectives" (Agenda 21, 16.3)

(a) Establishment of a process to empower indigenous people and their communities through measures that include:

- (i) Adoption or strengthening of appropriate policies and/or legal instruments at the national level;
- (ii) Recognition that the lands of indigenous people and their communities should be protected from activities that are environmentally unsound or that the indigenous people concerned consider to be socially and culturally inappropriate;
- (iii) Recognition of their values, traditional knowledge and resource management practices with a view to promoting environmentally sound and sustainable development;

UNCED Documents: Rio Declaration

"Indigenous people and their communities, and other local communities, have a vital role in environmental management and development because of their knowledge and traditional practices. States should recognize and duly support their identity, culture and interests and enable their effective

participation in the achievement of sustainable development.”
(Rio Declaration, Principle 22)

“States should effectively cooperate to discourage or prevent the relocation and transfer to other States of any activities and substances that cause severe environmental degradation or are found to be harmful to human health.” (Rio Declaration, Principle 14)

“In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.” (Rio Declaration, Principle 15)

“National authorities should endeavour to promote the internalization of environmental costs and the use of economic instruments, taking into account the approach that the polluter should, in principle, bear the cost of pollution, with due regard to the public interest and without distorting international trade and investment.”(Rio Declaration, Principle 16)

14.RESPECT FOR CULTURAL INTEGRITY AND INDIGENOUS PRACTICES

13.1. RESPECT FOR CULTURAL INTEGRITY AND RIGHTS OF INDIGENOUS PEOPLE

" respecting the cultural integrity and the rights of indigenous *people* [PEOPLES, EDITORIAL ADDITION] and their communities (3.7. b)

14.2. RESPECTS FOR TRADITIONAL AND INDIGENOUS PRACTICES

"Promote development in accordance with indigenous practices and adopt technologies appropriate to local conditions "(7.42 c)

the promotion of sustainable production systems such as traditional methods of agriculture, agroforestry, forestry, range and wildlife management, which use, maintain or increase biodiversity "(15.5 Biodiversity)

" consider undertaking pilot projects that combine environmental protection and development functions with particular emphasis on some of the traditional environmental management practices or systems that have a good impact on the environment "(13.21.a Fragile ecosystem)

" Collect and record information on indigenous conservation and rehabilitation practices and farming systems as a basis for research and extension programmes." (14.47 c, Agriculture)

" Governmentsshould ... Recognize and foster the traditional methods and the knowledge of indigenous people and their communities, emphasizing the particular role of women, relevant to the conservation of biological diversity and the sustainable use of biological resources, and ensure the opportunity for the participation of those groups in the economic and commercial benefits derived from the use of such traditional methods and knowledge" (15.4, g Biodiversity)

" Take effective economic, social and other appropriate incentive measures to encourage the conservation of biological diversity and the sustainable use of biological resources, including the promotion of sustainable production systems, such as traditional methods of agriculture, agroforestry, forestry, range and wildlife management, which use, maintain or increase biodiversity" (15.5 d Biodiversity)

" Take effective economic, social and other appropriate incentive measures to encourage the conservation of biological diversity and the sustainable use of biological resources, including the promotion of sustainable production systems, such as traditional methods of agriculture, agroforestry, forestry, range and wildlife management, which use, maintain or increase biodiversity" (15.5 d Biodiversity)

" Take action where necessary for the conservation of biological diversity through the in situ conservation of ecosystems and natural habitats, as well as primitive cultivars and their wild relatives, and the maintenance and recover of viable populations of species in their natural surrounding ..." (15.6 g. Biodiversity)

Governments... consistent with the requirements of international law should, as appropriate collect, assess and make available relevant and reliable information in a timely manner and in a form suitable for decision-making at all levels, with the full support and participation of local and indigenous people and their communities." (15.6 f Biodiversity)

"promotion of collaborative research programmes... fostering of traditional methods and knowledge of such groups (local and indigenous) in connection with these activities." (16.7 b Biotechnology)

"States shall cooperate with a view to the conservation of marine mammals and, in the case of cetaceans, shall in particular work

through the appropriate international organizations for their conservation, management and study" (17.50 Marine)

15. CONDEMNATION OF TRANSFER OF ECOLOGICALLY UNSOUND PRACTICES AND PRODUCTS (CONDEMNATION OF THIRD WORLD DUMPING- INCLUDING PRODUCTS DEEMED TO BE UNSAFE IN COUNTRY OF ORIGIN)

"States should effectively cooperate to discourage or prevent the relocation and transfer to other States of any activities and substances that cause severe environmental degradation or are found to be harmful to human health."(Principle 14 Rio Declaration)

Establish and enforce screening , systematic sampling and evaluation procedures for drugs and medical technologies, with a view to barring the use of those that are unsafe for the purposes of experimentation; ensure that drugs and technologies relating to reproductive health are safe and effective [and take account of ethical considerations]" (16.14 c, Biotechnology)

" [Governments of developed countries should provide a range of incentives to encourage industry to transfer environmentally sound technologies and know-how on clean technologies and low-waste production to developing countries on preferential and non-commercial terms, which would bring about changes to sustain innovation. Governments should cooperate with industry to develop guidelines and codes of conduct, leading to cleaner production through sectorial trade and industry association]" (20.13 Hazardous wastes)

" to adopt a ban on or prohibit, *as appropriate*, the export of hazardous wastes to countries that do not have the capacity to deal with those wastes in an environmentally sound way or that have banned the import of such wastes" (20.34. b. hazardous wastes)

"Implement policies for the implementation of a ban or prohibition, *as appropriate*, of exports of hazardous wastes to countries that do not have the *capacity to deal with those wastes in an environmentally sound way* or than have banned the import of such wastes" (20.39 c Hazardous wastes)

DANGEROUS LOOPHOLD IN THIRD WORLD DUMPING

" Develop regulatory and non-regulatory measures and procedures aimed at preventing the export of chemicals that are banned, severely restricted, withdrawn or not approved for health or environmental reasons, except when such export has received prior written consent from the importing country or is otherwise in accordance with the PIC procedure," (19.53 f Toxic chemicals)

TO BE COMPLETED

3.7. b. combating poverty 6.19 health
SPECIFIC REFERENCE TO WOMEN
11.4.b ,14.17` , 14.18 b.

GENDER6.19 health

" governments recognize that there is a new global effort to relate the elements of the international economic system and mankind's need for a safe and stable natural environment... "(2.4. Social and economic dimensions)
"However, conserving and rehabilitating the natural resources on lower potential lands in order to maintain sustainable man/land rations is also necessary. (14.3 Agriculture)

COMMUNITY CONTROL

" Governments, in cooperation with appropriate international and non-governmental organization, should support a community-driven approach to sustainability, which would be included, inter alia:

E3.7 d
14.16

SPECIFIC REFERENCE TO NGO

13.16 d; CHAPTER 27

INTERDISCIPLINARY

13.22 a

PARTICIPATION

14.4.b

" Long-term research into the importance of biodiversity for the functioning of ecosystems and the role of ecosystems in producing good, environmental services and other values supporting sustainable development with particular reference to the biology and reproductive capacities of key terrestrial and aquatic species, including native, cultivated and cultured species; ? observation and inventory techniques; ecological conditions necessary for biodiversity conservation and continued evolution; and social behaviour and nutrition habits dependent on natural ecosystems, where women play key roles. The work should be undertaken with the widest possible participation, especially of indigenous people and their communities, including women." (15.5 f, Biological diversity)

LAND TENURE

CONDITIONS

Additional financial resources in favour of developing countries are essential . The U. S. changed this " the availability of additional external resources will increase as foreign entities are convinces that such resources will generate a positive result and efficient utilization of such resources can be demonstrated." (2.24 Social and economic)

RESPONSIBILITY

(" Governments should establish regulations that lay down the ultimate responsibility of industries for environmentally sound disposal of the hazardous wastes their activities generate." ???20.13 k. Hazardous wastes) 14.46

MILITARY

" [Governments should ascertain whether their military establishments conform to strict environmental norms in the treatment and disposal of hazardous wastes.] (20.23 Hazardous wastes)

(h) Governments should ascertain that their military establishments conform to their nationally applicable environmental norms in the treatment and disposal of hazardous wastes.20.22

PART 2 PRINCIPLES OF ACTION EXTRACTED FROM INTERNATIONAL DOCUMENTS (PARTICULARLY AGENDA 21)

2.2.PRINCIPLES OF ACTION

The following principles have been extracted from a series of international documents, including Stockholm Convention 1972, the World Charter of Nature, 1992, and UNCED documents. and the Rights of the Child. These principles will be combined with those extracted from UN Declaration of Human Rights and international Covenants {diagram from Russow, J (1985), "A diagram of rights that are or are not protected through international documents"}. The delineation of principles is in progress. The proposed format will be the extracting of the principle from the documents, the naming of the principle, the abstract definition of the principle, and the citation from the international document that supports the principle.

Responsible-care-linked-to-life-cycle principle

This principle involves the recognition that responsible care is dependent upon the revealing of the full environmental impact of each stage of the life cycle of the product or substance

"Industry should be encouraged to develop application of a 'responsible care' approach by producers and manufacturers towards chemical products, taking into account the total life cycle of such products" (Agenda 21, 19.51 b.)

Positive-duty-to-protect human rights principles

"Indigenous people and their communities shall enjoy the full measure of human rights and fundamental freedoms without hindrance or discrimination." (Agenda 21, 16.1)

Positive-duty-to-protect principle

"Recognition that the lands of indigenous people and their communities should be protected from activities that are environmentally unsound or that the indigenous people concerned consider to be socially and culturally inappropriate; recommendations" (Agenda 21, 16.3 ii)

Positive-duty-to-protect-from-activities-that-are-environmentally-unsound principle

“Recognition that the lands of indigenous people and their communities should be protected from activities that are environmentally unsound or that the indigenous people concerned consider to be socially and culturally inappropriate; recommendations” (Agenda 21, 16.3 ii)

Positive-duty-to-protect-from-activities-that-are-culturally-inappropriate principle

“Recognition that the lands of indigenous people and their communities should be protected from activities that are environmentally unsound or that the indigenous people concerned consider to be socially and culturally inappropriate; recommendations” (Agenda 21, 16.3 ii)

Positive-duty-or-responsibility principle

“The responsibility to conserve their biodiversity and use their biological resources sustainably, and to ensure that activities within their jurisdiction or control do not cause damage to the biological diversity of other states or of areas beyond the limits of national jurisdiction. ” (Agenda 21, 15.3)

Prevention-through-effective-enforcement principle

“Effective prevention requires action through effective monitoring and the enforcement and imposition of appropriate penalties ”(Agenda 21, 20.20)

Prevention-through-effective-enforcement principle

“Effective prevention requires action through effective monitoring and the enforcement and imposition of appropriate penalties ”(Agenda 21, 20.20)

Prevention-through-imposition-of appropriate-penalties principle

“Government international and regional organization and industry should facilitate and expand the dissemination of technical and scientific information dealing with the various health aspects of hazardous wastes”
(Agenda 21, 20.22)

Revelation-of-health-impact principle

“Government international and regional organization and industry should facilitate and expand the dissemination of technical and scientific information dealing with the various health aspects of hazardous wastes” (Agenda 21, 20.22)

Dissemination-of-technical-information-dealing-with-the-health-aspects principle

“Government international and regional organization and industry should facilitate and expand the dissemination of technical and scientific information dealing with the various health aspects of hazardous wastes” (Agenda 21, 20.22)

Dissemination of scientific-information-dealing-with-the-health-aspects principle

“Government international and regional organization and industry should facilitate and expand the dissemination of technical and scientific information dealing with the various health aspects of hazardous wastes” (Agenda 21, 20.22)

Not-transferring-environmentally-harmful-activities-or-substances principle

“States should effectively cooperate to discourage or prevent the relocation and transfer to other states of any activities and substances that cause severe environmental degradation or are found to be harmful to human health” (Principle 14, Rio Declaration)

Root-cause-change principle

“Environmentally sound waste management must go beyond the mere safe disposal or recovery of wastes that are generated and seek to address the root cause of the problem by attempting to change unsustainable patterns of production and consumption ”(Agenda 21)

Significant-causal-interdependence principle

Possible reduction of resilience of ecosystem to climatic variation because of loss of biological diversity principle

" The loss of biological diversity may reduce the resilience of ecosystems to climatic variations and air pollution damage. Atmospheric changes can have important impacts on forests, biodiversity, and freshwater and marine ecosystems, as well as on economic activities, such as agriculture." (Agenda 21, 9.16)
cross link with clear cut

Linking-of-environmental-degradation-and-environmentally-harmful mismanagement

“Forests worldwide have been and are being threatened by uncontrolled degradation and conversion to other types of land uses, influenced by increasing human needs; agricultural; expansion, and environmentally harmful mismanagement, including, for example...unsustainable commercial logging... and the impact of loss and degradation of forests are in the form of soil erosion; loss of biological diversity, damage to wildlife habitats and degradation of watershed areas, deterioration of

the quality of life and reduction of options for development”
(Agenda 21, 11.12)

Overuse-avoidance principle

“Chemical control of agricultural pests has dominated the scene, but its overuse has adverse effects on farm budgets, human health and the environment...”(Agenda 21, 14.74)

Adverse-environmental-effects-of-overuse-of-chemicals principle

“Chemical control of agricultural pests has dominated the scene, but its overuse has adverse effects on farm budgets, human health and the environment...”(Agenda 21, 14.74)

Ecologically-unsound-practices-accumulation-impact principle

“ Despite mounting efforts over the past 20 years, the loss of the world' biological diversity, mainly from habitat destruction, over-harvesting, pollution and the inappropriate introduction of foreign plants and animals has continued.” (Agenda 21, 15.3)

Multiple-cause-destruction principle

“The environment is threatened in all its biotic and abiotic components: animals, plants, microbes and ecosystems comprising biological diversity; water, soil and air, which form the physical components of habitats and ecosystem; and all the interactions between the components of biodiversity and their sustaining habitats and ecosystem. With the continued increase in the use of chemicals, energy and non-renewable resources by expanding global population, associated environmental problems will also increase. Despite increasing efforts to prevent waste accumulation and to promote recycling, the amount of environmental damage caused by over-consumption, the quantities of waste generated and the degree of unsustainable land use appear likely to continue growing.”
(Agenda 21, 16.22)

Linking-of-environmental-damage-caused-by-overconsumption-principle

“Despite increasing efforts to prevent waste accumulation and to promote recycling, the amount of environmental damage caused by over-consumption, the quantities of waste generated and the degree of unsustainable land use appear likely to continue growing.” (Agenda 21, 16.22)

Multiple-unforeseen-consequence principle

“Poor land-use management, including deforestation and non-sustainable agriculture, mining and urbanization, could lead to a considerable increase in erosion problems and related soil loss in the river basins. The sedimentation in large reservoirs may have serious adverse effects downstream by reducing the quantity of natural nutrients available to agricultural land and coastal waters. .. Acidification of surface waters and

groundwaters due to atmospheric deposition of air pollutants can lead to depletion of freshwater living resources and thereby contribute to the loss of biodiversity.” (Agenda 21, 18.3)

“Major problems affecting the water quality of rivers and lakes arise, in variable order of importance according to different situations, from inadequately treated domestic sewage, inadequate controls on the discharges of industrial waste waters, loss and destruction of catchment areas, ill-considered siting of agricultural practices. This gives rise to the leaching of nutrients and pesticides. Aquatic ecosystems are disturbed and living freshwater resources are threatened. ...Erosion, degradation , deforestation and desertification have led to increased land degradation, and the creation of reservoirs has, in some cases, resulted in adverse effects on ecosystems.”(Agenda 21,18.45)

Attribution-of-causal-connection principle

“Many of these problems have arisen from a development model that is environmental destructive and from a lack of protection. Ecological and human health effects are the measurable consequences... although the means to monitor them are inadequate or non-existent in many countries. There is a widespread lack of perception of the linkages between the development, management use and treatment of water resources and aquatic ecosystems.” (Agenda 21, 18.45)

Prevention-to-avoid-subsequent-measures-to-rehabilitate principle

“A preventive approach, where appropriate, is crucial to the avoiding of costly subsequent measures to rehabilitate, treat and develop new water supplies.” (Agenda 21, 18.45)

Assessment-of-direct-and-indirect-costs principle

“Human health and environmental quality are undergoing continuous degradation by the increasing amount of hazardous wastes being produced. there are increasing direct and indirect costs to society and to individual citizens in connection with the generation, handling and disposal of such wastes. ” (Agenda 21, 20.9)

Linking of degradation-of-human-health-and-environmental-quality-with-increasing-amount-of-hazardous-wastes principle

“ Human health and environmental quality are undergoing continuous degradation by the increasing amount of hazardous wastes being produced. there are increasing direct and indirect costs to society and to individual citizens in connection with the generation, handling and disposal of such wastes.” (Agenda 21, 20.9)

Unprecedented-increase-in-environmentally-persistent-wastes principle

“Unsustainable patterns of production and consumption are increasing the quantities and variety of environmentally persistent wastes at unprecedented rates. The trend could significantly increase the quantities of wastes produced by the end of the century and increase quantities four to fivefold by the year 2025.”(Agenda 21, 21.7)

Condemnation-of-illegal-trafficking principle

“...illegal traffic in toxic and dangerous products (toxic and dangerous products are those that are banned, severely restricted, withdrawn or not approved for use of sale by governments in order to protect public health and the environment). see resolutions 42/183 and uu/226 ”(Agenda 21, 19.67)

Limiting-harmful-anthropogenic-activities principle

“...the objectives of this programme area are: reducing atmospheric pollution or limiting anthropogenic emissions of greenhouse gases”
(Agenda 21, 9)

“Linking-of-unsustainable-production-and-consumption-and- unprecedented-increase-in-environmentally-persistent-wastes principle

Unsustainable patterns of production and consumption are increasing the quantities and variety of environmentally persistent wastes at unprecedented rates. The trend could significantly increase the quantities of wastes produced by the end of the century and increase quantities four to fivefold by the year 2025.” (Agenda 21, 21.7)

“Ecological-and-human-health-effects-measurable-consequences-of - environmentally-destructive-model principle

Many of these problems have arisen from a development model that is environmental destructive and from a lack of protection. Ecological and human health effects are the measurable consequences... although the means to monitor them are inadequate or non-existent in many countries. There is a widespread lack of perception of the linkages between the development, management use and treatment of water resources and aquatic ecosystems”. (Agenda 21, 18.45)

“Measurability-of-ecological-and-health-consequences principle

Many of these problems have arisen from a development model that is environmental destructive and from a lack of protection. Ecological and human health effects are the measurable consequences...” (Agenda 21, 18.45)

“Change-in-lifestyle- trend-reversal principle

A preventive waste management approach focused on changes in lifestyles and in production and consumption patterns offers the best change for reversing current trends” (Agenda 21, 21.7)

“Reorientation-of-consumption-patterns principle

Achieving the goals of environmental quality and sustainable development will require efficiency in production and changes in consumption patterns in order to emphasize optimization of resource use and minimization of waste. In many instances, this will require reorientation of existing production and consumption patterns that have developed in industrial societies and are in turn emulated in much of the world.” (Agenda 21, 4.15)

“Promotion-of-alternative-models-of-consumption-to-reduce- environmental-stress principle

to promote patterns of consumption and production that reduce environmental stress and will meet the basic needs of humanity” (Agenda 21, 4.7.a)

“Promotion-of-alternative-models-of-consumption-to-meet-basic-needs-of-humanity principle

to promote patterns of consumption and production that reduce environmental stress and will meet the basic needs of humanity ”(Agenda 21, 4.7.a)

“Prohibition-of-harmful-substances principle

Considering the prohibition of those(harmful pesticides, fertilizers) found to be environmentally unsound” (Agenda 21, 17.28. i)

“Prohibition-of-environmentally-unsound-substances principle

Considering the prohibition of those(harmful pesticides, fertilizers) found to be environmentally unsound” (Agenda 21, 17.28. i)

“Elimination-of-accumulation-to-dangerous-levels principle

eliminating the emission or discharge of organohalogen compounds that threaten to accumulate to dangerous levels in the marine environment”
(Agenda 21, 17.28)

“Phasing-out -unmanageable-risk principle

And the phasing out or banning of toxic chemicals that pose an unreasonable and otherwise unmanageable risk to the environment or human health and those that are toxic, persistent and bio-accumulative and whose use cannot be adequately controlled” (Agenda 21, 19.50 b)

“Phasing-out -unreasonable risk principle

And the phasing out or banning of toxic chemicals that pose an unreasonable and otherwise unmanageable risk to the environment or human health and those that are toxic, persistent and bio-accumulative and whose use cannot be adequately controlled” (Agenda 21, 19.50 b)

“Banning-of-unmanageable-risk principle

And the phasing out or banning of toxic chemicals that pose an unreasonable and otherwise unmanageable risk to the environment or human health and those that are toxic, persistent and bio-accumulative and whose use cannot be adequately controlled ”(Agenda 21, 19.50 b)

“Phasing-out-unreasonable-risk principle

And the phasing out or banning of toxic chemicals that pose an unreasonable and otherwise unmanageable risk to the environment or human health and those that are toxic, persistent and bio-accumulative and whose use cannot be adequately controlled” (Agenda 21, 19.50 b)

“Replacement-of-safe-alternative principle

Governments should intensify research and development activities on cost-effective alternatives for processes and substances that currently result in the generation of hazardous wastes that pose particular problems for environmentally sound disposal or treatment, the possibility of ultimate phase-out of those substances that present an unreasonable or otherwise unmanageable risk and are toxic, persistent and bio-accumulative to be considered as soon as practicable.” *Emphasis should be given to alternatives that could be economically accessible to developing countries* ???(Agenda 21, 20.13. c)

Promotion-of-phase-out-of-risk research principle

" States, with the cooperation of international organizations *where appropriate*, should encourage industry to promote and undertake research into the phase-out of the processes that pose the greatest environmental risk based on hazardous wastes generated.” (Agenda 21, 20.18 b)

Mandate-to-supply-basic-needs principle

" As a first step towards the goal of providing adequate shelter for all, all countries should take immediate measures to provide shelter to their homeless poor, while the international community and financial institutions should undertake actions to support efforts of the developing countries to provide shelter to the poor.” (Agenda 21, 7.9.)

" Promote cooperation between the parties to relevant international conventions and action plans with the aim of strengthening and coordinating efforts to conserve biological diversity and the sustainable use of biological resources." (Agenda 21,15.8 e.)

"Strengthen-support-for-international-and-regional-instruments principle programmes and action plans concerned with the conservation of biological diversity and the sustainable use of biological resources." (Agenda 21, 15.8 f)

"Determination-of-guidelines-for-acceptable-exposure principle to produce guidelines for *acceptable* exposure for a greater number of toxic chemicals, based on peer review and scientific consensus distinguishing between health or environment based exposure limits and those relating to socio-economic factors." (Agenda 21, 19.13 b.)

"Distinction-of-guidelines-for-health-or-environment-based-exposure-limits principle to produce guidelines for *acceptable* exposure for a greater number of toxic chemicals, based on peer review and scientific consensus distinguishing between health or environment based exposure limits and those relating to socio-economic factors". (Agenda 21, 19.13 b.)

"Internationally-agreed-code principle
" Develop an internationally agreed upon code of principles for the management of trade in chemicals, recognizing in particular the responsibility for making available information on potential risks and environmentally sound disposal practices if those chemicals become wastes, in cooperation with governments and relevant international organizations and appropriate agencies of the United Nations system" (19.51 Toxic chemicals)

"Costs-and-benefits-guideline-formation principle
" A relevant and competent United Nations organization should take the lead, in cooperation with other organizations, to develop guidelines for estimating the costs and benefits of various approaches to the adoption of cleaner production and waste minimization and environmentally sound management of hazardous wastes, including rehabilitation of contaminated sites "(see 1991 Nairobi meeting and Basel Convention) (20.13. j, Hazardous wastes)

"Harmonization-of-criteria-[[harmonizing up to highest standard]] principle
There is a need to harmonize the procedures and criteria used in various international and legal instruments. There is also a need to develop or *harmonize* existing criteria for identifying

wastes dangerous to the environment and to build monitoring capacities.”(Agenda 21, 20.33)

“Promotion-of-clear-guidelines principle

" Promote the development of clear criteria and guidelines, within the framework of the Basel Convention and regional conventions, *as appropriate*, for environmentally and *economically sound* operation in resource recovery, recycling reclamation, direct use of alternative uses and for determination of acceptable recovery practices, including recovery levels where feasible and appropriate, with a view to preventing abuses and false presentation in the above operations.”
(Agenda 21, 20.35 e)

“Internationally-agreed-principle-on-risk-assessment principle

" There is a need for further development of internationally agreed principles on risk assessment and management of all aspects of biotechnology which should build upon those developed at the national level.” (Agenda 21, 16.32)

“Ethical-consideration-principle (also 16.16 a and b)

"Governments at the appropriate level, with the assistance of international and regional organizations, academic and scientific institutions and the pharmaceutical industry, should taking into account appropriate safety and ethical considerations” (Agenda 21, 16.14)

“Need-to-take-into-account-appropriate-safety principle

"Governments at the appropriate level, with the assistance of international and regional organizations, academic and scientific institutions and the pharmaceutical industry, should taking into account appropriate safety and ethical considerations” (Agenda 21, 16.14)

Precautionary principle

" Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.” (Rio Declaration, 1992).

Preventive-precautionary-and-anticipatory-approach principle

" apply preventive, precautionary and anticipatory approaches so as to avoid degradation of the main environment, as well as to reduce the risk of long-term or irreversible adverse effects upon it; ”(Agenda 21, 17.23 a)

Reduction-of-long-term-risk-or-irreversible-adverse-effects principle

" apply preventive, precautionary and anticipatory approaches so as to avoid degradation of the main environment, as well as

to reduce the risk of long-term or irreversible adverse effects upon it;”(Agenda 21, 17.23 a)

Precautionary-and-anticipatory-rather-than-reactive principle

" a precautionary and anticipatory rather than a reactive approach is necessary to prevent the degradation of the marine environment”.

Anticipatory-linked-with-clean-production-techniques principle

Anticipatory-linked-with-environmental-impact-assessment principle

“This requires inter alia, the adoption of precautionary measures, environmental impact assessments, clean production techniques, recycling, waste audits and minimization, construction and/or improvements of sewage treatment facilities, quality management criteria for the proper handling of hazardous substances, and a comprehensive approach to damaging impacts from air, land and water” (Agenda 21, 17.22.)

Anticipatory-and-life-cycle-approach principle

"consider adopting policies based on accepted producer liability principles, where appropriate, as well as precautionary, anticipatory and life-cycle approaches to chemical management, covering manufacturing, trade, transport, use and disposal ” (Agenda 21, 19.50 a)

Producer-liability principle

"consider adopting policies based on accepted producer liability principles, where appropriate, as well as precautionary, anticipatory and life-cycle approaches to chemical management, covering manufacturing, trade, transport, use and disposal ” (Agenda 21, 19.50 a)

Producer-liability based policy principle

"consider adopting policies based on accepted producer liability principles, where appropriate, as well as precautionary, anticipatory and life-cycle approaches to chemical management, covering manufacturing, trade, transport, use and disposal ” (Agenda 21, 19.50 a)

Foresight principle

"Each country should develop the knowledge and practical skills to foresee and identify environmental health hazards, and the capacity to reduce the risks. Basic capacity requirements must include knowledge about environmental health problems and awareness on the part of leaders, citizens and specialists...” (Agenda 21, 6.46 d)

Develop-knowledge-skills-to-foresee-environmental-hazards principle
"Each country should develop the knowledge and practical skills to foresee and identify environmental health hazards, and the capacity to reduce the risks. Basic capacity requirements must include knowledge about environmental health problems and awareness on the part of leaders, citizens and specialists..."(Agenda 21, 6.46 d)

Develop-knowledge-skills-to-identify-environmental-hazards principle
"Each country should develop the knowledge and practical skills to foresee and identify environmental health hazards, and the capacity to reduce the risks. Basic capacity requirements must include knowledge about environmental health problems and awareness on the part of leaders, citizens and specialists..."
(Agenda 21, 6.46 d)

Develop-capacity-to-reduce-risks principle
"Each country should develop the knowledge and practical skills to foresee and identify environmental health hazards, and the capacity to reduce the risks. Basic capacity requirements must include knowledge about environmental health problems and awareness on the part of leaders, citizens and specialists..."
(Agenda 21, 6.46 d)

Culture-of-safety Principle
This principle involves the commitment to act to prevent rather than to [correct]
"to promote a 'culture of safety' in all countries, especially those that are disaster-prone, the following activities should be carried out:" (Agenda 21, 7.60)

Responsible-care-principle
Industry should be encouraged to develop application of a 'responsible care' approach by producers and manufacturers towards chemical products, taking into account the total life cycle of such products" (Agenda 21, 19.51 b.)

Responsible-care-linked-to-life-cycle principle
This principle involves the recognition that responsible care is dependent upon revealing of life cycle of products
"Industry should be encouraged to develop application of a 'responsible care' approach by producers and manufacturers towards chemical products, taking into account the total life cycle of such products "(Agenda 21, 19.51 b.)

Concept-of-environmental-care principle...
"Empower community groups, non-governmental organizations and individuals to assume the authority and responsibility for

managing and enhancing their immediate environment through participatory tools, techniques and approaches embodied in the concept of environmental care.” (Agenda 21, 7.21. g)

Empowerment-of-community-groups principle

“Empower community groups, non-governmental organizations and individuals to assume the authority and responsibility for managing and enhancing their immediate environment through participatory tools, techniques and approaches embodied in the concept of environmental care.” (Agenda 21, 7.21. g)

Preventive-to avoid-costly-corrective-measures principle

“A preventive approach, where appropriate,. is crucial to the avoiding of costly subsequent measures to rehabilitate treat and develop new water supplies. ”(Agenda 21, 18.45)

Avoidance-of-costly-corrective-measures principle

“A preventive approach, where appropriate,. is crucial to the avoiding of costly subsequent measures to rehabilitate treat and develop new water supplies.” (Agenda 21, 18.45)

Cradle-to-grave-approach monitoring principle

This principle involves the recognition that governments have the responsibility for monitoring through the cradle to grave approach

“Governments, in collaboration with industry and appropriate international organizations, should develop procedures for monitoring the application of the cradle to grave approach, including environmental audits” (Agenda 21, 20.20 e)

Monitoring-through-Cradle-to-grave-approach principle

This principle involves the recognition that governments have the responsibility for monitoring through the cradle to grave approach

“Governments, in collaboration with industry and appropriate international organizations, should develop procedures for monitoring the application of the cradle to grave approach, including environmental audits” (Agenda 21, 20.20 e)

Lead-to-be-taken-by-government-to-establish environmental assessment principle

“Governments should take the lead in establishing and strengthening, as appropriate, national procedures for environmental impact assessment, taking into account the cradle-to-grave approach to the management of hazardous wastes, in order to identify options for minimizing the generation of hazardous wastes, through safer handling, storage, disposal and destruction” (Agenda 21, 20.20 e)

Lead-to-be-taken-by-government-in-minimizing-the-generation-of-environmental-wastes principle

“Governments should take the lead in establishing and strengthening, as appropriate, national procedures for environmental impact assessment, taking into account the cradle-to-grave approach to the management of hazardous wastes, in order to identify options for minimizing the generation of hazardous wastes, through safer handling, storage, disposal and destruction” (Agenda 21, 20.20 e)

Cradle-to-grave-approach-impact-assessment principle

“Governments should take the lead in establishing and strengthening, as appropriate, national procedures for environmental impact assessment, taking into account the cradle-to-grave approach to the management of hazardous wastes, in order to identify options for minimizing the generation of hazardous wastes, through safer handling, storage, disposal and destruction ”(Agenda 21, 20.20 e)

Environmental-impact-assessment principle

" Introduce appropriate environmental impact assessment procedures for proposed projects likely to have significant impacts upon biological diversity... and encourage the assessment of the impacts of relevant policies and programmes on biological diversity” (Agenda 21, 15.5 k)

Mandate-to-assess-impacts-of-policies-on-biodiversity principle

" Introduce appropriate environmental impact assessment procedures for proposed projects likely to have significant impacts upon biological diversity... and encourage the assessment of the impacts of relevant policies and programmes on biological diversity” (Agenda 21, 15.5 k)

Mandate-to-assess-impacts-of-programs-on-biodiversity principle

" Introduce appropriate environmental impact assessment procedures for proposed projects likely to have significant impacts upon biological diversity... and encourage the assessment of the impacts of relevant policies and programmes on biological diversity” (Agenda 21, 15.5 k)

Entire-life-cycle-risk-reduction principle

This principle involves the recognition that only through examining the full life cycle of a product can the risk be reduced "risk reduction involves broad-based approaches to reducing the risks of toxic chemicals, taking into account the entire life cycle of the chemicals.” (Agenda 21,19.45,)

Prior-assessment-of potential-adverse-impacts principle

" Ensure prior assessment of activities that may have significant adverse impacts upon the marine environment;” (Agenda 21,17.23 b)

Prior-assessment-in-decision-making-principle

“Ensure that relevant decisions are preceded by environmental impact assessments and also take into account the costs of any ecological consequences” (Agenda 21,7.42)

Mandate-in-decision-making-to-take-into-account-costs-of-ecological-consequences principle

“Ensure that relevant decisions are preceded by environmental impact assessments and also take into account the costs of any ecological consequences” (Agenda 21,7.42)

Environmental-awareness-and-understanding-dissemination principle

" Development of public education programmes directed at decision makers and the general public to encourage awareness and understanding of the relative benefits and risks of modern biotechnology, according to ethical and cultural considerations." (Agenda 21,16.16 b)

Standards-no-less-than-country-of origin-principle

(" Wherever they operate, transnational corporations and other large-scale enterprises should be encouraged to introduce policies and make commitments to adopt standards of operation with reference to hazardous waste generation and disposal that are equivalent to or no less stringent than standards in the country of origin, and Governments are invited to make efforts to establish regulations requiring environmentally sound management of hazardous wastes. "(Agenda 21,20.30)

Mandate-for-transnational-to make-commitments-to-adopt standards-of-operation-no-less-stringent-than-country-of-origin principle

(" Wherever they operate, transnational corporations and other large-scale enterprises should be encouraged to introduce policies and make commitments to adopt standards of operation with reference to hazardous waste generation and disposal that are equivalent to or no less stringent than standards in the country of origin, and Governments are invited to make efforts to establish regulations requiring environmentally sound management of hazardous wastes." (Agenda 21,20.30)

Mandate-to-government-to-establish-regulations-requiring- environmental-source-management principle

(" Wherever they operate, transnational corporations and other large-scale enterprises should be encouraged to introduce policies and make commitments to adopt standards of operation with reference to hazardous waste generation and disposal that are equivalent to or no less stringent than standards in the country of origin, and Governments are invited to make efforts to establish regulations requiring environmentally sound management of hazardous wastes." (Agenda 21,20.30)

Polluter-pay principle

“Governments should include in national planning and legislation an integrated approach to environmental protection, driven by prevention and source reduction criteria, taking into account the 'polluter pays' principle, and adopt programmes for hazardous waste reduction, including targets and adequate environmental control” (Agenda 21,20.20 b)

Polluter-pay principle

" Governments, *according to their capacities and available resources* and with the cooperation of the UN and other relevant organization, *as appropriate* should make recommendations to the appropriate forums or establish or adapt norms, including the *equitable* implementation of the polluter pays principle” (Agenda 21,20.39 b)

Treat-at-source principle

Inadequate sewage treatment (see marine 17.28)

"promoting primary treatment of municipal sewage discharged to rivers, estuaries and the sea, or other solutions appropriate to specific sites” (Agenda 21,17.28 e)

Minimize-or-avoid-environmental-damage principle

“Adopt policies that minimize if not altogether avoid environmental damage, whenever possible” (Agenda 21, 7.42 a)

Mandate-to-adopt-policies-to-minimize-or-avoid-environmental-damage principle

“Adopt policies that minimize if not altogether avoid environmental damage, whenever possible” (Agenda 21, 7.42 a)

“Substitution-of-less-harmful principle

there are often alternatives to toxic chemicals currently in use. Thus risk reduction can sometimes be achieved by using other chemicals or even non-chemical technologies. The classic example of risk reduction is the substitution of harmless or less harmful substances for harmful ones. establishment of pollution prevention procedures and setting standards for chemicals in each environmental medium, including food and water, and in consumer goods, constitute another example of risk reduction” (Agenda 21,19.45)

“Risk-reduction-through-substitution-of-harmless-or-less-harmful principle

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each environmental medium, including food and water, and in consumer goods, constitute another example of risk reduction” (Agenda 21,19.45)

Mandate-to-establish-pollution-prevention-procedures principle

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Setting -standards-means-to-risk-reduction principle

There are often alternatives to toxic chemicals currently in use. Thus risk reduction can sometimes be achieved by using other chemicals or even non-chemical technologies. The classic example of risk reduction is the substitution of harmless or less harmful substances for harmful ones. establishment of pollution prevention procedures and setting standards for chemicals in each environmental medium, including food and water, and in consumer goods, constitute another example of risk reduction (Agenda 21,19.45)

Root-cause-change principle

“ Environmentally sound waste management must go beyond the mere safe disposal or recovery of wastes that are generated and seek to address the root cause of the problem by attempting to change unsustainable patterns of production and consumption.” (Agenda 21,21.4)

Root-cause-linked-to-unsustainable-patterns-of-production-and-consumption principle

“ Environmentally sound waste management must go beyond the mere safe disposal or recovery of wastes that are generated and seek to address the root cause of the problem by attempting to change unsustainable patterns of production and consumption.” (Agenda 21,21.4)

Conservation-of-sinks principles

“ the conservation, sustainable management and enhancement, where appropriate, of all sinks for greenhouse gases; ”(Agenda 21,9.17 ii)

Positive-mandate-to- conserve principle

Mandate-to -conserve-traditional-forest-habitat-of indigenous-peoples principle

Mandate-to- conserve-forest-habitat-of local-communities principle

Mandate-to-establish-national-protected-area-system principle
Mandate-to-expand-national-protected-area-systems principle
Mandate-to- conserve-for-environmental-values principle
Mandate-to- conserve-for-social-values principle
Mandate-to- conserve-for-spiritual-values principle
Mandate-to- conserve-genetic-resources principle
Mandate-to- conserve-representative-ecological-systems principle
Mandate to conserve-

" Establishing, expanding and managing, as appropriate to each national context, protected area systems, which includes systems of conservation units for their environmental, social and spiritual functions and values, including conservation of forests in representative ecological systems and landscapes, primary old-growth forests, conservation and management of wildlife, nomination of world Heritage Sites under the World Heritage Conventions, as appropriate, conservation of genetic resources, involving in situ and ex situ measures and undertaking supportive measures to ensure sustainable utilization of biological resources and conservation of biological diversity and the traditional forest habitats of indigenous people, forest dwellers and local communities;" (Agenda 21, 11.15 b)

Positive-mandate-to-improve-the conservation principle

" The objectives and activities in this chapter of Agenda 21 are intended to improve the conservation of biological diversity and the sustainable use of biological resources." (Agenda 21,15.1)

Positive mandate to conserve biological diversity principle

" The objectives and activities in this chapter of Agenda 21 are intended to improve the conservation of biological diversity and the sustainable use of biological resources." (Agenda 21,15.1)

Mandate -to-take-economic-social-incentive measures to encourage conservation of biodiversity principle

" take effective economic, social and other appropriate incentive measures to encourage the conservation of biological diversity and the sustainable use of biological resources, including the promotion of sustainable production systems such as traditional methods of agriculture, agroforestry, forestry, range and wildlife management, which use, maintain or increase biodiversity "(Agenda 21,15.5)

Positive-mandate-to-be-consistent with requirements of international law principle

" Governments... and consistent with the requirements of international law should, as appropriate Identify and evaluate the potential economic and social implications and benefits of the conservation and sustainable use of terrestrial and aquatic

species in each country, building upon the results of country studies” (Agenda 21,15.6.)

Positive-mandate-to-identify and evaluate-potential-economic-social implications and benefits of Conservation principle

" Governments... and consistent with the requirements of international law should, as appropriate Identify and evaluate the potential economic and social implications and benefits of the conservation and sustainable use of terrestrial and aquatic species in each country, building upon the results of country studies” (Agenda 21,15.6.)

Mandate-to conserve and restore of altered critical habitats principle
" conservation and restoration of altered critical habitats”
(Agenda 21, 17.6 h.)

Recognition of non-damaging use value principle

Consideration-of-possibility-of-increasing-value-of-forests-through-non-damaging -uses principle

Mandate-for action-to increase-people's-perception-of-non-damaging-uses-of-forests principle

" the implications of the harvesting of forest resources for the other values of the forest should be taken fully into consideration in the development of forest policies. It is also possible to increase the value of forests through non-damaging uses such as eco-tourism and the managed supply of genetic materials. Concerted action is needed in order to increase people's perception of the value of forests and of the benefits they provide.” (Agenda 21, 11.22)

Positive-mandate-to-respect-indigenous practices principle

Mandate to emphasize in pilot project traditional environmental practices

" consider undertaking pilot projects that combine environmental protection and development functions with particular emphasis on some of the traditional environmental management practices or systems that have a good impact on the environment ”(Agenda 21, 13.21.a)

Positive mandate to utilize and produce [safe and] sound technology principle

Mandate-to-utilize-environmentally [safe and sound]renewable energy sources

Increase-use-of-environmentally [safe and sound] renewable resources principle

"cooperate to increase the availability of capacity, capabilities and relevant technologies-recognizing that technology includes biotechnology--in developing countries for utilizing and producing environmentally [safe and] sound renewable energy resources, such as solar, wind, geothermal, hydropower and biomass, including wood-fuel resource. Each resource should

be utilized in a manner that fosters sustainable development and minimizes environmental stress and health impacts, emphasizing the need for easily available, cleaner burning, smoke-free household fuel.” (Agenda 21, 9.9 g)

Positive mandate to plan and develop more efficient and less polluting principle

" "to plan and develop [safe and] more efficient and less polluting transportation systems, especially mass transit to support economic development efforts in an environmentally [safe and] sound way, giving special attention to urban and metropolitan areas.” (Agenda 21, 9.11.b)

Mandate-for-positive-long-term-research-into-biodiversity- in ecosystems principle

Importance-of-biodiversity-for-functioning-of-ecosystem principle

Mandate to determine ecological conditions for biodiversity conservation principle

Participation of indigenous people[s] and their communities in long-term-research -into biodiversity principle

" Long-term research into the importance of biodiversity for the functioning of ecosystems and the role of ecosystems in producing good, environmental services and other values supporting sustainable development with particular reference to the biology and reproductive capacities of key terrestrial and aquatic species, including native, cultivated and cultured species; ? observation and inventory techniques; ecological conditions necessary for biodiversity conservation and continued evolution; and social behaviour and nutrition habits dependent on natural ecosystems, where women play key roles. The work should be undertaken with the widest possible participation, especially of indigenous people and their communities, including women. ” (Agenda 21, 15.5 f,)

Promotion of environmentally sound technology research principle

"promoting research and development in environmentally sound technologies” (Agenda 21, 4.18 b)

" in rural areas, unsustainable practices, such as the exploitation of marginal lands and the encroachment on forests and ecologically fragile areas by commercial interests and landless rural populations, result in environmental degradation, as well as in diminishing returns for impoverished rural settlers. ” (Agenda 21, 7.28 2.)

Promotion of assessment and-observation-by-non-vested-interest-groups principle

“Governments and institutions, in collaboration where necessary with appropriate international agencies and organizations, Universities and non-governmental organizations should

undertake assessments and systematic observations of forests and related programmes and processes with a view to their continuous improvement.” (Agenda 21, 11.34)

Determination of Guidelines-for-acceptable-exposure-by-peer-review-and-scientific- consensus principle

Guidelines for -acceptable-exposure-based-on-peer-review and scientific-consensus principle

to produce guidelines for *acceptable* exposure for a greater number of toxic chemicals, based on peer review and scientific consensus distinguishing between health or environment based exposure limits and those relating to socio-economic factors. (Agenda 21, 19.13 b.)

Responsibility-of-community-and-individuals-participation principle

“Empower community groups, non-governmental organizations and individuals to assume the authority and responsibility for managing and enhancing their immediate environment through participatory tools, techniques and approaches embodied in the concept of environmental care.” (Agenda 21, 7.21. g)

Transparency-of-operations-of-industry principle

“Governments should encourage industries to be transparent in their operations and provide relevant information to the communities that might be affected by the generation, management and disposal of hazardous wastes” (Agenda 21, 20.14 f)

Mandate-to -encourage-Industry-to-provide-relevant-information principle

“Governments should encourage industries to be transparent in their operations and provide relevant information to the communities that might be affected by the generation, management and disposal of hazardous wastes” (Agenda 21, 20.14 f)

Community-right-to-know principle

“Industry should be encouraged to: adopt, on a voluntary basis, community right-to-know programmes based on international guidelines, including sharing of information on causes of accidental and potential releases and means of preventing them and reporting on annual routine emissions of toxic chemicals to the environment in the absence of host country requirements. ”(Agenda 21, 19.51 c)

“International-guidelines-for-community-right-to-know principle

Industry should be encouraged to: adopt, on a voluntary basis, community right-to-know programmes based on international guidelines, including sharing of information on causes of

accidental and potential releases and means of preventing them and reporting on annual routine emissions of toxic chemicals to the environment in the absence of host country requirements.”
(Agenda 21, 19.51 c)

“Host-country-right-to-know principle

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(Agenda 21, 19.51 c)

“Community-right-to-know-based international guidelines principle

Industry should be encouraged to: adopt, on a voluntary basis, community right-to-know programmes based on international guidelines, including sharing of information on causes of accidental and potential releases and means of preventing them and reporting on annual routine emissions of toxic chemicals to the environment in the absence of host country requirements”.
(Agenda 21, 19.51 c)

Mandate-for-governments-to-develop educational -materials principle

Mandate-for-government-to collaborate-with-UN-in developing-educational materials principle

Mandate-for-government-to collaborate-with-NGO-in developing-educational materials principle

Mandate-for-government-to collaborate-with-NGO-in-disseminating-educational materials principle

Mandate-for-government-to collaborate-with-NGO-in-developing-educational-materials-on the effects on environment and human health principle

“Governments, according to their capacities and available resources and with the cooperation of the United Nations, other organizations and non-governmental organizations, should collaborate in developing and disseminating educational materials concerning hazardous wastes and their effects on environment and human health, for use in schools, by women's groups and by the general public” (Agenda 21,20.29 a)

Mandate-to-include-material-on-environmental-impacts-in-schools principle

“Countries should incorporate within school curricula, where appropriate, the principles and practices of preventing and minimizing wastes and material on the environmental impacts of waste” (Agenda 21, 21.15)

Discouragement-or-prevention-of-transfer-to-other-states-of-harmful- activities principle

“States should effectively cooperate to discourage or prevent the relocation and transfer to other States of any activities and substances that cause severe environmental degradation or are found to be harmful to human health.”(Principle 14 Rio Declaration)

Discouragement-or-prevention-of-transfer-to-other-states-of-harmful-substances principle

“States should effectively cooperate to discourage or prevent the relocation and transfer to other States of any activities and substances that cause sever environmental degradation or are found to be harmful to human health.”(Principle 14 Rio Declaration)

Discouragement-or-prevention-of-transfer-to-other-states-of-substances- or-activities-that-cause-severe-environmental-degradation principle

“States should effectively cooperate to discourage or prevent the relocation and transfer to other States of any activities and substances that cause sever environmental degradation or are found to be harmful to human health.”(Principle 14 Rio Declaration)

Discouragement-or-prevention-of-transfer-to-other-states-of-substances-Harmful-to-human-health principle

“States should effectively cooperate to discourage or prevent the relocation and transfer to other States of any activities and substances that cause sever environmental degradation or are found to be harmful to human health.”(Principle 14 Rio Declaration)

All life in interconnected and interdependent in ways that will never be fully understood through science (Susuki)

"We are Earth, the people, plants and animals;
the rains and the oceans; the breath of the forests and the life of the sea"

In our quest to see ourselves as separate and even above the web of life we have imperiled the delegate balance

We have contaminated the air, water and soil and driven wild things to extinction, dammed rivers, torn down ancient forests, poisoned the rains and ripped holes in the sky"

Since the first United Nations Conference on the Environment in Stockholm in 1972 we have come to realize that the threats to the biosphere which sustains all life on this planet have increased in rate, magnitude and scale that inaction

is negligent. The international community has enough information about the pending state of ecological irreversibility that it must act immediately

Since the first United Nations Conference on the Environment in Stockholm in 1972, we have come to realize that the traditional patterns of development have contributed to poverty - denying more than a quarter of the world's population adequate living conditions — to the inequitable distribution of resources to over-consumption, to the violation of human rights, and to the potentially irreversible degradation of the ecosystem.

WE DECLARE THE FOLLOWING PRINCIPLES TO GUIDE HUMANITY TO AN EQUITABLE AND ECOLOGICALLY SOUND FUTURE:

1. The ecosystem of which we are a part shall be protected and preserved, ecologically unsound patterns of development shall be condemned and the inequity of development must be addressed and rectified
2. Development activities that benefit the few while compromising the biological inheritance and quality of life of the many must be condemned as being inherently wrong
3. Most of the third world debt was accumulated as a result of development that was inequitable and detrimental to the ecosystem, and remedial and restorative measures have to be undertaken to address the inequity and ecological harm. The third world debt should be forgiven and redirected for the purpose of addressing inequity and of restoring the ecosystem. While all are responsible for improving environmental quality, those who disproportionately consume the majority of the Earth's resources and pollute the natural environment must bear the bulk of the cost of ecological restoration and protection. While this requires transferring financial and technological ecologically sound technology, it also calls for more equitable distribution of resources within all states throughout the world. "All economically developed countries should set a minimum target of 1% of their GNP for environmentally-based development aid to the developing countries, and the United Nations should establish an International Equity Fund (IEF) dedicated to a global anti-poverty mission. This fund Would cover a 10 year period, whereby all nations would contribute 2.5 % of their military budgets per year; the fund would be dedicated to provide adequate food, water, education, health and housing plus debt relief to the poorest countries of the world." (Resolutions for UNCED, Whistler Foundation).
4. International ecological standards should be in place so that no short term individual pursuit of self-interest, or short sighted national or international regulations (GATT) could jeopardize the environment. The purpose of these standards are to address the individual and multinational pursuit of self-interest and consumptive and exploitative use of the environment and not to penalize local communities that wish to function in an interdependent way within the ecosystem. The economic development necessary to eliminate poverty shall not be a mandate to abuse the environment for either short-term

gain or economic growth alone. Principle must drive industry not industry driving principle.

5. Environmental processes do not recognize national boundaries; therefore states shall not have the sovereign right to exploit resources within their territories in isolation from the global ecological needs of the Earth

6. The continued build-up of the military complex must cease, and the use of military force as a means of resolving conflict must be rejected. A radical reduction of the military budgets of the world must occur and the funds released for ecological and humanitarian purposes. Peace is not merely the absence of war but the pursuit of environmental, social justice, economic, spiritual and cultural well-being.

7. The precautionary principle shall be extended to require those who wish to intervene in the ecological commons to have to justify their intervention and demonstrate the safety of their intervention. The full environmental costs shall be considered in any proposed development project.

8. the decision making process should be clearly defined, transparent, accessible and equitable. Criteria in decision making should be revealed, and the public and affected communities should be involved at the time of the formulation of the terms of reference and through the process.

9. The international community must condemn and disallow the exporting of products deemed to be unsafe in a state where there are advance testing procedures to other states with less advanced testing procedures

10 behaviour and attitudes rather than countries should be categorized as developed, developing or underdeveloped

11. The contribution of those peoples who have been "truly developed" in that they have succeeded in living in interdependence within the ecosystem shall be recognized and their advice sought.

EARTH CHARTER

to enshrine the following individual ecological rights

•

the right to a safe ecosystem

• the right to expect that the government will foster and encourage the moral and ethical responsibilities concomitant with the protection of the right to a safe ecosystem and to an ecological heritage

• the right to require the disallowing of acts that could contribute to ecological irreversibility

• the right to demand that the government take immediate actions to address the urgent potentially irreversible environmental situation even though the action may interfere with the pursuit of short term economic privileges

• the right to prevent the government or industry from satisfying short term economic wishes that would compromise the satisfaction of long term ecological needs of future generations

- the right to expect the government not to abandon high national environmental standards to comply with international economic agreements
 - the right to have the government give the environment, primacy in decision making
 - the right to require governments to approach the ecosystem as the interdependence of principles that need to be in place if there is to be a solution (unacceptability of "short term" solutions based on fragmentation of the problem)
 - the right to demand the preservation of significant ecosystems and that significant is not dependent on the notion of "collectibles" i.e. that if there is already an ecosystem preserved in one district would prevent a similar ecosystem from being protected in another district. the right to demand the reduction and elimination of destruction of the habitat by ecologically unsound economic practices
 - the right to demand that restrictions be placed on aesthetic or medicinal uses of fauna that could lead to species impoverishment
 - the right to demand the government to suspend any activity by Multinational Corporations that could cause environmental degradation through ecologically unsound practices.
 - the right to demand national control over the safety of products and over national standards related to ecologically sound practices in accordance with proposed international standards.
 - the right to demand that if a product or an activity is engaged in as a result of the falsification of data, or inadequate non-arm's length research that that product should be immediately taken off the market and the activity should be suspended
 - the right to demand the government to condemn and disallow the exporting of products or services that are deemed to be unsafe in a country where there may be high restrictions or regulations to other countries with more relaxed regulations (because of their inability to test these products and because of their economic need prevents them from paying for more expensive and safer substitutes)
 - the right to demand that "caution should be exercised when there is doubt about the impact of development
 - the right to demand that ecologically sound principles drive industry not industry driving principles
 - the right to have the onus of proof shifted from those opposing the intervention "having to demonstrate that the intervention will cause harm" to those advocating the intervention "having to demonstrate that their intervention will not cause harm.
-
- the right to ensure that remuneration should only be paid for work that is ethical (i.e. that it does not contribute to ecological irreversibility or ecological privation)
 - the right to demand the government to assess the full environmental impact of any intervention that may cause environmental harm to the ecosystem
 - the right to demand the government to resist the temptation of accepting non-ecologically sound projects because funds from these projects could be allocated for humanitarian projects (including job creation)

- the right of public to full disclosure about ecological consequences of an intervention
- the right of the public to have input into the decision making process at the time of meaningful alternatives: a) at the time of formulation of the terms of reference and at the time when a decision is made about an environmental assessment review is to be made; b) continually throughout the proposed project; c) at any time where there is significant public concern about the environmental impact of the project
- the right to require the government to disallow the rationalizing away of potentially harmful impact on the ecosystem through the guise of altruism or necessity
- the right to require the government to disallow projects where accidents, though unlikely, could be so disastrous that irreversible harm would occur to the environment.
- the right to require the government to prohibit the production of weapons of mass destruction and work towards the control over other weapons and towards eventual disarmament.
- the right to demand the government to reduce and eliminate use of harmful pesticides
- the right to require the government to disallow acts contributing to ecological irreversibility in all lands including those of private ownership and those whose ownership is under dispute

EARTH CHARTER

We are the Earth, the people, plants and animals; the rains and the oceans; the breath of the forests and the life of the sea

All life is interconnected and interdependent in ways that will never be fully understood through science

In our quest to see ourselves as separate and even above the web of life we have imperiled the delicate balance

We have contaminated the air, water and soil and driven wild things to extinction, dammed rivers, torn down ancient forests, poisoned the rains and ripped holes in the sky

We have come to realize that the traditional consumptive patterns of development have contributed to poverty, to the inequitable distribution of resources, to over-consumption, to the violation of human rights and to the potentially irreversible degradation of the ecosystem

We have come to realize that the threats to the biosphere which sustains all life on this planet have increased in rate, magnitude and scale that inaction is negligent. The international community has enough information about the pending state of ecological irreversibility that it must act immediately.

WE DECLARE THE FOLLOWING PRINCIPLES TO GUIDE HUMANITY TO AN EQUITABLE AND ECOLOGICALLY SOUND FUTURE

- The ecosystem of which we are a part shall be protected and preserved; ecologically unsound patterns of development shall be condemned and the inequity of development must be addressed and rectified. The mandate to limit growth must prevail
 - The precautionary principles shall be extended to require those who wish to intervene in the ecological commons to have to justify their intervention and demonstrate the safety of their intervention. The full environmental costs shall be considered in any proposed development project that may cause ecological harm
 - Development activities that benefit the few while compromising the biological inheritance, and quality of life of the many must be condemned as being inherently and ethically wrong
 - Most of the third world debt was accumulated as a result of development that was inequitable and detrimental to the ecosystem; remedial and restorative measures shall be undertaken to address the inequity and ecological harm. The third world debt shall be forgiven and redirected for the purpose of addressing inequity and of restoring the ecosystem. While all are responsible for improving environmental quality, those who disproportionately consume the majority of the Earth's resources and pollute the natural environment shall bear the bulk of the costs of ecological restoration and protection.
 - States shall not have the sovereign right to exploit resources within their territories. All actions within states must comply with high international ecological standards
 - International ecological standards shall be in place so that no short term individual pursuit of self-interest, or short sighted national or international regulations (GATT) could jeopardize the environment. The purpose of these standards is to address the individual and multinational pursuit of self interest and to prevent the consumption and exploitative use of the environment and not to penalize local communities that wish to function in an interdependent way with the ecosystem. The economic development necessary to eliminate poverty shall not be a mandate to abuse the environment for either short-term gain or economic growth.
 - The international community shall condemn and shall disallow the exporting of products deemed to be unsafe in a state where there are advanced testing procedures to other states with less advanced testing procedures. No products or activities shall be transferred to other states if their transfer could cause harm to health or to the ecosystem.
 - The continued build-up of the military complex must cease, and the use of military forces as a means of resolving conflict must be rejected. A radical reduction of the military budgets of the world must occur, and the funds released for ecological and humanitarian purposes.
- The decision making process shall be clearly defined, transparent, accessible and equitable. Criteria in decision making shall be revealed, and the public

and affected communities should be involved at the time of formulation of the terms of reference and throughout the process

• Behaviour and attitudes rather than countries should be categorized as "developed, " "developing" or "underdeveloped." The contribution of those people who have been "truly developed" in that they have succeeded in living in interdependence with the ecosystem shall be recognized and their advice sought

() **THAT** in July 1992, I wrote a position piece, on Canada's Vacuous Promises, which was published in the Times Colonist

EXHIBIT

1992 Canada makes vacuous promises
Promises, which was published in the Times Colonist **as**

1992 CANADA IGNORES INTERNATIONAL ENVIRONMENTAL DOCUMENTS

Canada violates or ignores international environmental documents to which it has been a signatory while deluding the world community into thinking that it is genuinely concerned about the environment.

At the press conference given by Federal Minister of the Environment, Jean Charest at the UNCED conference in Rio, a representative of the United Nations introduced Charest as being from a country which was truly concerned about the environment. During the question period I indicated that "UNCED should be a time to dispel myths not perpetuate them and that Canada is not an ecologically sound country and that we should be honest with the rest of the world

Evidence that could dispel the myth that Canada is truly concerned about the environment has been occurring for years throughout B.C. in the forest industry, and is occurring currently in the dispute in Clayoquot Sound.

Rather than the courts in Canada insisting on adherence to international environmental documents such as the World Charter of Nature (UN Resolution 37/7, 1982) or to the current Convention on Biological Diversity (1992), Canadian courts condemn those who strive to call for the adherence to international law (environmentalists), and condone those who ignore International Law. (industry).

For Example, Canada adopted the World Charter of Nature, 1982 (UN resolution 37/7) which states the following:

11. Activities which might have an impact on nature shall be controlled, and the best available technologies that minimize significant risks to nature or other adverse effects shall be used; in particular;

a) all activities which are likely to cause irreversible damage to nature shall be avoided;

c) Activities which are likely to pose a significant risk to nature shall be preceded by an exhaustive examination; their proponents shall demonstrate that expected benefits outweigh potential damage to nature and where potential adverse effects are not fully understood, the activities should not proceed;

Have governments in Canada since 1982 "avoided" industrial activities such as ecologically unsound "logging practices that have caused irreversible damage to nature.? Have governments in Canada called upon forest companies to not proceed with ecologically unsound practices whose adverse effects are not fully understood?

In 1992, Canada is now a signatory of the Convention on Biological Diversity which notes the following:

that it is vital to anticipate, prevent and attack the causes of significant reduction or loss of biological diversity at source.

also where there is a threat of significant reduction or loss of biological diversity, lack of full scientific certainty should not be used as a reason for postponing measures to avoid or minimize such a threat

Is Canada reducing the loss of biological diversity at the source, when it is prepared to log old growth forests before it has carried out adequate non-arm's length research into the true biodiversity of the old growth forests? Is there not strong enough evidence in place that clear-cut logging has destroyed biodiversity, yet we appear to wait for "scientific certainty" before we are prepared to avoid or minimize such a threat? By that time there may be very little biodiversity left.

At the Press Conference where Mulroney signed the Convention on Biological Diversity in Rio de Janeiro, I asked him " if the signing of this document would mean that the government of Canada would condemn ecologically unsound practices such as clear-cut logging that destroy biodiversity." He replied that "he did not want to deal with issues "

If Mulroney is willing to sign a document professing to adhere to the preservation of biodiversity, and if he is not willing to deal with the practices that contribute to the loss of biodiversity, then the Canadian public will have to bring this discrepancy between rhetoric and action to the attention of the international community..

The environmentalists who have continually been striving to preserve the little remaining old growth forests, and to call for the need to identify and do research into biodiversity are the ones who have been adhering to the principles enunciated in the United Nations' World Charter of Nature. They will also be the ones who are calling for the preservation of the old growth areas so that Canada will be able to adhere to the binding principles enunciated in the United Nations Convention on Biological Diversity. Yet it is those who act to prevent "irreversibility" that are prosecuted as criminals, and those who cause "irreversibility" that are protected by Canadian courts

() **THAT** in July 1992, I gave a presentation on UNCED to the National Annual General Meeting of the United Nations Association of Canada

() THAT in 1992 I attended the NARST Conference in Boston, and I went to the evening plenary of the NARST conference,

COMMENT

a professor Rice?? who in full patriarchal style with a beautiful assistant not unlike a tradition stage show was discussing the simplicity of science and models. I stood up and challenged him and said that he was offering nothing new but only reiterating what Herbert Simon from his University had advocated years ago. There was silence in the room of 5 hundred. I went to the washroom, and several women came up to me and thanked me for raising the issues that I raised. I also talked to one of the principal organizers who said that he had felt the same way about the key note address but of course he could not say anything.

() **THAT** in September, 1992, David White sent a letter to Joe Clark about the need to include "ecological rights", and the rights of future generations in the proposed Accord

EXHIBIT

1992 Sept
Open letter:
Honourable Joe Clark

Before the deadline for submissions of recommendations for the constitution, we submitted a proposal for a Charter of Ecological Rights. At the same time, we indicated that ecological rights could also be covered by extending the notion of "right to security" to "right to common security," which would include "protection of the environment," as well as the right to a safe environment.

In your response to our submission, you indicated that you had reflected upon our suggestions.

On Monday August 24, 1992, I read the article in the Globe and Mail entitled "Main provisions of unity accord." In this article, which may or may not have been based on government briefing, under the section on "Social and Economic Union," the following statement was made: "The Constitution would guarantee rights to health care, social services, education, workers' rights and protection of the environment."

Most of those concerned about the environment believed that the government had undertaken to comply with commitments made at UNCED to seriously protect the environment. On August 26, I obtained a copy of the proposed Social Charter which indicated that it would be the economy not the environment that would be sustained.

With this wording, the public has been misled by the statement in the Globe and Mail Article.

Either the government has changed this clause to enshrine the right to a sustainable, i.e., safe and sound environment, and this version has been

revised; the government has erred in its judgment of the concept of "sustainability" or the government has intentionally misled the public into thinking that the environment has been protected.

Before the government takes the constitution to the public, those concerned about the environment must be ensured that there will be serious provisions in the Constitution to protect the environment, and to guarantee ecological heritage in that present actions will not jeopardize the rights of future generations to their ecological heritage.

ERA Ecological Rights Association
1230 St Patrick St., Victoria, B.C., V8S 4Y4

cc The Honourable Audrey McLaughlin
cc The Right Honourable, Brian Mulroney
cc The Honourable, Jean Chrétien
cc Globe and Mail

() THAT in September 1992, I had input into a paper by Rod Dobell on a paper for a

NAMI meeting on the Theme learn and live live and learn

() THAT in 1992, I was elected to steering committee of CORE
SEPTEMBER 9, 1992

Education for an Economically Competitive and Socially Responsible North America

() **THAT** in 1992 at I co-wrote with Erich Swartz **Mis-education through Rhetoric: Implications for global education: A tragic outcome of UNCED**

Chapter 36 in Agenda 21 had been used to justify increased corporate intrusion into education

EXHIBIT

AGENDA 21 CHAPTER 36: EDUCATION, PUBLIC AWARENESS
TRAINING

RESOLUTION: INFLUENCE AWARENESS OF HUMAN RIGHTS,
ENVIRONMENT, AND PEACE ISSUES THROUGH EDUCATION

[ADD human rights and Noting that in chapter 36 of Agenda 21, a very important distinction is made between promoting "education," promoting "public awareness," and promoting "training." It appears to be clear in Agenda 21 that non-governmental organizations, community-based groups, women's groups and aboriginal groups are called upon to assist educational authorities in reorienting education. The role of industry is ascertained to be limited to specific areas of business and industrial and training programs.

Educational authorities, with appropriate assistance of non-governmental organizations, including women's and indigenous peoples' organizations should promote all kinds of adult education programmes for continuing education in environment and development, basing activities around elementary/secondary schools and local problems. The authorities and

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In the section of Agenda 21 that addresses the "promoting of public awareness" industry is included not as the dispenser of "education" but as the recipient of needed education.

"Countries and regional organizations should be encouraged, as appropriate, to provide public environmental and development information services for raising the awareness of all groups, the private sector and particularly decision makers. (Agenda 21, section 36.10 c)

In the section of Agenda 21, that addresses the "promoting of training, an important role for industry is envisioned.

To strengthen national capacities,... in training, to enable governments, employers and workers to meet their environmental and development objectives and to facilitate the transfer and assimilation of new environmentally sound, socially acceptable and appropriate technology and know-how (Agenda 21, 36.13 c)

Aware that educational material based on a conceptual framework of international principles has been developed.

We call upon member states of the United Nations:

-To reject industry's participation in the determination of philosophical underpinnings of education

-To support educational programs that develop materials that reflect the principles agreed to in international instruments

Noting that in chapter 36 of Agenda 21, a very important distinction is made between promoting "education," promoting "public awareness," and promoting "training." It appears to be clear in Agenda 21 that non-governmental organizations, community-based groups, women's groups and aboriginal groups are called upon to assist educational authorities in reorienting education. The role of industry is ascertained to be limited to specific areas of business and industrial and training programs.

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Unfortunately Canada has initiated a decision making process related to environmental education or education for sustainability where industry has been influential in determining the philosophical underpinnings of education. The involvement of industry in this manner was not intended in Chapter 36.

At ECO-ed, in October 1992, the group EECOM was formed; the government of Canada also supported EECOM of "environmental educators" which included several front groups from industry such as Canadian forestry association,

I attended a work group, and when I introduced myself, I indicated my concern about industry's intrusion into education. Then the others introduced themselves and most of them were associated with industry- forest, tarsands and petroleum,

()

EXHIBIT:

Agenda 21 chapter 36: education, public awareness training
resolution: influence awareness of human rights, environment, and peace issues through education

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"Educational authorities, with appropriate assistance of non-governmental organizations, including women's and indigenous peoples' organizations should promote all kinds of adult education programmes for continuing education in environment and development, basing activities around elementary/secondary schools and local problems. The authorities and industry should encourage business, industrial and agricultural schools to include such topics in their curricula. The corporate sector could include sustainable development in their education and training programmes." Agenda 21, Chapter 36.5 I

In the section of Agenda 21 that addresses the " promoting of public awareness " industry is included not as the dispenser of "education" but as the recipient of needed education.

" Countries and regional organizations should be encouraged, as appropriate, to provide public environmental and development information services for raising the awareness of all groups, the private sector and particularly decision makers."(Agenda 21, section 36.10 c)

In the section of Agenda 21, that addresses the "promoting of training, an important role for industry is envisioned.

"To strengthen national capacities,... in training, to enable governments, employers and workers to meet their environmental and development objectives and to facilitate the transfer and assimilation of new environmentally sound, socially acceptable and appropriate technology and know-how" (Agenda 21, 36.13 c)

Aware that educational material based on a conceptual framework of international principles has been developed.

We call upon member states of the United Nations:

- To reject industry's participation in the determination of philosophical underpinnings of education

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Unfortunately Canada has initiated a decision making process related to environmental education or education for sustainability where industry has been influential in determining the philosophical underpinnings of education. The involvement of industry in this manner was not intended in Chapter 36.
INTRO.

NATIONAL PRIORITY

STATUS REPORT

a) Reorientation of education towards sustainable development:

Elementary and secondary school education falls under the jurisdiction of Canadian provinces. To ensure information sharing and collaboration in the environmental education field in Canada, the Canadian Council of Ministers of the Environment established an Education Communications Task Group. It also works in collaboration with the Council of Ministers of Education.

Provincial governments are active at different levels in the promotion of environmental education through their environment, natural resource and education ministries.

EXHIBIT

() THAT in September 1992, I analyzed the draft and submitted suggestions to the proposed the CORE Land use Charter

EXHIBIT

SEPTEMBER 28, 1992

ANALYSIS OF THE PROPOSED DRAFT OF THE LAND USE CHARTER

LEGEND OF TYPE

PLAIN TYPE IS FOR THE ORIGINAL CHARTER

ITALICS ARE FOR SECTIONS THAT ARE SUGGESTED FOR DELETION

BOLD FOR SECTIONS THAT ARE DEEMED NECESSARY TO ADD

[BOLD] IN BRACKETS STATEMENT OF REASONS FOR CHANGING SECTIONS

A Land Use Charter

[inappropriate name because the Charter must address land air and water.]

A charter of ecological preservation and ecologically safe and sound use of resources

•Recognizing the urgency of the current environmental situation and for the need to address the destruction of the environment, the violation of human rights, the disregard for social justice and the perpetuation of inequity.

•Concurring with the assessment of the current urgency as expressed in Agenda 21, we acknowledge the following:

“Erosion, degradation , deforestation and desertification have led to increased land degradation, and the creation of reservoirs has, in some cases, resulted in adverse effects on ecosystems. Many of these problems have arisen from a development model that is environmental destructive and from a lack of protection.” (Agenda 21, 18.45)

• Convinced that it is time in British Columbia to redress the imbalance that has been caused by ecologically unsound use of land, air and water, by immediately ceasing resource use in areas that could be lost for preservation, in particular the little remaining examples of significant old growth, and in fulfillment of commitments made at the Earth Summit we shall be committed to the following:

**“Establishing, expanding and managing, as appropriate to each national context, protected area systems, which includes systems of conservation units for their environmental, social and spiritual functions and values, including conservation of forests in representative ecological systems and landscapes, primary old-growth forests, conservation and management of wildlife, nomination of world Heritage Sites under the World Heritage Conventions, as appropriate, conservation of genetic resources,”
(Agenda 21, 11.15 b., Deforestation), 1992)**

• Convinced that humanity must be guided by a moral code of action to respect the inherent worth of nature , and in fulfillment of commitments made in the World Charter of Nature, we shall be committed to the following:

“...every form of life is unique, warranting respect regardless of its worth to [humans], and to accord other organisms such recognition [humans] must be guided by a moral code of action”. (a, World Charter of Nature, 1982)

- **Concurring with the global commitment under the "Convention for the Protection of Cultural and Natural Heritage" (1972) to fulfil our international duty to identify and protect natural heritage for future generations:**

Each State Party to this convention recognizes that the duty of ensuring the identifications, protection, conservation, presentation and transmission to future generations of the cultural and natural heritage...(Convention for the Protection of the World Cultural and Natural heritage)

- **Concurring with the global commitment under the World Charter of Nature (1982) to avoid activities which are likely to cause irreversible damage to nature**

“Activities which are likely to cause irreversible damage to nature shall be avoided; and activities which are likely to pose a significant risk to nature shall be preceded by an exhaustive examination; their proponent shall demonstrate that expected benefits outweigh potential damage to nature, and where potential aversive effects are not fully understood, the activities should not proceed” (Agenda 21, section 11b)

- **Concurring with the enshrinement of the precautionary principle and in fulfillment of commitments made in the Rio Declaration and in Agenda 21, we shall be committed to the following:**

" Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation." (Rio Declaration, 1992).

- Recognizing that causes of irreversible environmental damage may not be fully understood or predictable, and in fulfillment of commitments made in Agenda 21, we shall recognize the following:**

"In the face of threats of irreversible environmental damage, lack of full scientific understanding should not be an excuse for postponing actions which are justified in their own right. The precautionary approach could provide a basis for policies relating to complex systems that are not yet fully understood and whose consequences of disturbances cannot yet be predicted (Agenda 21, 35.4)

- **Concurring with the enshrinement of the principle of prior environmental impact assessment and in fulfillment of commitments made in Agenda 21, we shall enshrine the following principle:**

"Ensure that relevant decisions are preceded by environmental impact assessments and also take into account the costs of any ecological consequences" 7.42 b
" Ensure prior assessment of activities that may have significant adverse impacts upon the marine environment;"
(17.23 b Marine)

- **Concurring with the global condemnation of the transfer or relocation of harmful activities or substances , and in fulfillment of our commitments made in the Rio Declaration, we shall condemn the following:**

the transfer and relocation to other states of any activities and substances that cause severe environmental degradation or are found to be harmful to human health."
(Principle 14 Rio Declaration)

- **Concurring with the need to examine the "cradle to grave," or "full life cycle" approach to industry, and in fulfillment of our commitments made in Agenda 21, we will require and undertake the complete analysis of each industry's intervention into the ecosystem**

"should develop procedures for monitoring the application of the cradle to grave approach, including environmental audits" (Agenda 21 20.20 e)

THE PROVINCIAL COMMITMENT

The government of British Columbia is committed to:

- **preserving significant representative ecosystems**, protecting and restoring the quality and integrity of the environment, and
- **ensuring *securing ecologically safe and sound employment securing a sound and prosperous economy***

This commitment is made to the people of British Columbia and to the global community. A healthy environment and **ecologically safe and sound employment *healthy economy. are essential British Columbia. to the social, cultural, material, physical and spiritual well-being of British Columbians.*** Furthermore, the Province recognizes its obligations **under various international declarations, conventions and charters, to preserve representative ecosystems, and** to protect, and manage *and use its resources and environment to fulfill its responsibility to global well-being.* **in an ecologically safe and sound way its land, air and water resources.** Finally the Province shall ensure that present-day decisions do not compromise **the integrity and inherent worth of preserved ecosystems** and the ability of future generations to meet their own environmental and economic needs.

- recognizing the current change in global political situation, the province will make a request to the Federal Government to transfer a substantial segment of the military budget to be used for the preservation of significant areas of land and water bodies, for allowing for the regeneration of areas that have been destroyed, for providing for the restoration of areas that have suffered environmental degradation, and for the creation of ecologically safe and sound employment through value added jobs
- recognizing that human understanding of nature is incomplete. The province will undertake to preserve significant ecosystems
- recognizing that injunctions are usually granted to prevent irreparable harm, the issuing of injunction against those who are attempting to prevent irreversible harm is untenable

PRINCIPLES

Sustainable Environment

[the preserving of ecosystems, the engaging in ecologically safe and sound practices and the entrenching of social programs are not separated here}

A healthy environment is the foundation upon which a sound economy and society depend. [Ecosystems do not only have a role to support society]. The essential role that ecosystems play in supporting our society establishes an environmental imperative that must be respected in all land, resource and economic decisions. Our priority must be to maintain natural systems for present and future generations.

1. To redress the imbalance resulting from years of non-compliance to the spirit of international Conventions such as the Convention for the Protection and Preservation of Cultural and Natural heritage, and Charters such the World Charter of Nature (1972), the Province shall immediately preserve the little remaining significant unfragmented old growth areas for ecological heritage and for the maintenance of natural systems.

The Province shall **preserve**, maintain and enhance the life-supporting capacity of air, water, land and ecosystems. The Province shall respect and **preserve** the integrity of **intact** natural systems and **will allow for regeneration** will seek to restore previously degraded environments. **The Province will concurrently transfer funds into the creation of ecologically safe and sound employment.**

- to redress the imbalance resulting from years of addressing the errors of previously ecologically unsound practices, the province shall support and fund research not into technological fixes for rectifying the harm

caused by ecologically unsafe and unsound practices, but into new and viable ecologically safe and sound practices.

-to redress the imbalance resulting from years of non-arm's length research reflecting conflict of interest, the province shall support independent non vested interest, arm's length research.

- to redress the imbalance resulting from the misplaced onus of proof, the province shall shift the burden of proof from those opposing the intervention having to demonstrate harm to those proposing the intervention having to demonstrate the ecological safety and soundness of the intervention

2. The Province shall preserve significant areas that contain biodiversity and shall conserve biological diversity in genes, species and ecosystem and shall condemn, ban disallow any practices that contribute to loss of biodiversity. including current practices of clear cut logging. The province will not permit the redefining of the term Biodiversity to accommodate ecologically unsound practices such as clear cut logging.

3. The province shall attempt to anticipate and prevent adverse environmental impacts. When making land and resource decisions, the province shall exercise caution and special concern for natural values, recognizing that human understanding of nature is incomplete.

4. The Province shall ensure that the true environmental and social costs are accounted for prior to making a decision for a project or an activity that will affect air, water or land. in land resource use and economic to proceed The true environmental social costs will have to consider the costs required by society not only to repair the harm but also to do research into repairing the harm, and to monitor ecologically unsound practices and to enforce regulations And in assessing the true environmental costs those who have been responsible will be required to pay for past as well as present damage (polluter pay principle as enunciated in Agenda 21)

3.The province shall also establish high provincial standards for ecologically safe and sound practices and products taking into consideration fundamental international principles of preservation and ecologically safe and sound employment.

The province shall establish a series of independent panels reflecting community concern, not vested interests to attempt to establish province wide guidelines for ecologically safe and sound practices

The province shall establish a list of industries or industrial practices that have not been able to satisfy the ecologically safe and sound conditions of the life cycle approach and disallow these industries to function in the province

The province shall subject all interventions that could have a potential adverse effect to environmental assessment review

The province will disallow any practice that has been deemed ecologically unsound by a panel of independent, non-vested concerned body

5. The province shall recognize its responsibility to **preserve significant representative ecosystems**, to protect, and restore the global environment

the province shall reduce consumption to sustainable levels, **engage in alternative practices that reduce consumption** , and avoid importing or exporting *ecological stresses activities or substances that could cause harm to human health or to the environment [statement in harmony with wording in the Rio Declaration]* and to help meet the global challenge of sustainably supporting the human population

The province shall establish ecologically safe and sound working environments for all employees. No employee shall ever be dismissed from work for demanding to have ecologically safe and sound environment

The province shall not be required to pay compensation for the transferring of resource use into non-use or preservation reverting to the ecological commons.

The province shall undertake to assist with funds transferred from the military budget to convert ecologically unsound employment to ecologically safe and sound employment.

6. The Province shall preserve and protect the environment for its inherent value and for the use and enjoyment of humans

Sustainable Economy

[preservation of ecosystems, and then the engaging in ecologically safe and sound practices and the entrenchment of strong social programs are not separated here}

The province shall recognize that the preservation of significant areas is a global requirement and is conditional not on economic development but on political will. Similarly the willingness to ensure ecologically safe and sound employment in an ecologically safe and sound environment is all dependent on political will.. The establishment of the commitment to preservation and to ecologically safe and sound employment will drive the community to fulfill these requirement.

Given the urgency of the current global situation, the province undertakes to ensure that employment shall be ecologically safe and sound.

The Province shall ensure that ecologically sound practices prevail, and will fund only appropriate technology beyond simply allowing for the prevailing of currently unsound practices.

The province shall ensure that ecologically unsound practices will be phased out and eventually eliminated

the province shall recognizes that it is impossible to balance two values when the fulfillment of one is the denial of the other.

1. The Province shall promote a dynamic and competitive **ecologically safe and sound** economy that maintains options for **land air and water preservation and ecologically safe and sound use** future land and resources uses.

The Province shall advocate international ecologically safe and sound standards so that the province in advocating the highest tenable standards will not be at a global disadvantage

The Province shall make a representation to GATT to insist that high international standards be established for preservation of nature, conservation of resources, and ecologically safe and sound practices so that no action in the Province taken to address the need for ecologically safe and sound employment will be overturned as being a subsidy. For example, the decision by the province to stop the export of raw logs (as per section 135 in the Forest Act) so as to create ecologically sound employment shall not be construed as a subsidy.

2. The Province shall encourage diversified economic development **in an ecologically safe and sound way** that increases the employment and other benefits derived from a given stock of resources.

3. The Province shall *encourage* **insist that pollution is controlled at the source and that there will be eventually zero harmful emissions into the ecosystem encourage** , and shall **insist on proposal for development that make ecologically safe and sound and efficient use of resources**
development that reduces waste and makes efficient use of resources

4. *The Province shall encourage optimum use of natural systems and resources, consistent with their inherent capability to support our economic, social and environmental needs.* { **vacuous statement unclear what that would entail** }

5. The province shall ensure that renewable resources are used in an **ecologically safe and sound** manner **so** that they will be sustainable over the long term. **and the Province will not jeopardize long term ecological**

rights to natural heritage and to ecologically safe and sound employment for short-term economic gain

6. The Province shall ensure that the use of non-renewable resources **is phased out and that funding be placed immediately into discovering ecologically safe and sound alternatives (Agenda 21, Energy section)** avoids **avoiding** their exhaustion and addresses the needs of future generations

7. *The Province shall stimulate environmentally sound economic activity and innovation through a system of economic instruments* [**environmental sound economic activity should not be introduced only in this section it should be a precondition for all future activity. By having it in this section it suggests that the reference to economic activity in other sections does not mean environmentally sound**]

8. The Province shall provide a regulatory framework which promotes stability and predictability for business and investment. **The Province, through the development of standards of ecologically safe and sound practices will minimize the need to monitor as the engaging in ecologically safe and sound practices will entail a different type of monitoring; a monitoring to determine if industry is engaging in these practices rather than a monitoring to determine whether the practices are having a significant adverse impact on the environment.**

Social Sustainability

[**preservation of ecosystems, and then the engaging in ecologically safe and sound practices, and the entrenchment of strong social programs are not separated here**]

Social equity requires that the concerns of individuals and communities are respected **as ecological preservation and ecologically safe and sound employment are established.** *environmental and economic needs are balanced.*

1 The Province shall aim for a fair distribution of the costs and benefits of *land use* decisions **about land, air and water. and undertake to propose measures that will bring about a more equitable distribution of resources. This could entail the giving of a guaranteed annual income to anyone who is displaced as a result of conversion to ecologically sound employment, and ensure that the person will be appropriately retrained. In this way those whose jobs have been converted will not be required to move from the community.**

2. The Province is committed to social stability, and will support economic and social measures to address the economic effects of land use decisions **These measures could entail the giving of a guaranteed annual income to anyone who is displaced as a result of conversion to ecologically sound employment, and ensure that the person will be appropriately retrained. In this way those whose jobs have been converted will not be required to move from the community.**

3. The Province shall promote a good quality of life by fostering opportunities to;

* earn a living **in an ecologically safe and sound way**

* obtain education and training **by putting additional funding into the creation of post-secondary institutions**

* access social, cultural and recreation services and

* enjoy a quality environment **through the preservation of significant ecosystem, the creation of ecologically safe and sound employment, and the entrenching of social equity programs**

4. In addition, equity requires that land use and related resources and environmental decisions be made in a fair and open manner **without the participation of those who have a vested economic interest in not adhering to ecologically safe and sound practices**

REXAMINATION OF THE TERMS OF REFERENCE OF CORE AND THE "LAND USE CHARTER" IN THE LIGHT OF THE TWO FOLLOWING EXTENUATING CIRCUMSTANCES;

1. THE REQUESTED INVESTIGATION BY THE OMBUDSMAN'S OFFICE INTO THE ENVIRONMENTAL DEGRADATION CAUSED BY THE MINISTRY OF FOREST'S NON COMPLIANCE WITH THE FOREST ACT SECTION 60. OF INTERNATIONAL AGREEMENTS.

In September 1991, we submitted a complaint to the Ombudsman office, while Steven Owen was still the ombudsman, calling for the investigation into forest practices that were causing damage to the natural environment. To support the claim we submitted a document from the Ministry of Fisheries indicating the destruction of fish habitat (a violation of section 33 of the Fisheries Act, caused by current logging practices. We were notified that the complaint would be addressed.

While Steven Owen was the ombudsman little was done to investigate this complaint.

In January 1992, CORE was established, and Stephen Owen was named as the Commissioner. In June forestry Minister Miller, suddenly became cognizant of the degradation that had occurred through logging practices. One of the implications of this complaint is that if the complaint is deemed justified, and if the Ministry of Forests, and industry through noncompliance with the Forest Act caused damage to the natural environment, the whole discussion of "compensation" for areas that will be taken out of TFL and put into wilderness areas will be reassessed.

2. THE COMMITMENTS BY CANADA TO PRINCIPLES ENUNCIATED IN INTERNATIONAL AGREEMENTS.

practices. and calling for the enforcing of section 60 of the Forest Act was initiated prior to the completion by the Ombudsman office

CORE was initiated at a time prior to the deliberations of UNCED. As a result of many of the deliberations of UNCED, a few key principles emerged that need to reassess the terms of reference of CORE

Given the recognition of the urgency of the global situation
" Establishing, expanding and managing, as appropriate to each national context, protected area systems, which includes systems of conservation units for their environmental, social and spiritual functions and values, including conservation of forests in representative ecological systems and landscapes, primary old-growth forests, conservation and management of wildlife, nomination of world Heritage Sites under the World Heritage Conventions, as appropriate, conservation of genetic resources, involving in situ and ex situ measures and undertaking supportive measures to ensure sustainable utilization of biological resources and conservation of biological diversity and the traditional forest habitats of indigenous people, forest dwellers and local communities; "(11.15 b., Deforestation)

"Many of these problems have arisen from a development model that is environmental destructive and from a lack of protection. Ecological and human health effects are the measurable consequences... although the means to monitor them are inadequate or non-existent in many countries. There is a widespread lack of perception of the linkages between the development, management use and treatment of water resources and aquatic ecosystems. "
(18.45 Fresh water)

"There are few regions of the world that are still exempt from the problems of loss of potential sources of freshwater supply, degraded water quality and pollution of surface and groundwater sources. Major problems affecting the water quality of rivers and lakes arise, in variable order of importance according to different situations, from inadequately treated domestic sewage, inadequate controls on the discharges of industrial waste waters, loss and destruction of catchment areas, ill-considered siting of agricultural practices. This gives rise to the leaching of nutrients and pesticides. Aquatic ecosystems are disturbed and living freshwater resources are threatened. ...Erosion, degradation, deforestation and desertification have led to increased land degradation, and the creation of reservoirs has, in some cases, resulted in adverse effects on ecosystems. Many of these problems have arisen from a development model that is environmental destructive and from a lack of protection. Ecological and human health effects are the measurable consequences... although the means to monitor them are inadequate or non-existent in many countries. There is a widespread lack of perception of the linkages between the development, management use and treatment of water resources and aquatic ecosystems. A preventive approach, where appropriate, is crucial to the avoiding of costly subsequent measures to rehabilitate, treat and develop new water supplies." (18.45 Fresh water)

" to promote patterns of consumption and production that reduce environmental stress and will meet the basic needs of humanity" (4.7.a Changing Consumption Patterns)

Decision making process

a distinction must be made between vested interests and public concern.

U.N. PROCLAMATION FOR TRANSLATING RHETORIC INTO ACTION

IN 1972, WE SAID, recognizing our ignorance

Declaration of the United Nations Conference on Humans and the Environment (1972)

- A point has been reached in history when we must shape our actions throughout the world with a more prudent care for their environmental consequences. Through ignorance or indifference we can do massive and irreversible harm to the earth's environment...
- Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well being, and he bears a solemn responsibility to protect and improve the environment for present and future generations (Principle 1)
- Man and his environment must be spared the effects of nuclear weapons and all other means of mass destruction. States must strive to reach prompt agreement, in the relevant international organs, on the elimination and complete destruction of such weapons (Principle 26)

IN 1982, WE WERE STILL SAYING,

World Charter of Nature (1982)

- Activities which are likely to pose a significant risk to nature shall be preceded by an exhaustive examination; their proponents shall demonstrate that expected benefits outweigh potential damage to nature, and where potential adverse effects are not fully understood, the activities should not proceed (11 b)
- Activities which are likely to cause irreversible damage to nature shall be avoided (11. a)
- All areas of the earth, both land and sea, shall be subject to these principles of conservation; special protection shall be given to unique areas, to representative samples of all the different type of ecosystems and to the habitats of rare or endangered species (3)
- Every form of life is unique, warranting respect regardless of its worth to man, and to accord other organisms such recognition, man must be guided by a moral code of activities (16)
- Knowledge of nature shall be broadly disseminated and shall be made available to all, particularly by ecological education as an integral part of general education. (16)
- Military activities damaging to nature shall be prohibited (16)

NOW IN 1992, WE ARE SAYING, acknowledging

Humanity stands at a critical moment in its history. Within and without nations, a worsening environment, which undermines sustainable development, threatens the well-being of present and future generations. We depend on the health of the planet and its resources on which

Rio Declaration on Environment and Development

- States should co-operate to prevent, reduce and control transboundary and global environmental degradation or damage, including climate change and ozone depletion, and to address the common concerns of all States concerning the environment (Principle 2)
- In order to protect the environment for present and future generations, States should cooperate to address the common concerns of all States concerning the environment, including the prevention, reduction and control of transboundary and global environmental degradation or damage (Principle 3)

Agenda 21

- The growth of the world population, the increasing demand for food, and the depletion of natural resources, including the life-supporting capacities of the oceans, require a change in development patterns (Agenda 21, 17.23b)
- Forests worldwide have been and are being degraded and destroyed, and the loss of biological diversity, soil erosion, and the loss of biological diversity, soil erosion, and the loss of biological diversity (Agenda 21, 17.23b)
- Despite mounting evidence over the past few years, the loss of the world's biological diversity, including species, genetic diversity, and ecosystems, and the inappropriate modification of ecosystems and animals has continued (Agenda 21, 17.23b)
- Many of the problems have a global dimension and require an environmentally sound and equitable approach (Agenda 21, 18.45)
- Unsustainable patterns of production and consumption are increasing the quantities and variety of environmentally hazardous wastes at unprecedented rates (Agenda 21, 17.23b)
- Environmentally sound waste management practices and the more widespread use of recycling and other environmentally sound waste management practices should seek to address the root cause of the problem by attempting to change and improve patterns of production and consumption (Agenda 21, 17.23b)
- Ensure prior assessment of activities that may have significant adverse impacts upon the environment (Agenda 21, 17.23b)
- Apply preventive, precautionary and anticipatory approaches to activities which threaten the environment, as well as to reduce the risk of long-term or irreversible adverse effects upon it (Agenda 21, 17.23b)
- ...Taking into account the cradle-to-grave approach to the management of hazardous wastes (Agenda 21, 17.23b)
- to promote a 'culture of safety' in all countries... (Agenda 21, 17.23b)
- Develop application of responsible care approach... (Agenda 21, 17.23b)
- ...taking into account entire life cycle (Agenda 21, 19.45)
- ...equitable implementation of the polluter pays principle (Agenda 21, 20.39 b)
- Effective prevention requires action through effective monitoring and the enforcement and imposition of appropriate penalties (Agenda 21, 20.20)
- To increase the availability... in developing countries for utilizing and producing environmentally [safe and] sound renewable energy resources, such as solar, wind, geothermal, hydropower and biomass. (Agenda 21, 9.9)
- Indigenous people and their communities shall enjoy the full measure of human rights and fundamental freedoms without hindrance or discrimination (Agenda 21, 26.1)

Now in 2002 we must be resolved to act

- Be it resolved that the global community cease all activities that could have significant adverse environmental effects (specifically activities such as the testing of nuclear weapons, the use of nuclear armed or powered vessels, the engaging in ecologically unsound practices, and the production of ecologically unsound products), that deny social justice, that violate human rights, and that contribute to war and conflict.
- Be it further resolved that a significant proportion of the global military budget be transferred to preserve ecological heritage, to create ecologically safe and sound employment, and to foster global social justice

IN 1972, WE SAID, recognizing our ignorance
in the Declaration of the United Nations Conference on the Human
Environment (1972)

- A point has been reached in history when we must shape our actions throughout the world with a more prudent care for their environmental consequences. Through ignorance or indifference we can do massive and irreversible harm to the earthly environment...
- “Man [human] has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations” (Principle 1)
- “Man [human] and his environment must be spared the effects of nuclear weapons and all other means of mass destruction. States must strive to reach prompt agreement, in the relevant international organs, on the elimination and complete destruction of such weapons” (Principle 26)

IN 1982, WE WERE STILL SAYING,
World Charter of Nature (1982)

- Activities which are likely to pose a significant risk to nature shall be preceded by an exhaustive examination; their proponents shall demonstrate that expected benefits outweigh potential damage to nature, and where potential adverse effects are not fully understood, the activities should not proceed (11 b)
- Activities which are likely to cause irreversible damage to nature shall be avoided (11. a)
- All areas of the earth, both land and sea, shall be subject to these principles of conservation; special protection shall be given to unique areas, to representative samples of all the different type of ecosystems and to the habitats of rare or endangered species (3)
- Every form of life is unique, warranting respect regardless of its worth to man, and to accord other organisms such recognition, man must be guided by a moral code of action (a)
- Knowledge of nature shall be broadly disseminated by all possible means, particularly by ecological education as an integral part of general education. (16)
- Military activities damaging to nature shall be avoided (Principle 20)

NOW IN 1992, WE ARE SAYING AGAIN, with knowledge

Humanity stands at a defining moment in history. We are confronted with a perpetuation of disparities between and within nations, a worsening of poverty, hunger, ill health and illiteracy, and the continuing deterioration of the ecosystems on which we depend for our well- being (Agenda 21, Preamble, 1.1)

Prepared the policy statement “United Nations Proclamation for Translating Rhetoric and Action— a proclamation delineating significant obligations incurred and expectations created through international agreements—and presented the proclamation at the plenary session from a working group on

“international issues” at the ECO-ED conference, and circulated this proclamation widely for signatures at the conference and at subsequent international conferences.

and on " Canada's International Environmental Rhetoric" (1992)

() ECO-ED

EXHIBIT In October 1992, only four months after UNCED, the World Congress on Education and Communication on Environment and Development (ECO-ED), took place in Toronto. One of its key objectives was to increase the potential of environmental education to meet the challenge of UNCED by forming new partnerships and exchanging information and perspectives. ECO-ED brought together more than 260 key presenters and 4500 participants from eighty-four countries.

In 1992, thirteen national education associations agreed to form a Coalition of Education Leaders to promote environmental citizenship in their respective communities.

() ECO-ED

- revelation of a series of divergent principles that continue to prevent the convergence between concern/principle and action (See Russow, J. and White, D. (1991) "Systemic Constraints Preventing Change: See Russow, J. "Miseducation through Rhetoric: Implications for Global Education (Divergent principles) ," paper presented at ECO-ED, 1992, and White, D. "Mis-education through Rhetoric: Implications for Global Education (Forestry policy)"

COMMENT

The ERA Ecological Rights Association, as part of its presentation at ECO-Ed, "Mis-education through Rhetoric: implications for Global Education," prepared and circulated a proclamation entitled "The United Nations Proclamation for Translating Rhetoric into Action. This proclamation was signed by over 250 delegates to ECO-Ed from over 40 countries, and is currently being circulated around the world. The ERA Ecological Rights Association has also extracted principles from UNCED and prepared for circulation a "Principle-adherence Report" to evaluate the compliance or non-compliance of states to some of the principles that emerged from the UNCED documents.

- revelation of a series of divergent principles that continue to prevent the convergence between concern/principle and action (See Russow, J. and White, D. (1991) "Systemic Constraints Preventing Change: See Russow, J. "Miseducation through Rhetoric: Implications for Global Education (Divergent principles) ," paper presented at ECO-ED, 1992, and White, D. "Miseducation through Rhetoric: Implications for Global Education (Forestry policy)"

For further information Contact: Joan Russow, ERA Ecological Rights Association, 1230 St. Patrick St. Victoria, B.C. CANADA, V8S 4Y4, 604- 598-2740 FAX: 604

- 1992. Wrote a paper on "Mis-education through Rhetoric:

Implications for global education" and presented the paper at the United Nations Conference on Environmental Education (ECO-Ed), Toronto. This paper outlined the discrepancy between international Rhetoric and National inaction

I met Wendy Goldstein from the IUCN who attended my session.

-Alicia Barcena, from the Earth Council spoke about UNCED. I pointed out that there were at least 200 principles that could be derived from UNCED, and a programme could be prepared on a principle-based approach

- spent time getting signatures for the UN proclamation for translating rhetoric into action. Ironically this proclamation because of the design gave the illusion of being an official document and was, when in placed it up along with official documents, it was not taken down. --An indication that often people do not read.

- Session on education with key note speaker MacLaren. We could sense that the group that was emerging was supportive of increased corporate involvement in education. We broke up into discussion groups and did a round. I was first and expressed my concern about what I saw as a development coming out of Rio was the increased intrusion of corporations into education. After the round I found out that most of the delegates in my group were from industry including industry front groups; Also a representative from the Royal Society Magnus **Lundgren** -teaching at Uvic. I said that I was certain that Digby Maclaren the former president of the Royal Society would not concur with his support of corporate involvement in Education David and I put our names in for BC representatives. Rick Kool, and from Ann Eco?? appeared to fully support corporate intrusion

IDRC KEITH BESANYON SPOKE ABOUT ALL THE WORK THAT NEEDED TO BE DONE

I SAID PUBLICLY THAT THERE WERE ALREADY AT LEAST 200 PRINCIPLES THAT COULD BE IMPLEMENTED IMMEDIATELY

BATA SHOES AND ALOS AND INDONESIAN SHOE FACTORY. EAST TIMOR

MOVE: ALOS AND EAST TIMOR MADE A TAPE AND THIS WAS CIRCULATED WITH MANUFACRUTING CONSENT BY NAOM CHOMSKY

BATA women also on panel

World Bank representative for the Environment

There was a session on the World Bank and the contribution the first speaker on the panel was from Indonesia or the Philippines, and she spoke glowingly of how the World Bank had helped her country. The representative from the World Bank exclaimed his on-going dedication to the environment. During the question period, a Toronto woman originally from Thailand stood up and denounced the World Bank She said my mother used to be able to drink the water from the creek now with your help she has to buy bottled water, and now thanks to the World Bank there are prostitutes serving the Western world.

After she spoke , Also spoke condemning Bata and what they were doing in ??? in supporting Indonesian suppression and atrocities in East Timor

While I was waiting, I spoke French to a women from Senegal ... She asked if I would interpret for here

A real problem at Eco-Ed was lack of translation into even French and Spanish

I agreed and after I made my comment opposing the World Bank. I interpreted for her. Because I had talked with her earlier I had a good idea about what she was going to say. It was incredibly difficult to stand in front of about 700 people and interpret for a half an hour, and then the next person also from Africa asked me to interpret for him which I did for another half hour. Both of them condemned the World Bank.

The women sitting behind me was from the World bank when I returned to my seat, the women behind me {from the World bank} said that the World Bank rep was poorly treated. I said that I would like to know more about the world bank she offered to put me on the mailing list and I received their publications for the next few years.

Gave a presentation on a panel at ECO-ED "Misinformation Through Divergent Principles ECO-ed

EXHIBIT

1992

Mis-education through Rhetoric: Implications for Global Education, October, 1992, by Joan Russow, Sessional Lecturer, Global Issues Environmental Studies, Program University of Victoria)

Divergent principle of shelved commitments

This principle involves the making of strong recommendations but failing to summon up the political will to carry out the recommendations.

IN 1972, WE SAID, recognizing our ignorance
Declaration of the United Nations Conference on the Human Environment (1972)

- " A point has been reached in history when we must shape our actions throughout the world with a more prudent care for their environmental consequences. Through ignorance or indifference we can do massive and irreversible harm to the earthly environment...
- Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations (Principle 1)
- Man and his environment must be spared the effects of nuclear weapons and all other means of mass destruction. States must strive to reach prompt agreement, in the relevant international organs, on the elimination and complete destruction of such weapons" (Principle 26)

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- “Activities which are likely to pose a significant risk to nature shall be preceded by an exhaustive examination; their proponents shall demonstrate that expected benefits outweigh potential damage to nature, and where potential adverse effects are not fully understood, the activities should not proceed (11 b)
- Activities which are likely to cause irreversible damage to nature shall be avoided (11. a)
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- Every form of life is unique, warranting respect regardless of its worth to man, and to accord other organisms such recognition, man must be guided by a moral code of action (a)
- Knowledge of nature shall be broadly disseminated by all possible means, particularly by ecological education as an integral part of general education. (16)
- Military activities damaging to nature shall be avoided” (Principle 20)

NOW IN 1992, WE ARE SAYING AGAIN, with knowledge

“Humanity stands at a defining moment in history. We are confronted with a perpetuation of disparities between and within nations, a worsening of poverty, hunger, ill health and illiteracy, and the continuing deterioration of the ecosystems on which we depend for our well- being” (Agenda 21, Preamble, 1.1)

Rio Declaration (1992)

- “States should effectively cooperate to discourage or prevent the relocation and transfer to other States of any activities and substances that cause severe environmental degradation or are found to be harmful to human health” (Principle 14)
- “In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.” (Principle 15)

Agenda 21

- “The growth of world population and production combined with unsustainable consumption patterns places increasingly severe stress on the life-supporting capacities of our planet” (Agenda 21, 5.2)
- Forests worldwide have been and are being threatened by uncontrolled degradation and conversion to other types of land uses... and environmentally harmful mismanagement including...unsustainable commercial logging...and the impacts of loss and degradation of forests are in the form of soil erosion;

loss of biological diversity, damage to wildlife habitats and degradation of watershed areas..”(Agenda 21, 11.12)

- “Despite mounting efforts over the past 20 years,, the loss of the world's biological diversity, mainly from habitat destruction, overharvesting, pollution and the inappropriate introduction of foreign plants and animals has continued” (Agenda 21, 15.3)
- Many of the problems have arisen from a development model that is environmentally destructive and from a lack of protection. (Agenda 21. 18.45)
- Unsustainable patterns of production and consumption are increasing the quantities and variety of environmentally persistent wastes at unprecedented rates (Agenda 21, 21.7)
- Environmentally sound waste management must go beyond the mere safe disposal or recovery of wastes that are generated and seek to address the root cause of the problem by attempting to change unsustainable patterns of production and consumption. (Agenda 21, 21.4)
- Ensure prior assessment of activities that may have significant adverse impacts upon the marine environment (Agenda 21, 17.23b)
- Apply preventive, precautionary and anticipatory approaches so as to avoid degradation of the main environment, as well as to reduce the risk of long-term or irreversible adverse effects upon it (Agenda 21, 17.23)
- ...Taking into account the cradle-to-grave approach to the management (Agenda 21, 20.20)
- to promote a 'culture of safety" in all countries... (Agenda 21, 7.60)
- Develop application of responsible care approach... (Agenda 21, 20.18)
- ...taking into account entire life cycle (Agenda 21, 19.45)
- ...equitable implementation of the polluter pays principle (Agenda 21, 20.39 b)
- Effective prevention requires action through effective monitoring and the enforcement and imposition of appropriate penalties (Agenda 21, 20.20)
- To increase the availability .. in developing countries for utilizing and producing environmentally [safe and] sound renewable energy resources, such as solar, wind geothermal, hydropower and biomass. (Agenda 21, 9.9)
- Indigenous people and their communities shall enjoy the full measure of human rights and fundamental freedoms without hindrance or discrimination (agenda 21, 26.1)

“Indigenous people and their communities have an historical relationship with their lands and are generally descendants of the original inhabitants of such lands. In the context of this chapter the term "lands" is understood to include the environment of the areas which the people concerned traditionally occupy. Indigenous people and their communities represent a significant percentage of the global population. They have developed over many generations a holistic traditional scientific knowledge of their lands, natural resources and environment. Indigenous people and their communities shall enjoy the full measure of human rights and fundamental freedoms without hindrance or discrimination. Their ability to participate fully in sustainable development practices on their lands has tended to be limited as a result of factors of an

economic, social and historical nature. In view of the interrelationship between the natural environment and its sustainable development and the cultural, social, economic and physical well-being of indigenous people, national and international efforts to implement environmentally sound and sustainable development should recognize, accommodate, promote and strengthen the role of indigenous people and their communities.” (Agenda 21, 16.1)

“In full partnership with indigenous people and their communities, Governments and, where appropriate, intergovernmental organizations should aim at fulfilling the following objectives: (Agenda 21, 16.3)

(a) Establishment of a process to empower indigenous people and their communities through measures that include:

(i) Adoption or strengthening of appropriate policies and/or legal instruments at the national level;

(ii) Recognition that the lands of indigenous people and their communities should be protected from activities that are environmentally unsound or that the indigenous people concerned consider to be socially and culturally inappropriate;
recommendations

States should effectively cooperate to discourage or prevent the relocation and transfer to other States of any activities and substances that cause severe environmental degradation or are found to be harmful to human health. (Rio Declaration, Principle 14)

In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation. (Rio Declaration, Principle 15)

National authorities should endeavour to promote the internalization of environmental costs and the use of economic instruments, taking into account the approach that the polluter should, in principle, bear the cost of pollution, with due regard to the public interest and without distorting international trade and investment.”(Rio Declaration, Principle 16)

Canada violates or ignores international environmental documents to which it has been a signatory while deluding the world community into thinking that it is genuinely concerned about the environment.

At the press conference given by Federal Minister of the Environment, Jean Charest at the UNCED conference in Rio, a representative of the United Nations introduced Charest as being from a country which was truly concerned about the environment. During the question period I indicated that " UNCED should be a time to dispel myths not perpetuate them and that Canada is not an ecologically sound country and that we should be honest with the rest of the world

Evidence that could dispel the myth that Canada is truly concerned about the environment has been occurring for years throughout B.C. in the forest industry, and is occurring currently in the dispute in Clayoquot Sound.

Rather than the courts in Canada insisting on adherence to international environmental documents such as the World Charter of Nature (UN Resolution 37/7, 1982) or to the current Convention on Biological Diversity (1992), Canadian courts condemn those who strive to call for the adherence to international law (environmentalists) , and condone those who ignore International Law. (industry).

For Example, Canada is a signatory of the World Charter of Nature, 1982 (UN resolution 37/7) which states the following:

11. Activities which might have an impact on nature shall be controlled, and the best available technologies that minimize significant risks to nature or other adverse effects shall be used; in particular;
 - a) all activities which are likely to cause irreversible damage to nature shall be avoided;
 - c) Activities which are likely to pose a significant risk to nature shall be preceded by an exhaustive examination; their proponents shall demonstrate that expected benefits outweigh potential damage to nature and where potential adverse effects are not fully understood, the activities should not proceed;

Have governments in Canada since 1982 "avoided" industrial activities such as ecologically unsound "logging practices that have caused irreversible damage to nature.? Have governments in Canada called upon forest companies to not proceed with ecologically unsound practices whose adverse effects are not fully understood?

In 1992, Canada is now a signatory of the Convention on Biological Diversity which notes the following:

that it is vital to anticipate, prevent and attack the causes of significant reduction or loss of biological diversity at source.

also where there is a threat of significant reduction or loss of biological diversity, lack of full scientific certainty should not be used as a reason for postponing measures to avoid or minimize such a threat

Is Canada reducing the loss of biological diversity at the source, when it is prepared to log old growth forests before it has carried out adequate non-arm's length research into the true biodiversity of the old growth forests? Is there not strong enough evidence in place that clear-cut logging has destroyed biodiversity, yet we appear to wait for "scientific certainty" before we are prepared to avoid or minimize such a threat? By that time there may be very little biodiversity left.

At the Press Conference where Mulroney signed the Convention on Biological Diversity in Rio de Janeiro, I asked him, "if the signing of this document would mean that the government of Canada would condemn ecologically unsound practices such as clear-cut logging that destroy biodiversity." He replied that "he did not want to deal with issues."

If Mulroney is willing to sign a document professing to adhere to the preservation of biodiversity, and if he is not willing to deal with the practices that contribute to the loss of biodiversity, then the Canadian public will have to bring this discrepancy between rhetoric and action to the attention of the international community...

The environmentalists who have continually been striving to preserve the little remaining old growth forests, and to call for the need to identify and do research into biodiversity are the ones who have been adhering to the principles enunciated in the United Nations' World Charter of Nature. They will also be the ones who are calling for the preservation of the old growth areas so that Canada will be able to adhere to the binding principles enunciated in the United Nations Convention on Biological Diversity. Yet it is those who act to prevent "irreversibility" that are prosecuted as criminals, and those who cause "irreversibility" that are protected by Canadian courts

I have analyzed statements in the following Government of Canada statutes and attempted to extract and categorize general principles underlying these statements:

The Atomic Energy Control Act, R.S. C A-19, S 1
The Emergency Preparedness Act, 1988, C 11.
The Canadian Environmental Protection Act, 1988, C 22.
The Environmental Contaminants Act, 1974-75-76, C 72.
The Fisheries Act, 1977, C 35
The Department of the Environment Act, R.S., C 14 (2nd Supp.), s2
The Government Organization Act 1979, C 13
The Hazardous Products Act, R.S., C H-3, S 1

In all the statutes, which I examined, dealing with either hazardous materials or the pollution caused by hazardous materials, importance is placed on the determination of the safety of the hazardous materials. And it is recognized that in order to determine safety, it is necessary to have

information about the materials and their uses. This principle is enunciated in the following examples drawn from the statutes.

a) In section 11 (Disclosure) of the Hazardous Products Act, “disclosure of information is required where the Minister has reason to believe that a product or substance may be dangerous... The Minister may send a written notice to the manufacturer of the product or substance requesting the manufacturer to disclose to the Minister the formula, composition or chemical ingredients of the product or substance and such other information in the possession of the manufacturer as the Minister deems necessary for the purpose of determining whether the product or substance is or is likely to be a danger to the health or safety of the public.”(the Hazardous Products Act. R.S., CH-3, S 1)

b) Pursuant to 7 (2) Of the Environment Contaminants Act “where the Minister of National Health and Welfare believes that a substance will constitute a significant danger to human health or the environment, the Minister may send a written notice to any person engaged in any commercial, manufacturing or processing activity involving the substance or any member of a classes of substances of which the substance is a member requiring that person to furnish the Minister with such information specified in the notice.” (The Environmental Contaminants Act. 1974-75-76, C 72)

c) Section 33. 1 of the Fisheries Act states the following:
“Every person who carries on or proposes to carry on any work or undertaking that results or is likely to result in
a) the deposit of a deleterious substance in water frequented by fish or in any place under any conditions where that deleterious substance or any other deleterious substance that results from the deposit of that deleterious substance may enter any such water, or
b) the alteration, disruption or destruction of fish habitat shall on the request of the Minister... (a) provide the Minister with such plans, specifications, studies, procedures, schedules, analyses, samples or other information relating to the work or undertaking and with such analyses, samples, evaluations, studies or other information relating to the water, place or fish habitat that is or is likely to be affected by the work or undertaking as will enable the Minister to determine
c) whether there is or is likely to be a deposit of a deleterious substance by reason...d) whether the work or undertaking results or is likely to result in any alternation, disruption or destruction of fish habitat.”
(Federal Fisheries, 1977, C. 35)

e) In section 5 Department of the Environment Act
“The Minister in exercising his powers and carrying out his duties and functions under section 4 shall...

5(ii) ensure that new federal projects, programs and activities are assessed early in the planning process for potential adverse effects on the quality of the natural environment and that a further review is carried out of those projects, programs, and activities that are found to have probable significant adverse effects and the results thereof taken into account”,

f) Furthermore in Section 2 of the Environmental Contaminants Act consideration is given to effects that are persistent and cumulative:

“(iii) the extent to which the substance or any class of substances of which it is a member can become dispersed and will persist in the environment.

(iv) the ability of the substance or of any class of substances of which it is a member to become incorporated and to accumulate in biological tissues and to cause biological change.” (The Environmental Contaminants Act. 1974-76)

8. That the principle is set out in the regulations related to the Atomic Energy Board Act that extreme precautions must be taken in the transport of atomic materials:

a) “*(2) Any person who transports or causes to be transported any radioactive material ...” (see Exhibit A for the list of stipulated regulations for atomic materials)

9. That the principle is expressed in the Emergency Preparedness Act that the government has a duty to make extensive provisions for civil emergency preparedness

Divergent Principle of accumulated appeasements

This principle involves the participating in conferences, conventions, round tables that examine a particular issue , knowing that delay dispels criticism

Divergent principle of managed conception

This principle involves the offering of a new vision by destroying of what exists so that it will no longer even be conceived

Principle of destroying what exists to eliminate its conception [to deny its prior existence]

involves the destruction of what exists so that it will not even be conceived

For example, if the old growth forests were destroyed the conception of the old growth forest would be the "managed" forest of industry.

Principle of management of conception of preservation

involves the creation usually through a diorama in museum of what one wants to bring into existence

A major problem in *settling the question* of "old growth preservation" is defining "old growth" - everyone has his or her own definition. the term "old growth" more likely describes a *biological condition* or forest environment, rather than trees of a specific age classification.

Once it is defined, the biggest problem then is that society must decide on the goal and the strategy. Preservation of land areas should be both *biologically reasonable* and *socially affordable*. Society needs to weigh the costs and benefits of all the options.

One solution could be to leave some of the new forests we are growing long enough to develop the characteristics of old growth stands. (Janna Kumi, Silviculture Research Coordinator, MacMillan Bloedel) [they have eliminated the concept of an old growth forest being an area where there has been no human intervention)

Divergent principle of fulfillment illusion

This principle involves the stating of objectives but knowing that fulfillment is impossible

Divergent Principle of non-enforceability

This principle involves the agreeing to anything providing that it will not be enforceable

Divergent principle of excluded alternative

This principle involves the claiming to consider an alternative but then irreversibly eliminating the alternative during the period of deliberation

3. Talk and log syndrome

ethical implications of violation of the "principle of fair alternative" which ensures that no action should irreversibly destroy an alternative while this alternative is purported to be seriously considered.

In the decision making process alternatives that are purported to be under consideration are being eliminated while the decision making process continues.

Although certain areas have been set aside, while the Commission on Resources and Environment is involving the community, logging will proceed in specific areas.

Divergent Principle of fair unequal access

This principle involves the asserting of equal access while affirming that some have more equal access than others
involves access being determined in a mobility sense rather than a pecuniary sense

Everyone has access; " everyone has the right to sleep under the bridges of Paris but it is only the poor who avail themselves of that right"

Divergent Principle of Misconstrued balance

This principle involves expressing concern about the fairness, consensus and balance, and then failing to make a distinction between vested human interests and ecological concerns

Members on Round table

Divergent principle exclusionary tactics or extreme exclusion

This principle involves the lauding of the consensus process and then ensuring that the extreme views are excluded before the process begins
For example, prior to engaging in the Consensus process for CORE, the so-called different sectors are to meet select delegates; the delegates that reflect the extremes in each group will thus be eliminated as delegates, before the delegates enter into the consensus process

For example, during the public work shops for the Canadian "Green Plan," there were sessions with participants

Divergent principle of predetermine failure of consensus to justify unilateral decision

This principle involves decision making body initiating a process of consensus, which by its composition will not achieve consensus, and then indicating that if the process does not work, the decision making body will make the decision.

For example , in the description of the consensus process for CORE, the premier states:

"The Commission will complete its regional planning process on Vancouver Island within 18 months. If consensus is not possible, after duly considering the Commission's public report, decisions on protected areas and the working forest will be taken by government." (Premier Harcourt, Press Release, January 18, 1992)

Divergent principle of misapplied balance or fairness:

This principle involves the extolling of fairness and balance in the remainder while having destroyed and "managed" a large proportion of the whole

involves the destruction of large proportion of whole and then demanding the sharing of the remainder, and extolling the unfairness of the opposition for not being willing to share or to enter into a "balanced" process

Divergent principle of survival rationalization

This principle involves the extolling of the value of the work ethic to justify the causing of harm

Divergent Principle of Pontification (the greener than thou)

This principle involves the undertaking to "solve " a problem that exists externally while ignoring the same problem when it exists internally [thus giving the illusion that the problem does not exist internally]

magnanimity

rather than address the problem locally, the state offers to address the same problem in another state thus giving the illusion that the problem does not exist in the home state

to address external problem presumes that problem does not exist internally
Mulroney at UNCED promised 115 M for "managing forests in developing countries

Divergent Principle of commitment entailing presumption of minimum standard

This principle involves proposing a solution to a problem whose existence depends on a much deeper problem that is not even being addressed.

Brazil states it will include 'environmental education,' in the school system, conveying the impression that it has in fact a school system (Lopes, personal communication)

Divergent principle of flaunting the good to disguise the bad

This principle involves the focusing on the only non-destructive part of production while ignoring the serious impacts of the predominantly destructive part of the production.

For example Alcan flaunting Alcan Recycling while destroying displacing cultures and destroying the environment through the production of aluminum

Divergent principle of industry-driving principle

This principle involves the proponent of harm determining what should constitute harm

Divergent principle of misplaced onus of proof

This principle requires opponents of activities that could have potentially significant adverse environmental effects to have to demonstrate harm rather than proponents of the activities having to demonstrate the safety of their activities.

Divergent principle of opportunistic criticism (self servingism)

this principle involves the phrasing and using of the criticism of the opposition to discard a term or practices and then replacing it with a term or practices that would be less acceptable to the opposition

Principle of opportunistic criticism: self servingism
involves using the criticism of the opposition to discard a term or practices
and then replacing it with a term or practice that would be more despicable to
the opposition

statement of the Round table

Sustainable development

replaced with "sustainability"

" One of the most important findings of the British Columbia round Table's
initial series of public consultations was that the use of the term 'sustainable
development' was problematic. AS in the rest of the world, British Columbians
had difficulty accepting the Brundtland Commission's definition of this term
and the Round Table found that the debate surrounding this definition often
detracted from the development of a proactive strategy designed to meet
British Columbia's needs. AS s result of the apparent contradiction between
'sustainable ' (meaning capable of being maintained) and "development"
(implying expansion and growth), the round Table has chosen to adopt the
simpler term of 'sustainability' (meaning a process or a state that can be
maintained indefinitely).

Divergent principle of delusion of solution

This principle involves the offering of a solution that is either equally as bad or
worse than the problem it was intended to solve

1.4. "Principle of delusion of solution"

Making strong statements and then offering a solution that is worse than the
problem,

IAEA document

Divergent principle of the dogma of "flamboyant absurdity"

This principle carries the concerns of one's opponents to the point where the
regulations governing the opponents concerns should become the standard
by which other potentially lesser concerns will be addressed.

For example, the IAEA appears to advocate that, what is considered to be
the most dangerous industry, just because it is dangerous, has developed
stringent standards, and that they who contribute to possibly the greatest
uncontrollable hazard are the ones who should assist the community in
dealing with other hazards.

The basic principles for radiation protection and safety in all
applications and activities in nuclear science and technology are
precautionary and are so well founded in science and so widely
accepted that they are now also being regarded as a source of
guidance in controlling pollutants and impacts arising from other
human activities. Their wider application would undoubtedly
contribute towards sustainable development. (p.2)

Divergent principle of "justification through dire consequences of alternatives"
device

This device involves the revealing of the dire consequences of the current practices and offering one own practice as the salvation for the problem

In the following statement the IAEA cites the dire consequences of the other alternatives to justify their proposed alternative:

“The problem of acid rain, which is linked to emissions from the burning of fossil fuels, has been recognized for decades..... . the primary concern about the continued and increasing use of fossil fuels is the problem of CO₂ emission and the potential impact on world climate...World conference on the Changing Atmosphere... need to reduce CO₂ emission (IAEA document, p. 5)
climate change in connection with fossil fuels” (p. 9)

Divergent principle of the "benevolent outcome exploitation" strategy

This strategy involves the selection of the outcome which the opposition to the proposed alternative would advocate and the subsequent attempt to demonstrate that the proposed alternative, which the opposition would condemn, would be the best way of achieving that outcome.

In the following statements from the IAEA document, the IAEA focuses on the desired outcomes of reducing acid rain and limiting greenhouse gas to justify the selection of their proposed alternative:

“Several governments have already made commitments to reduce carbon emission, while recognizing that this will be hard to achieve except through drastic policy decisions in the energy sector.” (IAEA Document, 1992, p.6)

“Nuclear power plants in normal operations cause very little environmental detriment and are beneficial when they replace plants which would emit CO₂, SO₂, and NO₂ (p. 12). In this respect they would help to reduce acid rain and limit greenhouse gas emissions” (IAEA Document 1992 , p. 12)

Divergent Principle of usurpation of opponents desired consequences

This principle involves the commiserating with the opponent's concern and then showing how the opponent's position would deny the concern

"Principle of usurpation of opponents desired consequences"

involves the selection of the opponents concern and then showing how the opponents position would deny the opponents concern

For example, The Fraser Institute of British Columbia is against rent controls. To support their opposition, they indicate how rent controls would contribute to discrimination (something that the opponent would be concerned about)

Divergent Principle of vested interest altruism or blatant visual misrepresentation

This principle involves the portrayal or depiction of an idyllic state disguising vested interest or ecologically unsound practices, visually or verbally. For example in the development plans presented by the Forest Companies, industry depicts a fawn, a single logger in the Forests and a clear cut the size of a classroom, a blatant case of visual misrepresentation.

At the public viewings sponsored by the company and usually with a concurrent presentation by the Ministry of Forestry, there are usually presentations of plans (verbal-graphic imagery) indicating what is to be done accompanied by visual representations (visual imagery) of what they claim will occur. I have noticed that there is a disjunction between the presentation of plans and the visual representation. In the visual representation are often scenes of fawns in the forest, a logger with a saw in an area that appears to be fully treed, and a photograph of a clear-cut area that gives the impression of being not much larger than a class room. I as a member of the public have been initially intimidated by the complexity of the plans and look to the visual representation for clarification and simplification of the information. In the plans there is evidence of large areas of clear cut but in the visual representation there is usually no visual evidence of road blasting, of construction extensive road building, of miles of deforestation caused by clear-cut, of broadcast burns, or of non-productive planted areas that pass for reforestation. I felt that while I had been asked to attend the public process viewings, I do not feel that I have been presented with the real alternatives: I was left with the impression that the companies have been allowed to use whatever visual images they wish in order to inform and communicate with the public, regardless of whether the visual images correspond to what is actually being done. I also noticed that at several sessions the Ministry of Forestry and the Ministry of Fisheries were in attendance with their own visual representation. When they were present they also depicted scenes of wilderness. I felt that I had been visually misled by not only the forest companies but also by the government departments that are supposed to be monitoring the forest companies in the public interest.

2. Another example of visual/verbal misrepresentation is present in the juxtaposition of the actual forests (visual imagery) and the interpretation of what the visual image represents (verbal imagery). On a trip through the Cowichan Valley I noticed an example of a lush second growth forest. On the road in front of this lush second growth, Fletcher Challenge has placed a sign that reads "Fletcher Challenge, naturally seeded, 1920." This juxtaposition between the lush second growth forest and the sign is another example of verbal/visual misrepresentation. Fletcher Challenge neglected to mention on the sign that this lush second growth forest is not the outcome of their current forest practices, and that the only reason that this second growth stand, is so lush is that it was logged at a time when there was minimal construction of roads, when there was no full scale clear-cut, and when there was no prescribed burn and when it was not replanted in off-site monoculture.

Divergent principle of silken transition

This principle involves the expression of deep concern before launching into the real agenda, so that the reader is ready for acceptance

For example

"Surveys have shown clearly the concern of Canadians for their environment: but patterns of behaviour that spring from generations of rising expectations and assumptions of inevitable economic growth are slow to change. Environmental security and job security often seem to be in conflict.

The key is education: first, to transform public concern into appropriate decision making and action; second, in the longer term, to help new generations to understand the interdependence of ecology and economic development, to acquire the skills to find the balance between them, and to develop the commitment to participate in the search for a more sustainable future.

"Learning for a sustainable Future:" A sustainable Development Education Program. affiliated with the Conference Board of Canada.

Industry Association Contact Meetings - members of the Board of Directors and Conference Board staff held a series of meetings with major industry associations to ask them to promote the program with their member companies. These member companies will be approached for the private sector portion of the program funding in 1992. Association involvement was seen as a critical part of the legitimization process for the companies.

Divergent Principle of entailment of presumed minimum

This principle involves undertaking to address a problem that is dependent upon a more serious problem that is not addressed

Divergent Principle of redefining legally binding terms

This principle involves the recognition that it is important that a concept is legally sanctioned, and then redefining the term that designates the concept to accommodate practices that have been considered to deny the concept

For example, The concepts of " biodiversity the Biodiversity convention being signed, and eventually ratified and legally binding. Industry redefined "biodiversity"

Divergent Principle of redefining legally binding terms

“This principle involves the adopting of "environmentally correct" terms, and then redefining the terms to accommodate current practices that would violate the essence of these terms.

For example, The British Columbia Forest Resources Commission has adopted the term "ecologically sound practices" and then proceeds to claim : that "clear cut logging" in most cases was the most ecologically sound forest practice.” (Forest Resources Commission Report, 1991)

“Miller [the Minister of Forests]concluded by announcing that the Forest Resources Commission has been asked to research and propose a Forest Practices Code. Its objective will be to ensure that the management of our forest is based on sound ecological practices and achieves the high standards we expect for stewardship” (Press Release, January 18, 1992)

In a similar way Industry has adopted the term "old growth," and proceeded to redefine it:

“Industry is also redefining "old growth" forests.” (Press Release; January 18, 1992) {Note; Miller has recently been suspended for Conflict of Interests}

"A major problem in *settling the question* of "old growth preservation" is defining "old growth" - everyone has his or her own definition. the term "old growth" more likely describes a *biological condition* or forest environment, rather than trees of a specific age classification.

Once it is defined, the biggest problem then is that society must decide on the goal and the strategy. Preservation of land areas should be both *biologically reasonable* and *socially affordable*. Society needs to weigh the costs and benefits of all the options.

One solution could be to leave some of the new forests we are growing long enough to develop the characteristics of old growth stands. (Janna Kumi, Silviculture Research Coordinator)

Divergent Principle of self-serving misplaced categories"

Designation of "North/South dichotomy as being between the North wanting environment and the South wanting development

" developed countries"

statements from "South Group"

iv call for the establishment of a global programme for alleviating poverty in the South and for protecting or rehabilitating the environment

b. the reduction of emission, over an agreed period of time, in line with a country's quota;

(d) The creation of a global system for the transfer, on preferential and non-commercial terms, of environment-friendly technologies that would enable the South to reduce its emission of gases while pursuing a path of economic growth.

p. 1 UNCED subject matter is nothing less than the safety of the planet and the well-being and future of humankind. Its declared aim is to adopt recommendations which, if implemented, may ensure that the world and its

resources will satisfy the needs and aspirations of all human beings in an equitable, environmentally sound and sustainable manner.

Divergent Principle of non-effective resolve

This principle involves the criticizing of harm after having caused the harm when one was in a position to prevent it

Principle of non-effective commitment

Involves the proponent of harm waiting until he/she is ineffective to criticize the harm

For example: retired general becomes concerned about what he or she no longer has control over prevention

Divergent Principle of denying-donor

This principle involves donating to the disenfranchised and then continuing to deny equitable distribution of resources

1.20. Principle of denial-donor

those who deny the inequitable distribution of resources, use words and actions to donate to the disenfranchised

McMillan Bloedel sets up a forest

Divergent principle of readjustment for error (the Green Revolution syndrome, or the perpetuation of the technological fix delusion)

This principle involves the setting up of departments and institutions to determine the means of rectifying the harm after having permitted and continuing to permit harmful practices to occur

Because of this principle, there is the continued condoning of research and development into rectifying the harm done through ecologically unsound practices rather than discontinuing ecologically unsound practices

For example, In Sudbury, Canada, the soil has been destroyed for years, and trees have not been able to grow, because of emissions from industry. Rather than addressing

Divergent Principle of couched hypocrisy

This principle involves talking about the care, or new found wisdom and commitment to prevent harm while continuing to carry out practices that cause harm

Divergent Principle of criticizing as a fault the very thing that the critic is responsible for

"Unfortunately, the present role of the media and of our educational institutions seems to be one that entrenches the status quo. This is partially due to the infrastructures of these institutions and their inability to keep pace with a rapidly changing world. But it is also due in part to the comfort we all feel with the familiar; all of us would like the world to operate in a way that is rational, predictable, and understandable. How do we change this attitude:

how do we help people make some sense out of the changes occurring all around them.; how do we equip people to not only become comfortable with change but to be agents for positive change." (B.C. Round Table Education Strategy, p.)

- Divergent principle of incompatible problem /solution.
- Divergent principle of benevolent camouflage
- "the two tenets of the program are "positivism" and Both sides
- Divergent Principle of principle enunciation compromise advocacy"
- Divergent Principle of non-effective resolve
- Divergent Principle of unfulfilled co-option

This principle involves the displaying the language of change while continuing to practice as usual

This principle involves the setting up of principles that the opposition would advocate and then stating that realistically these principles must be compromised

For example, in the "B.C. Round Table: Education Strategy", prepared by private consultants for British Columbia Round Table on Economy and Environment) , they enunciate strong principles and then indicate that realistically there will have to be trade-offs.

Sustainability report

- A sustainable British Columbia will have as its objectives: the preservation of biodiversity; the protection of pure water, clean air and uncontaminated terrestrial, wetland, coastal and sea-bottom systems; the stabilization of global climactic conditions; the protection of natural beauty that we value aesthetically and spiritually; and a commitment to a new economic ethic based on making better use of what we have.

A new style of 'doing business' will have to include:

- A new order of urban design that reduces the need for energy-intensive transportation, integrates green space, and enhances our sense of community.
- Forestry and agricultural practices that protect soil, water and nutrient cycles
- Land-use planning that preserves prime agricultural and forest lands and protects wilderness areas and wildlife habitat, while providing, working capacity for development.

- A vibrant and dynamic economy, in which ingenuity is focused on qualitative--rather than quantitative --growth, and in which the full value of environmental assets and the impacts of human activities are considered

*A new harmony with First Nations people in which aboriginal rights and self-determination have been resolved

*Full and satisfying participation in decision-making, with local and individual empowerment

- A social support structure that eliminates the fears of hunger, sickness, alienation and lack of opportunities for education and personal fulfillment

- Health that is measured in degrees of wellness rather than sickness; a standards of living that is measured by quality of life rather than by level of consumption

In summary, we will have realized our absolute dependence on planet earth and will have adopted the ethic of sustainability for our collective survival.

- Limit our impact on the living world to stay within its carrying capacity (its ability to renew itself from natural and human impacts)
- Preserve and protect the environment (conserve life support systems, biological diversity, and renewable resources
- 8 Hold to a minimum the depletion of non-renewable resources
- Promote long-term economic development that increases the benefits from a given stock of resources without drawing down on our stocks of environmental assets (through diversifying and making resources use more efficient)
- Meet basic needs and aim for a fair distribution of the benefits and the costs of resources use and environmental protection
- Promote values that support sustainability (through information and education)

Applying the Principles

“Principles are meant to act as guidelines to shape provincial policy and to test the wisdom of our decisions and actions. However, applying the principles in daily decision-making often involves making difficult choices and compromises. In order to balance environmental, social and economic values fairly, trade-offs between human activities and the principles will be inevitable.” (Draft of Education Strategy, (September, 1992),

Divergent Principle of usurped right to criticize

This principle involves the criticizing of proposals for not going far enough by critics who do not even live up to the proposals that they criticize

For example, the Ministry of the Environment of British Columbia returned from the Earth Summit and complained about UNCED being a failure because it did not go far enough (Cashore, 1992, Address given at Post-UNCED Conference). Canada does not even live up to the principles enunciated at UNCED, such as the "precautionary principle," "Anti- dumping principle," or the "life-cycle approach principle"

Divergent Principle of transferred integrity

For example, Steven Owen who was the former Ombudsman of British Columbia, is placed in the controversial position of being the Commissioner of the " Commission on Resources and Environment"

"I'm confident Stephen Owen can lead that process [CORE] in a fair, open and balanced way. The integrity he brings to this position will provide an excellent foundation for the new commission." (Harcourt, Premier of British Columbia" (January 18, 1992, in Press Release)

I am extremely pleased that Stephen Owen, with his proven track record for fairness, openness and integrity will lead this initiative. (Harcourt, Premier of British Columbia" (January 18, 1992, in Press Release)

"Divergent Principle of self-regulation or self-monitoring" or "fox in chicken coop syndrome"

This principle affirms the importance of regulating or monitoring and then allows the proponents of the activity that is to be regulated or monitored, the privilege to regulate or monitor themselves

For example, the (International Atomic Energy Agency (IAEA) has been given the responsibility to monitor the commercial use of nuclear energy, while at the same time they have become promoters of the use of nuclear energy {for further discussion, see Knelman and Russow, "the not-too-hidden agenda of International Atomic Agency (IAEA) at UNCED: Nukespeak, and seductive devices, dogmas, strategies and fallacies}

Divergent Principle of balance of convenience

This principle recognizes the need to prevent irreparable harm while interpreting irreparable harm in terms of balance of convenience

For example, in the updated version of " the Conduct of Civil Litigation in B. C., the following fundamental principle related to injunctions is put forth:

"The remedy [of injunction] of course, is an equitable one. ' The exercise of the equitable jurisdiction is not to be restricted by the straitjacket of rigid rules but is to be based on broad principles of justice and convenience, equity regarding the substance and not merely the facade or the shadow. It moves with time and circumstances. (Norris, J.A.) Equity is not to be presumed to be of an age past childbearing.' (Haman, J) " (Conduct of Civil Litigation in B.C., Chapter 42, August, 1991)

"If a remedy of an injunction is an equitable remedy that should move with time and circumstances, perhaps the courts could look to leaders in the international community and to documents from the body of international environmental law and convention for insight into the current time and circumstance. "(For further discussion see MacLaren, D. Proceedings from the Royal Society of Canada Conference on Global Issues, 1991)

1. Concerns about the global time and circumstance were expressed by the international community of scientists and scholars at the "Global Environment" conference sponsored by the Royal Society of Canada in Kingston , June, 1991.

Divergent Principle of integration of disparate functions

This principle involves the integrating of the functions of promoter and regulator

For example, International Atomic Energy Agency (IAEA) both promotes the use of nuclear energy and is the regulator of the use of nuclear energy

The International Atomic Energy Agency (IAEA) was initially set up in the 1960's to regulate Nuclear energy; they have, however, become one of the strongest proponents of nuclear energy. A fundamental regulatory principle of the "separation of function" is that "the agency entrusted for regulating a technology cannot be the same agency that promotes the use of that technology"(Knelman, 1975). IAEA, through its UNCED document entitled "Nuclear Techniques and Sustainable Development." acted as a major proponent, not only of the current use, but of the increased use of nuclear energy. {for further discussion, see Knelman and Russow, "the not-too-hidden agenda of International Atomic Agency (IAEA) at UNCED: Nukespeak, and seductive devices, dogmas, strategies and fallacies}

The seductive devices, strategies and fallacies used by the IAEA all draw upon the fundamental language of 'nukespeak.' Knelman (1986, 1992) has expanded on the euphemistic nature of Nukespeak: (term first used in Hilgartner S., R. Bell, and R. O'Connor 1982)

The rule is sanitize by euphemism: political euphemism is of course older than nuclear power. How many of us recognize the "elimination of unreliable elements"? There are forbidden words in the language of civil nuclear power. For example, the words "accident", "pollution" or "disease" are never used. Accidents are either "transients" events, "significant events," "anomalies," "occurrences," or "abnormal occurrences." In the extreme, they become "normal abnormalities", i.e. truth becomes lies. Explosions are "events of rapid disengagement" or "prompt criticality." Waste dumps are "residue areas". Thermal pollution becomes "thermal effects" and pollution becomes "impacts." Disease becomes "health effects." This is a euphemism for cancer and genetic malformations. And missing plutonium, which is the link to clandestine acquisition of nuclear explosives is "material unaccounted for" or simply MUF! (Knelman, 1986.)

Other names relating to nuclear accidents are criticality, nuclear excursions, abnormal evolution, normal aberration, plant transients, unnecessary ignition sources. "Nukespeak" is perpetuated through "nuclear acceptance campaigns" by the PR departments of the nuclear establishment, designed to find "palatable synonyms" for "scare words" through the use of "truth squads" in order to remove "undue public concern", create "pro-energy climate" where "technically qualified persons" would agree that nuclear power poses "no significant threat" and could be entrusted for the timely detection of potential abnormalities, or there is "no evidence" of such threat (as though lack of evidence is proof of assertion) and the promises that turned into

lies i.e. that nuclear power would be "too cheap to meter" providing society with "boundless energy" and save us from "freezing in the dark .", this is the language of Orwell's 1984, where peace is war and truth is a lie." (Knelman, 1992).

Divergent Principle of misconstrued balance"

Round table

Divergent Principle of functional exclusion"

Given we have 6 official languages at the UN. but after 7 only English and in small work shops

Divergent Principle of mitigated commitment"

Divergent Principle of manifest destiny

for example: in the Museum in British Columbia.

Divergent Principle of benevolent co-option

In 1992, the Canadian Network for Environmental Education and Communication (EECOM) was formed to help educators from the formal and the nonformal sectors. It helps them network and better coordinate environmental education activities. EECOM also facilitates the identification and sharing of resources.

At ECO-ed, in October 1992, the group EECOM a network of "environmental educators" was formed; it included several front groups for industry such as Canadian forestry association,

I attended the work group that was instrumental in forming EECOM . I introduced myself indicated my concern about industry's intrusion into education. Then the others introduced themselves and most of them were associated with industry- forests and petroleum,
~1993

() THAT in OCTOBER 1993 I co-wrote with Erich Swartz a paper entitled Mis-education through Rhetoric: Implications for global education Paper accepted for presentation at NARST National Association of Research into the Teaching of Science

This paper is a follow-up to the paper, "Delusion of certainty in science and technology: implications for global environmental issues," presented at the 1992 NARST Conference (National Association of Research into Science Teaching). The delusion of certainty also occurs because of the rhetoric embodied in laws that are deemed to protect the environment. The public assumes that when there are laws in place enunciating high environmental

The institutions and individuals that have been responsible for thwarting the substantial societal changes necessary to "sustain" the environment, economy and the social fabric, usurp

the rhetoric of change and offer solutions that prevent the rhetoric from being translated into action. The global environmental situation is too urgent for the international community to be content with rhetoric. We as educators must expose the discrepancy between rhetoric and action and ensure that students and the public will not be "mis-educated." The need for international awareness of the way that rhetoric is contributing to inaction is essential.

Members of the global community who are concerned about the escalation of war, the degradation of the environment, the violation of human rights, and the disregard for social justice are concerned that the Earth Summit in Rio de Janeiro did not go far enough in addressing the urgency of the global situation. There are a number of systemic constraints that have prevented real change.

Although the global community did not go far enough, there are still some strong fundamental principles that did emerge. International educators, along with other concerned members of the global community, must insist on the translating of the rhetoric of enunciated principles into convergent action.

systemic Constraints preventing change

The following "systemic constraints," appear to have prevented the global community at the Earth Summit from addressing the urgency of the global situation:

- the continued willingness to enshrine the sovereign right to exploit natural resources.
- the refusal of independent states to accept the rule of international law
- the reluctance to establish stringent international environmental standards which will guide but allow for the empowering of communities (Agenda 21, Chapter 3, (a) "Empowering Communities"
- the unwillingness to move beyond sovereign barriers to international governance
- the failure to recognize that the situation is so urgent that international environmental governance and standards have to be necessary
- the unwillingness of states to allow for a stringent monitoring program
- the reluctance to recognize that the urgency of the current global situation requires the summoning up of the international political will to move from "should" to "shall"
- the obsession with consensus which may lead to the lowest common denominator rather than striving through collaboration for the highest tenable principles
- the designation of failure made by those states, institutions and individuals who do not even live up to the moderate principles established by consensus
- the unwillingness to dispel myths and the willingness to perpetuate myths

- the revelation of a problem and the presentation of a solution which could have more disastrous or equally disastrous consequences as the problem (nuclear)
- the continued justification and rationalization about the use of ecologically unsound practices in the guise of technological fixes
- the condoning of technological fixes suggested as solutions:

The objective of this programme area is to undertake research to determine the effects of increased ultraviolet radiation resulting from stratospheric ozone layer depletion on the Earth's surface, and on plant and animal life in affected regions, as well as its impact on agriculture and to develop, as appropriate, strategies aimed *at mitigating its adverse effects*. (14.103 Agriculture)

A considerable number of international bodies are involved in work on *chemical safety*. In many countries work programmes for the promotion of chemical safety are in place. Such work has international implications, as chemical risks do not respect national boundaries. However, a significant strengthening of both national and international efforts is needed to achieve an environmentally sound management of chemicals. (19.3 Toxic chemicals)

" Develop regulatory and non-regulatory measures and procedures aimed at preventing the export of chemicals that are banned, severely restricted, withdrawn or not approved for health or environmental reasons, *except when such export has received prior written consent from the importing country or is otherwise in accordance with the PIC procedure*; (19.53 f Toxic chemicals)

" *The safe and environmentally sound management of radioactive wastes*, including their minimization, transportation and disposal, is important, given their characteristics. In most countries with a substantial nuclear power programme, technical and administrative measures have been taken to implement a waste management system. In many other countries still only in preparation for a national nuclear programme or having only nuclear applications, such systems are still needed (22.2. Radioactive wastes)
- the presence and use of international short-term economic regulations which justify the abandoning by sovereign states of high ecological standards. (Present in GATT regulations, and evident in Chapter 2 of Agenda 21 "Social and Economic Dimensions.")
- the persistence of the situation whereby the power to prevent environmental harm or to preserve environmental heritage resides in those whose interest it is to benefit economically from the environment. and that in whose interest it is to benefit economically from the environment tend to ignore ecologically sound practices
- the persistence of the co-option, often through government funding, of groups, whose role should be to act as the conscience of the official decision makers
- the persistence of the situation where those who should be speaking out are constrained because of professional commitments, and where those who are willing to speak out are not heard because the press fails to report their statements
- the sanctioned use of "words of delusion" that either delude the public into thinking that what is unsafe, is safe, or delude the public into thinking that there is the political will to eliminate unsafe practices.
- the sanctioned use of loophole vague terms like "as appropriate" or of loophole provisions like without *prejudice to international trade principles*. For

example, in the following section on consumption They should therefore review the purchasing policies of their agencies and departments so that they may improve, where possible, the environmental content of government procurement policies, *without prejudice to international trade principles*. (4.23, Consumption)

- the sanctioned use of the "notwithstanding clause" device. This device allows for the indulging in strong statements about deep concern and the need for significant change and then including a notwithstanding clause that negates the strong statement.

" Implement, as a matter of urgency, *in accordance with country-specific conditions and legal systems*, measures to ensure that women and men have the same right to decide freely and responsibly on the number and spacing of their children and have access to the information, education and means, as appropriate, to enable them to exercise this right *in keeping with their freedom, dignity and personally held values, taking into account ethical and cultural considerations*. (3.8 j Combating Poverty)

- the sanctioned use of oxymorons like "the environmentally sound management of hazardous wastes" (20.22 Hazardous wastes) or "the promoting the safe and environmentally sound management of radioactive wastes" (Chapter 22 Radioactive wastes)

- the sanctioned use of term like "harmonizing" which usually leads not the highest tenable principles but to the lowest common denominator

- the unwillingness to redefine development in terms of ecologically sound practices; such as

- (i) the degree to which a state has been able to integrate with the ecosystem through ecological sound practices causing its human activity to have little deleterious impact on the environment

- ii) The degree to which there is an equitable distribution of resources

- iii) the extent to which a state refrains from contributing to global ecological or military harm

- iv) The degree of condemnation, and avoidance of over-consumption

- v) the ability to minimize the human impact on the environment through stabilization of population

- vi) the degree of compliance with the enshrining of positive rights (right to ecologically sound work, to food, to shelter as well as with negative rights)

- (vii) the ability to live within the carrying capacity of the ecosystem; in which case the US could possibly be the least developed

- the stereotyping of countries into categories of "developed, underdeveloped, and developing" rather than designating behaviours and attitudes as being "developed, underdeveloped and developing";

- the presumption that technological transfer should always pass from "North" to "South"

- the reluctance to deal with essential issues such as the link between "Nuclear civil reactors and Nuclear Arms Industry" or the Link between Poverty and lack of universal " secondary" as well as "primary" health care system (3.6. e Combating Poverty)

("Systemic Constraints preventing change," Russow & White, in progress)

Although there were systemic constraints which prevented UNCED from addressing the urgency of the global situation, there were many significant acknowledgements and principles which emerged from UNCED.

Acknowledgements and principles, from UNCED, that could facilitate change

“Although many of the above constraints appear to have influenced the ability of the global community to address the urgency of the global situation, there are many internationally adopted acknowledgements and principles arising out of UNCED that do express the global condemnation of ecologically unsound practices (see Russow, J. Content analysis of Agenda 21 and of Rio Declaration). The principles emerging from UNCED could reflect a convergence or a divergence between expressed concern and action. If there is now the international political will to at least adhere to the few strong principles emerging from UNCED then there will be concurrence. If, however, there is a divergence between expressed concern and action, then little real change will occur.

One of the roles of international educators could be to build on the strong international principles that emerged from the UNCED documents. Normally educators believe that they are mandated to "present both sides," of an issue. Perhaps now, in 1992, given the recognition of increased urgency

the threats to the biosphere which sustains all life on this planet have increased in rate, magnitude and scale that inaction is negligent. The international community has enough information about the pending state of ecological irreversibility that it must act immediately.” (Resolution, from Path to Brazil Resolutions, and also adopted in the NGO Earth Charter)

“Educators can develop curriculum around internationally adopted fundamental principles without being perceived as indoctrinating students” [For further discussion see Russow, J. (1985,1992) “A Mode of Instruction: Principle- issue analysis”].

Another role of international educators could be to expose what could be designated as "divergent principles." Divergent principles are those "principles" that arise when there is a discrepancy between the expressed concern and the actions proposed to address these concerns: A gap between rhetoric and action

In this paper the process of exposing "Divergent principles" has been illustrated. The following Divergent Principles have been abstracted from concern/actions drawn from international law, national law, and industrial practices.

A long-standing systemic constraint is the "rhetoric that purports to address the urgency but is never translated into action.

Divergent principle of shelved commitments

This principle involves the making of strong recommendations but failing to summon up the political will to carry out the recommendations.

IN 1972, WE SAID, recognizing our ignorance
Declaration of the United Nations Conference on the Human Environment
(1972)

- A point has been reached in history when we must shape our actions throughout the world with a more prudent care for their environmental consequences. Through ignorance or indifference, we can do massive and irreversible harm to the earthly environment...
- Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations (Principle 1)
- Man, and his environment must be spared the effects of nuclear weapons and all other means of mass destruction. States must strive to reach prompt agreement, in the relevant international organs, on the elimination and complete destruction of such weapons (Principle 26)

IN 1982, WE WERE STILL SAYING,
World Charter of Nature (1982)

- Activities which are likely to pose a significant risk to nature shall be preceded by an exhaustive examination; their proponents shall demonstrate that expected benefits outweigh potential damage to nature, and where potential adverse effects are not fully understood, the activities should not proceed (11 b)
- Activities which are likely to cause irreversible damage to nature shall be avoided (11. a)
- All areas of the earth, both land and sea, shall be subject to these principles of conservation; special protection shall be given to unique areas, to representative samples of all the different type of ecosystems and to the habitats of rare or endangered species (3)
- Every form of life is unique, warranting respect regardless of its worth to man, and to accord other organisms such recognition, man must be guided by a moral code of action (a)
- Knowledge of nature shall be broadly disseminated by all possible means, particularly by ecological education as an integral part of general education. (16)
- Military activities damaging to nature shall be avoided (Principle 20)

NOW IN 1992, WE ARE SAYING AGAIN, with knowledge

“Humanity stands at a defining moment in history. We are confronted with a perpetuation of disparities between and within nations, a worsening of poverty, hunger, ill health and illiteracy, and the continuing deterioration of the ecosystems on which we depend for our well- being” (Agenda 21, Preamble, 1.1)

Rio Declaration (1992)

- “States should effectively cooperate to discourage or prevent the relocation and transfer to other States of any activities and substances that cause severe environmental degradation or are found to be harmful to human health” (Principle 14)
- “In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation”. (Principle 15)

Agenda 21

- “The growth of world population and production combined with unsustainable consumption patterns places increasingly severe stress on the life-supporting capacities of our planet (Agenda 21, 5.2)
- “Forests worldwide have been and are being threatened by uncontrolled degradation and conversion to other types of land uses... and environmentally harmful mismanagement including...unsustainable commercial logging...and the impacts of loss and degradation of forests are in the form of soil erosion; loss of biological diversity, damage to wildlife habitats and degradation of watershed areas.” (Agenda 21, 11.12)
- “Despite mounting efforts over the past 20 years, the loss of the world's biological diversity, mainly from habitat destruction, over-harvesting, pollution and the inappropriate introduction of foreign plants and animals has continued” (Agenda 21, 15.3)
- “Many of the problems have arisen from a development model that is environmentally destructive and from a lack of protection.” (Agenda 21, 18.45)
- “Unsustainable patterns of production and consumption are increasing the quantities and variety of environmentally persistent wastes at unprecedented rates” (Agenda 21, 21.7)
- “Environmentally sound waste management must go beyond the mere safe disposal or recovery of wastes that are generated and seek to address the root cause of the problem by attempting to change unsustainable patterns of production and consumption.” (Agenda 21, 21.4)
- “Ensure prior assessment of activities that may have significant adverse impacts upon the marine environment ”(Agenda 21, 17.23b)
- “Apply preventive, precautionary and anticipatory approaches so as to avoid degradation of the main environment, as well as to reduce the risk of long-term or irreversible adverse effects upon it” (Agenda 21, 17.23)
- “...Taking into account the cradle-to-grave approach to the management ”(Agenda 21, 20.20)
- “to promote a 'culture of safety' in all countries...” (Agenda 21, 7.60)
- “Develop application of responsible care approach...” (Agenda 21, 20.18)
- “...taking into account entire life cycle ”(Agenda 21, 19.45)
- “...equitable implementation of the polluter pays principle” (Agenda 21, 20.39 b)
- “Effective prevention requires action through effective monitoring and the enforcement and imposition of appropriate penalties” (Agenda 21, 20.20)
- “To increase the availability. in developing countries for utilizing and producing environmentally [safe and] sound renewable energy resources, such as solar, wind geothermal, hydropower and biomass.” (Agenda 21, 9.9)

- “Indigenous people and their communities shall enjoy the full measure of human rights and fundamental freedoms without hindrance or discrimination” (agenda 21, 26.1)

“Indigenous people and their communities have an historical relationship with their lands and are generally descendants of the original inhabitants of such lands. In the context of this chapter the term "lands" is understood to include the environment of the areas which the people concerned traditionally occupy. Indigenous people and their communities represent a significant percentage of the global population. They have developed over many generations a holistic traditional scientific knowledge of their lands, natural resources and environment. Indigenous people and their communities shall enjoy the full measure of human rights and fundamental freedoms without hindrance or discrimination. Their ability to participate fully in sustainable development practices on their lands has tended to be limited as a result of factors of an economic, social and historical nature. In view of the interrelationship between the natural environment and its sustainable development and the cultural, social, economic and physical well-being of indigenous people, national and international efforts to implement environmentally sound and sustainable development should recognize, accommodate, promote and strengthen the role of indigenous people and their communities.” (Agenda 21, 16.1)

“In full partnership with indigenous people and their communities, Governments and, where appropriate, intergovernmental organizations should aim at fulfilling the following objectives”:
(Agenda 21, 16.3)

(a) Establishment of a process to empower indigenous people and their communities through measures that include:

(i) Adoption or strengthening of appropriate policies and/or legal instruments at the national level;

(ii) Recognition that the lands of indigenous people and their communities should be protected from activities that are environmentally unsound or that the indigenous people concerned consider to be socially and culturally inappropriate;
recommendations

“States should effectively cooperate to discourage or prevent the relocation and transfer to other States of any activities and substances that cause severe environmental degradation or are found to be harmful to human health.” (Rio Declaration, Principle 14)

“In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.” (Rio Declaration, Principle 15)

“National authorities should endeavour to promote the internalization of environmental costs and the use of economic instruments, taking into account the approach that the polluter should, in principle, bear the cost of pollution, with due regard to the public interest and without distorting international trade and investment.” (Rio Declaration, Principle 16)

Canada violates or ignores international environmental documents to which it has been a signatory while deluding the world community into thinking that it is genuinely concerned about the environment.

At the press conference given by Federal Minister of the Environment, Jean Charest at the UNCED conference in Rio, a representative of the United Nations introduced Charest as being from a country which was truly concerned about the environment. During the question period I indicated that UNCED should be a time to dispel myths not perpetuate them and that Canada is not an ecologically sound country and that we should be honest with the rest of the world

Evidence that could dispel the myth that Canada is truly concerned about the environment has been occurring for years throughout B.C. in the forest industry, and is occurring currently in the dispute in Clayoquot Sound.

Rather than the courts in Canada insisting on adherence to international environmental documents such as the World Charter of Nature (UN Resolution 37/7, 1982) or to the current Convention on Biological Diversity (1992), Canadian courts condemn those who strive to call for the adherence to international law (environmentalists), and condone those who ignore International Law. (industry).

For Example, Canada is a signatory of the World Charter of Nature, 1982 (UN resolution 37/7) which states the following:

11. Activities which might have an impact on nature shall be controlled, and the best available technologies that minimize significant risks to nature or other adverse effects shall be used; in particular;
 - a) all activities which are likely to cause irreversible damage to nature shall be avoided;

c) Activities which are likely to pose a significant risk to nature shall be preceded by an exhaustive examination; their proponents shall demonstrate that expected benefits outweigh potential damage to nature and where potential adverse effects are not fully understood, the activities should not proceed;

Have governments in Canada since 1982 "avoided" industrial activities such as ecologically unsound "logging practices that have caused irreversible damage to nature.? Have governments in Canada called upon forest companies to not proceed with ecologically unsound practices whose adverse effects are not fully understood?

In 1992, Canada is now a signatory of the Convention on Biological Diversity which notes the following:

that it is vital to anticipate, prevent and attack the causes of significant reduction or loss of biological diversity at source.

also, where there is a threat of significant reduction or loss of biological diversity, lack of full scientific certainty should not be used as a reason for postponing measures to avoid or minimize such a threat

Is Canada reducing the loss of biological diversity at the source, when it is prepared to log old growth forests before it has carried out adequate non-arm's length research into the true biodiversity of the old growth forests? Is there not strong enough evidence in place that clear-cut logging has destroyed biodiversity, yet we appear to wait for "scientific certainty" before we are prepared to avoid or minimize such a threat? By that time there may be very little biodiversity left.

At the Press Conference where Mulroney signed the Convention on Biological Diversity in Rio de Janeiro, I asked him " if the signing of this document would mean that the government of Canada would condemn ecologically unsound practices such as clear-cut logging that destroy biodiversity." He replied that "he did not want to deal with issues "

If Mulroney is willing to sign a document professing to adhere to the preservation of biodiversity, and if he is not willing to deal with the practices that contribute to the loss of biodiversity, then the Canadian public will have to bring this discrepancy between rhetoric and action to the attention of the international community.

The environmentalists who have continually been striving to preserve the little remaining old growth forests, and to call for the need to identify and do research into biodiversity are the ones who have been adhering to the principles enunciated in the United Nations' World Charter of Nature. They will also be the ones who are calling for the preservation of the old growth areas so that Canada will be able to adhere to the binding principles enunciated in the United Nations Convention on Biological Diversity. Yet it is those who act

to prevent "irreversibility" that are prosecuted as criminals, and those who cause 'irreversibility" that are protected by Canadian courts

I have analyzed statements in the following Government of Canada statutes and attempted to extract and categorize general principles underlying these statements:

The Atomic Energy Control Act, R.S. C A-19, S 1
The Emergency Preparedness Act, 1988, C 11.
The Canadian Environmental Protection Act, 1988, C 22.
The Environmental Contaminants Act, 1974-75-76, C 72.
The Fisheries Act, 1977, C 35
The Department of the Environment Act, R.S., C 14 (2nd Supp.), s2
The Government Organization Act 1979, C 13
The Hazardous Products Act, R.S., C H-3, S 1

In all the statutes, which I examined, dealing with either hazardous materials or the pollution caused by hazardous materials, importance is placed on the determination of the safety of the hazardous materials. And it is recognized that in order to determine safety, it is necessary to have information about the materials and their uses. This principle is enunciated in the following examples drawn from the statutes.

a) In section 11 (Disclosure) of the Hazardous Products Act, "disclosure of information is required where the Minister has reason to believe that a product or substance may be dangerous... The Minister may send a written notice to the manufacturer of the product or substance requesting the manufacturer to disclose to the Minister the formula, composition or chemical ingredients of the product or substance and such other information in the possession of the manufacturer as the Minister deems necessary for the purpose of determining whether the product or substance is or is likely to be a danger to the health or safety of the public."(The Hazardous Products Act. R.S., CH-3, S 1)

b) Pursuant to 7 (2) Of the Environment Contaminants Act "where the Minister of National Health and Welfare believes that a substance will constitute a significant danger to human health or the environment, the Minister may send a written notice to any person engaged in any commercial, manufacturing or processing activity involving the substance or any member of a classes of substances of which the substance is a member requiring that person to furnish the Minister with such information specified in the notice." (The Environmental Contaminants Act. 1974-75-76, C 72)

c) Section 33. 1 of the Fisheries Act states the following:
"Every person who carries on or proposes to carry on any work or undertaking those results or is likely to result in

a) the deposit of a deleterious substance in water frequented by fish or in any place under any conditions where that deleterious substance or any other deleterious substance that results from the deposit of that deleterious substance may enter any such water, or

b) the alteration, disruption or destruction of fish habitat shall on the request of the Minister... (a) provide the Minister with such plans, specifications, studies, procedures, schedules, analyses, samples or other information relating to the work or undertaking and with such analyses, samples, evaluations, studies or other information relating to the water, place or fish habitat that is or is likely to be affected by the work or undertaking as will enable the Minister to determine

c) whether there is or is likely to be a deposit of a deleterious substance by reason...d) whether the work or undertaking results or is likely to result in any alternation, disruption or destruction of fish habitat.”

(Federal Fisheries, 1977, C. 35)

e) In section 5 Department of the Environment Act

“The Minister in exercising his powers and carrying out his duties and functions under section 4 shall...

5(ii) ensure that new federal projects, programs and activities are assessed early in the planning process for potential adverse effects on the quality of the natural environment and that a further review is carried out of those projects, programs, and activities that are found to have probable significant adverse effects and the results thereof taken into account”,

f) Furthermore, in Section 2 of the Environmental Contaminants Act consideration is given to effects that are persistent and cumulative:

“(iii) the extent to which the substance or any class of substances of which it is a member can become dispersed and will persist in the environment.

(iv) the ability of the substance or of any class of substances of which it is a member to become incorporated and to accumulate in biological tissues and to cause biological change.” (The Environmental Contaminants Act. 1974-76)

8. That the principle is set out in the regulations related to the Atomic Energy Board Act that extreme precautions must be taken in the transport of atomic materials:

a) “*(2) Any person who transports or causes to be transported any radioactive material ...” (See Exhibit A for the list of stipulated regulations for atomic materials)

9. That the principle is expressed in the Emergency Preparedness Act that the government has a duty to make extensive provisions for civil emergency preparedness

Divergent Principle of accumulated appeasements

This principle involves the participating in conferences, conventions, round tables that examine a particular issue and knowing that delay dispels criticism

Divergent principle of managed conception

This principle involves the offering of a new vision by destroying of what exists so that it will no longer even be conceived

Principle of destroying what exists to eliminate its conception [to deny its prior existence]

involves the destruction of what exists so that it will not even be conceived

For example, if the old growth forests were destroyed the conception of the old growth forest would be the "managed" forest of industry.

Principle of management of conception of preservation

involves the creation usually through a diorama in museum of what one wants to bring into existence

"A major problem in *settling the question* of "old growth preservation" is defining "old growth" - everyone has his or her own definition. the term "old growth" more likely describes a *biological condition* or forest environment, rather than trees of a specific age classification.

Once it is defined, the biggest problem then is that society must decide on the goal and the strategy. Preservation of land areas should be both *biologically reasonable* and *socially affordable*. Society needs to weigh the costs and benefits of all the options.

One solution could be to leave some of the new forests we are growing long enough to develop the characteristics of old growth stands. (Janna Kumi, Silviculture Research Coordinator) [they have eliminated the concept of an old growth forest being an area where there has been no human intervention)

Divergent principle of fulfillment illusion

This principle involves the stating of objectives but knowing that fulfillment is impossible

Divergent Principle of non-enforceability

This principle involves the agreeing to anything providing that it will not be enforceable

Divergent principle of excluded alternative

This principle involves the claiming to consider an alternative but then irreversibly eliminating the alternative during the period of deliberation

3. Talk and log syndrome

ethical implications of violation of the "principle of fair alternative" which ensures that no action should irreversibly destroy an alternative while this alternative is purported to be seriously considered.

In the decision-making process alternatives that are purported to be under consideration are being eliminated while the decision-making process continues.

Although certain areas have been set aside, while the Commission on Resources and Environment is involving the community, logging will proceed in specific areas.

Divergent Principle of fair unequal access

This principle involves the asserting of equal access while affirming that some have more equal access than others
involves access being determined in a mobility sense rather than a pecuniary sense

Everyone has access; " everyone has the right to sleep under the bridges of Paris but it is only the poor who avail themselves of that right"

Divergent Principle of Misconstrued balance

This principle involves expressing concern about the fairness, consensus and balance, and then failing to make a distinction between vested human interests and ecological concerns

Members on Round table

Divergent principle exclusionary tactics or extreme exclusion

This principle involves the lauding of the consensus process and then ensuring that the extreme views are exclude before the process begins
For example, prior to engaging in the Consensus process for CORE, the so-called different sectors are to meet select delegates; the delegates that reflect the extremes in each group will thus be eliminated as delegates, before the delegates enter into the consensus process

For example, during the public workshops for the Canadian "Green Plan," there were sessions with participants

Divergent principle of predetermine failure of consensus to justify unilateral decision

This principle involves decision making body initiating a process of consensus, which by its composition will not achieve consensus, and then indicating that if the process does not work, the decision-making body will make the decision.
For example, in the description of the consensus process for CORE, the premier states:

"The Commission will complete its regional planning process on Vancouver Island within 18 months. If consensus is not possible, after duly considering the Commission's public report, decisions on protected areas and the working forest will be taken by government." (Premier Harcourt, Press Release, January 18, 1992)

Divergent principle of misapplied balance or fairness

This principle involves the extolling of fairness and balance in the remainder while having destroyed and "managed" a large proportion of the whole
involves the destruction of large proportion of whole and then demanding the sharing of the remainder, and extolling the unfairness of the opposition for not being willing to share or to enter into a "balanced" process

Divergent principle of survival rationalization

This principle involves the extolling of the value of the work ethic to justify the causing of harm

Divergent Principle of Pontification (the greener than thou)

This principle involves the undertaking to "solve " a problem that exists externally while ignoring the same problem when it exists internally [thus giving the illusion that the problem does not exist internally]

Magnanimity

Rather than address the problem locally, the state offers to address the same problem in another state thus giving the illusion that the problem does not exist in the home state.

In order to address external problem presumes that problem does not exist internally

Mulroney at UNCED promised 115 M for "managing forests in developing countries

Divergent Principle of commitment entailing presumption of minimum standard

This principle involves proposing a solution to a problem whose existence depends on a much deeper problem that is not even being addressed. Brazil states it will include 'environmental education,' in the school system, conveying the impression that it has in fact a school system (Lopes, personal communication)

Divergent principle of flaunting the good to disguise the bad

This principle involves the focusing on the only non-destructive part of production while ignoring the serious impacts of the predominantly destructive part of the production.

Divergent principle of industry-driving principle

This principle involves the proponent of harm determining what should constitute harm

Divergent principle of misplaced onus of proof

This principle requires opponents of activities that could have potentially significant adverse environmental effects to have to demonstrate harm rather than proponents of the activities having to demonstrate the safety of their activities.

Divergent principle of opportunistic criticism (self-servingism)

This principle involves the phrasing and using of the criticism of the opposition to discard a term or practices and then replacing it with a term or practices that would be less acceptable to the opposition

Principle of opportunistic criticism: self servingism

involves using the criticism of the opposition to discard a term or practices and then replacing it with a term or practice that would be more despicable to the opposition

statement of the Round Table

Sustainable development

replaced with "sustainability"

" One of the most important findings of the British Columbia r

Round Table's initial series of public consultations was that the use of the term 'sustainable development' was problematic. As in the rest of the world, British Columbians had difficulty accepting the Brundtland Commission's definition of this term and the Round Table found that the debate surrounding this definition often detracted from the development of a proactive strategy designed to meet British Columbia's needs. As result of the apparent contradiction between 'sustainable ' (meaning capable of being maintained) and "development" (implying expansion and growth), the Round Table has chosen to adopt the simpler term of 'sustainability' (meaning a process or a state that can be maintained indefinitely).

Divergent principle of delusion of solution

This principle involves the offering of a solution that is either equally as bad as or worse than the problem it was intended to solve

1.4. "Principle of delusion of solution"

Making strong statements and then offering a solution that is worse than the problem,

IAEA document

Divergent principle of the dogma of “flamboyant absurdity”

This principle carries the concerns of one's opponents to the point where the regulations governing the opponent's concerns should become the standard by which other potentially lesser concerns will be addressed.

For example, the IAEA appears to advocate that, what is considered to be the most dangerous industry, just because it is dangerous, has developed stringent standards, and that they who contribute to possibly the greatest uncontrollable hazard are the ones who should assist the community in dealing with other hazards.

“The basic principles for radiation protection and safety in all applications and activities in nuclear science and technology are precautionary and are so well founded in science and so widely accepted that they are now also being regarded as a source of guidance in controlling pollutants and impacts arising from other human activities. Their wider application would undoubtedly contribute towards sustainable development.” (p.2)

Divergent principle of "justification through dire consequences of alternatives" device

This device involves the revealing of the dire consequences of the current practices and offering one own practice as the salvation for the problem

In the following statement the IAEA cites the dire consequences of the other alternatives to justify their proposed alternative:

“The problem of acid rain, which is linked to emissions from the burning of fossil fuels, has been recognized for decades..... the primary concern about the continued and increasing use of fossil fuels is the problem of CO₂ emission and the potential impact on world climate..... World conference on the Changing Atmosphere... need to reduce CO₂ emission (IAEA document, p. 5)
climate change in connection with fossil fuels” (p. 9)

Divergent principle of the “benevolent outcome exploitation” strategy

This strategy involves the selection of the outcome which the opposition to the proposed alternative would advocate and the subsequent attempt to demonstrate that the proposed alternative, which the opposition would condemn, would be the best way of achieving that outcome.

In the following statements from the IAEA document, the IAEA focuses on the desired outcomes of reducing acid rain and limiting greenhouse gas to justify the selection of their proposed alternative:

“Several governments have already made commitments to reduce carbon emission, while recognizing that this will be hard to achieve except through drastic policy decisions in the energy sector.” (IAEA Document, 1992, p.6)

“Nuclear power plants in normal operations cause very little environmental detriment and are beneficial when they replace plants which would emit CO₂, SO₂, and NO₂ (p. 12). In this respect they would help to reduce acid rain and limit greenhouse gas emissions” (IAEA Document 1992, p. 12)

Divergent Principle of usurpation of opponents desired consequences

This principle involves the commiserating with the opponent's concern and then showing how the opponent's position would deny the concern
"Principle of usurpation of opponents desired consequences"
involves the selection of the opponents concern and then showing how the opponent's position would deny the opponents' concern
For example, The Fraser Institute of British Columbia is against rent controls. To support their opposition, they indicate how rent controls would contribute to discrimination (something that the opponent would be concerned about)

Divergent Principle of vested interest altruism or blatant visual misrepresentation

This principle involves the portrayal or depiction of an idyllic state disguising vested interest or ecologically unsound practices, visually or verbally. For example, in the development plans presented by the Forest Companies, industry depicts a fawn, a single logger in the Forests and a clear cut the size of a classroom, a blatant case of visual misrepresentation.

At the public viewings sponsored by the company and usually with a concurrent presentation by the Ministry of Forestry, there are usually presentations of plans (verbal-graphic imagery) indicating what is to be done accompanied by visual representations (visual imagery) of what they claim will occur. I have noticed that there is a disjunction between the presentation of plans and the visual representation of these plans. In the visual representation are often scenes of fawns in the forest, a logger with a saw in an area that appears to be fully treed, and a photograph of a clear-cut area that gives the impression of being not much larger than a class room. I as a member of the public have been initially intimidated by the complexity of the plans and look to the visual representation for clarification and simplification of the information. In the plans there is evidence of large areas of clear cut but in the visual representation there is usually no visual evidence of road blasting, of construction extensive road building, of miles of deforestation caused by clear-cut, of broadcast burns, or of non-productive planted areas that pass for reforestation. I felt that while I had been asked to attend the public process viewings, I do not feel that I have been presented with the real alternatives: I was left with the impression that the companies have been allowed to use whatever visual images they wish in order to inform and communicate with the public, regardless of whether the visual images correspond to what is actually being done. I also noticed that at several sessions the Ministry of Forestry and the Ministry of Fisheries were in attendance with their own visual representation. When they were present, they also depicted scenes of wilderness. I felt that I had been visually misled by not only the forest companies but also by the government departments that are supposed to be monitoring the forest companies in the public interest.

2. Another example of visual/verbal misrepresentation is present in the juxtaposition of the actual forests. (Visual imagery) and the interpretation of what the visual image represents (verbal imagery). On a trip through the Cowichan Valley, I noticed an example of a lush second growth forest. On the road in front of this lush second growth, Fletcher Challenge has placed a sign that reads "Fletcher Challenge, naturally seeded, 1920." This juxtaposition between the lush second growth forest and the sign is another example of verbal/visual misrepresentation. Fletcher Challenge neglected to mention on the sign that this lush second growth forest is not the outcome of their current forest practices, and that the only reason that this second growth stand, is so lush is that it was logged at a time when there was minimal construction of roads, when there was no full-scale clear-cut, and when there was no prescribed burn and when it was not replanted in off-site monoculture.

Divergent principle of silken transition

This principle involves the expression of deep concern before launching into the real agenda, so that the reader is ready for acceptance

For example

"Surveys have shown clearly the concern of Canadians for their environment: but patterns of behaviour that spring from generations of rising expectations and assumptions of inevitable economic growth are slow to change. Environmental security and job security often seem to be in conflict."

The key is education: first, to transform public concern into appropriate decision making and action; second, in the longer term, to help new generations to understand the interdependence of ecology and economic development, to acquire the skills to find the balance between them, and to develop the commitment to participate in the search for a more sustainable future.

"Learning for a sustainable Future:" A sustainable Development Education Program. affiliated with the Conference Board of Canada.

Industry Association Contact Meetings - members of the Board of Directors and Conference Board staff held a series of meetings with major industry associations to ask them to promote the program with their member companies. These member companies will be approached for the private sector portion of the program funding in 1992. Association involvement was seen as a critical part of the legitimization process for the companies.

Divergent Principle of entailment of presumed minimum

this principle involves undertaking to address a problem that is dependent upon a more serious problem that is not addressed

Divergent Principle of redefining legally binding terms

This principle involves the recognition that it is important that a concept is legally sanctioned, and then redefining the term that designates the concept to accommodate practices that have been considered to deny the concept

For example, The concepts of " biodiversity
the biodiversity convention being signed, and eventually ratified and legally binding. Industry redefined "biodiversity"

Divergent Principle of redefining legally binding terms

This principle involves the adopting of "environmentally correct" terms, and then redefining the terms to accommodate current practices that would violate the essence of these terms.

For example, The British Columbia Forest Resources Commission has adopted the term "ecologically sound practices" and then proceeds to claim: that "clear cut logging" in most cases was the most ecologically sound forest practice." (Forest Resources Commission Report, 1991)

Miller [the Minister of Forests] concluded by announcing that the Forest Resources Commission has been asked to research and propose a Forest Practices Code. "Its objective will be to ensure that the management of our forest is based on sound ecological practices and achieves the high standards we expect for stewardship "(Press Release, January 18, 1992)

In a similar way Industry has adopted the term "old growth," and proceeded to redefine it:

Industry is also redefining "old growth" forests. (Press Release; January 18, 1992) {Note; Miller has recently been suspended for Conflict of Interests}

"A major problem in *settling the question* of "old growth preservation" is defining "old growth" - everyone has his or her own definition. the term "old growth" more likely describes a *biological condition* or forest environment, rather than trees of a specific age classification.

Once it is defined, the biggest problem then is that society must decide on the goal and the strategy. Preservation of land areas should be both *biologically reasonable* and *socially affordable*. Society needs to weigh the costs and benefits of all the options.

One solution could be to leave some of the new forests we are growing long enough to develop the characteristics of old growth stands." (Janna Kumi, Silviculture Research Coordinator)

Divergent Principle of self-serving misplaced categories"

Designation of "North/South dichotomy as being between the North wanting environment and the South wanting development

" Developed countries"

statements from "South Group"

iv call for the establishment of a global programme for alleviating poverty in the South and for protecting or rehabilitating the environment

b. the reduction of emission, over an agreed period of time, in line with a country's quota;

(d) The creation of a global system for the transfer, on preferential and non-commercial terms, of environmentally-friendly technologies that would enable the South to reduce its emission of gases while pursuing a path of economic growth.

p. 1 UNCED subject matter is nothing less than the safety of the planet and the well-being and future of humankind. Its declared aim is to adopt recommendations which, if implemented, may ensure that the world and its resources will satisfy the needs and aspirations of all human beings in an equitable, environmentally sound and sustainable manner.

Divergent Principle of non-effective resolve

This principle involves the criticizing of harm after having caused the harm when one was in a position to prevent it

Principle of non-effective commitment

Involves the proponent of harm waiting until he/she is ineffective to criticize the harm

For example: retired general becomes concerned about what he or she no longer has control over prevention

Divergent Principle of denying-donor

This principle involves donating to the disenfranchised and then continuing to deny equitable distribution of resources

1.20. Principle of denial-donor

those who deny the inequitable distribution of resources, use words and actions to donate to the disenfranchised

Mc Millan Bloedel sets up a forest

Divergent principle of readjustment for error (the Green Revolution syndrome, or the perpetuation of the technological fix delusion)

This principle involves the setting up of departments and institutions to determine the means of rectifying the harm after having permitted and continuing to permit harmful practices to occur

Because of this principle, there is the continued condoning of research and development into rectifying the harm done through ecologically unsound practices rather than discontinuing ecologically unsound practices

For example, In Sudbury Canada, the soil has been destroyed for years, and trees have not been able to grow, because of emissions from industry.

Rather than addressing

Divergent Principle of couched hypocrisy

This principle involves talking about the care, or new found wisdom and commitment to prevent harm while continuing to carry out practices that cause harm

Divergent Principle of criticizing as a fault the very thing that the critic is responsible for

"Unfortunately, the present role of the media and of our educational institutions seems to be one that entrenches the status quo. This is partially due to the infrastructures of these institutions and their inability to keep pace with a rapidly changing world. But it is also due in part to the comfort we all feel with the familiar and like the world to operate in a way that is rational, predictable, and understandable. How do we change this attitude: how do we help people make some sense out of the changes occurring all around them? how do we equip people to not only become comfortable with change but to be agents for positive change?" (B.C. Round Table Education Strategy)

Divergent principle of incompatible problem /solution.

Divergent principle of benevolent camouflage

This principle involves the

"the two tenets of the program are "positivism" and Both sides

"Principle of enunciation compromise advocacy"

Divergent Principle of non-effective resolve

Divergent Principle of malevolent co-option

this principle involves the displaying the language of change while continuing to practice as usual

This principle involves the setting up of principles that the opposition would advocate and then stating that realistically these principles must be compromised

For example, in the "B.C. Round Table: Education Strategy", prepared by private consultants for British Columbia Round Table on Economy and Environment), they enunciate strong principles and then indicate that realistically there will have to be trade-offs.

Sustainability report

- A sustainable British Columbia will have as its objectives: The preservation of biodiversity; the protection of pure water, clean air and uncontaminated terrestrial, wetland, coastal and sea-bottom systems; the stabilization of global climactic conditions; the protection of natural beauty that we value aesthetically and spiritually; and a commitment to a new economic ethic based on making better use of what we have.

A new style of 'doing business' will have to include:

- A new order of urban design that reduces the need for energy-intensive transportation, integrates green space, and enhances our sense of community.
- Forestry and agricultural practices that protect soil, water and nutrient cycles
- Land-use planning that preserves prime agricultural and forest lands and protects wilderness areas and wildlife habitat, while providing, working capacity for development.

- A vibrant and dynamic economy, in which ingenuity is focused on qualitative--rather than quantitative --growth, and in which the full value of environmental assets and the impacts of human activities are considered

*A new harmony with First Nations people in which aboriginal rights and self-determination have been resolved

* Full and satisfying participation in decision-making, with local and individual empowerment

- A social support structure that eliminates the fears of hunger, sickness, alienation and lack of opportunities for education and personal fulfillment
- Health that is measured in degrees of wellness rather than sickness; a standard of living that is measured by quality of life rather than by level of consumption

In summary, we will have realized our absolute dependence on planet earth and will have adopted the ethic of sustainability for our collective survival.

- Limit our impact on the living world to stay within its carrying capacity (its ability to renew itself from natural and human impacts)

- Preserve and protect the environment (conserve life support systems, biological diversity, and renewable resources)
- 8 Hold to a minimum the depletion of non-renewable resources
- Promote long-term economic development that increases the benefits from a given stock of resources without drawing down on our stocks of environmental assets (through diversifying and making resources use more efficient)
- Meet basic needs and aim for a fair distribution of the benefits and the costs of resources use and environmental protection
- Promote values that support sustainability 9 through information and education)

Applying the Principles

“Principles are meant to act as guidelines to shape provincial policy and to test the wisdom of our decisions and actions. However, applying the principles in daily decision-making often involves making difficult choices and compromises. In order to balance environmental, social and economic values fairly, trade-offs between human activities and the principles will be inevitable. (Draft of Education Strategy,” (September, 1992),

Divergent Principle of usurped right to criticize

This principle involves the criticizing of proposals for not going far enough by critics who do not even live up to the proposals that they criticize

For example, the Ministry of the Environment of British Columbia returned from the Earth Summit and complained about UNCED being a failure because it did not go far enough (Cashore, 1992, Address given at Post- UNCED Conference). Canada does not even live up to the principles enunciated at UNCED, such as the "precautionary principle," "Anti- dumping principle," or the "life-cycle approach principle"

Divergent Principle of transferred integrity

For example, Steven Owen who was the former Ombudsman of British Columbia, is placed in the controversial position of being the Commissioner of the " Commission on Resources and Environment"

"I'm confident Stephen Owen can lead that process [CORE] in a fair, open and balanced way. The integrity he brings to this position will provide an excellent foundation for the new commission." (Harcourt, Premier of British Columbia (January 18, 1992, in Press Release)

I am extremely pleased that Stephen Owen, with his proven track record for fairness, openness and integrity will lead this initiative. (Harcourt, Premier of British Columbia (January 18, 1992, in Press Release)

Divergent Principle of self-regulation or self-monitoring" or "fox in chicken coop syndrome"

This principle affirms the importance of regulating or monitoring and then allows the proponents of the activity that is to be regulated or monitored, the privilege to regulate or monitor themselves

For example, the (International Atomic Energy Agency (IAEA) has been given the responsibility to monitor the commercial use of nuclear energy, while at the same time they have become promoters of the use of nuclear energy {for further discussion, see Knelman and Russow, "the not-too-hidden agenda of International Atomic Agency (IAEA) at UNCED: Nukespeak, and seductive devices, dogmas, strategies and fallacies}

Divergent Principle of balance of convenience

This principle recognizes the need to prevent irreparable harm while interpreting irreparable harm in terms of balance of convenience

For example, in the updated version of " the Conduct of Civil Litigation in B. C., the following fundamental principle related to injunctions is put forth:

"The remedy [of injunction] of course, is an equitable one. ' The exercise of the equitable jurisdiction is not to be restricted by the straitjacket of rigid rules but is to be based on broad principles of justice and convenience, equity regarding the substance and not merely the facade or the shadow. It moves with time and circumstances. (Norris, J.A.) Equity is not to be presumed to be of an age past childbearing.' (Haman, J) " (Conduct of Civil Litigation in B.C., Chapter 42, August, 1991)

"If a remedy of an injunction is an equitable remedy that should move with time and circumstances, perhaps the courts could look to leaders in the international community and to documents from the body of international environmental law and convention for insight into the current time and circumstance. "(For further discussion see Malaren, D. Proceedings from the Royal Society of Canada Conference on Global Issues, 1991)

1. Concerns about the global time and circumstance were expressed by the international community of scientists and scholars at the "Global Environment" conference sponsored by the Royal Society of Canada in Kingston, June, 1991.

Divergent Principle of integration of disparate functions

This principle involves the integrating of the functions of promoter and regulator

For example, International Atomic Energy Agency (IAEA) both promotes the use of nuclear energy and is the regulator of the use of nuclear energy

The International Atomic Energy Agency (IAEA) was initially set up in the 1960's to regulate nuclear energy: They have, however, become one of the strongest proponents of nuclear energy. A fundamental regulatory principle of the "separation of function" is that "the agency entrusted for regulating a

technology cannot be the same agency that promotes the use of that technology"(Knelman, 1975). IAEA, through its UNCED document entitled "Nuclear Techniques and Sustainable Development." acted as a major proponent, not only of the current use, but of the increased use of nuclear energy. {for further discussion, see Knelman and Russow, "the not-too-hidden agenda of International Atomic Agency (IAEA) at UNCED: Nukespeak, and seductive devices, dogmas, strategies and fallacies}

The seductive devices, strategies and fallacies used by the IAEA all draw upon the fundamental language of 'nukespeak.'" Knelman (1986, 1992) has expanded on the euphemistic nature of Nukespeak:
(Term first used in Hilgartner S, R. Bell, and R. O'Connor 1982)

"The rule is sanitized by euphemism: political euphemism is of course older than nuclear power. How many of us recognize the "elimination of unreliable elements"? There are forbidden words in the language of civil nuclear power. For example, the words "accident", "pollution" or "disease" are never used. Accidents are either "transients," "events," "significant events," "anomalies," "occurrences," or "abnormal occurrences," In the extreme, they become "normal abnormalities," i.e., truth becomes lies. Explosions are "events of rapid disengagement" or "prompt criticality". Waste dumps are "residue areas." Thermal pollution becomes "thermal effects" and pollution becomes "impacts." Disease becomes "health effects." This is a euphemism for cancer and genetic malformations. And missing plutonium, which is the link to clandestine acquisition of nuclear explosives is "material unaccounted for" or simply MUF! (Knelman, 1986.) Other names relating to nuclear accidents are criticality, nuclear excursions, abnormal evolution, normal aberration, plant transients, and unnecessary ignition sources. "Nukespeak" is perpetuated through "nuclear acceptance campaigns" by the PR departments of the nuclear establishment, designed to find "palatable synonyms" for "scare words" through the use of "truth squads" in order to remove "undue public concern", create "pro-energy climate" where "technically qualified persons" would agree that nuclear power poses "no significant threat" and could be entrusted" for the timely detection of potential abnormalities, or there is "no evidence" of such threat (as though lack of evidence is proof of assertion) and the promises that turned into lies i.e. that nuclear power would be "too cheap to meter" providing society with "boundless energy" and save us from "freezing in the dark"; this is the language of Orwell's 1984, where peace is war and truth is a lie." (Knelman, 1992).

1.8. "Principle of misconstrued balance"

Round table

1.9. Principle of functional exclusion"

Given we have 6 official languages at the UN. but after 7 only English and in small work shops

1.10. "Principle of mitigated commitment"

to

1.13. Principle of manifest destiny

for example: in the Museum in British Columbia.

1.22. Principle of benevolent co-option

Implication for global education

Cynicism because of discrepancy between rhetoric and action.

This syndrome occurs when individuals, groups, or institutions sense that a particular direction can be particularly self-serving. In some cases, the particular direction has been advocated by individuals, groups or institutions which the

JCL s have attempted to discredit, to thwart in any pursuits, prevent access to instruments of change. When the JCL realize the self-serving aspect, they embark upon a two-prong strategy: the discrediting through misrepresentation and the feigned concern but offering a solution that would counteract the addressing of the concern

Perhaps since the members of the Round Table are only recent converts to environmental concerns, they are not aware that most concerned members of the global community have been calling for a changed vision and a shift in values and a new world view which encompasses the following, recommendations many of whom have been endorsed by international declarations, covenants, conventions and charters

6. That the principle is repeatedly seen in these statutes that the government has a duty to provide the public with crucial and essential information about the environment

- a) In section 5 of the Department of the Environment Act it is written:
"The Minister in exercising his powers and carrying out his duties and functions ... shall...

(iii) provide to Canadians environmental information in the public interest.” (Department of the Environment Act, R.S., R.S., C 14 ,2nd Supp., S 2)

- b) Also, in section 19 (6) of Canadian Environmental Protection Act the Minister may disclose information:
"Where
 - a) the disclosure is in the interest of public health, public safety or the protection of the environment and
 - b) the public interest in the disclosure clearly outweighs in importance any material financial losses or prejudice to the competitive position of the person who provided the information or on whose behalf it was provided.” (Canadian Environmental Protection Act, 1988, C 2)
- c) In section 6 of the Government Organization Act, the mandate is given:
“6(iii) to provide to Canadians environmental information in the public interest.” (Government Organization Act, 1979, C 13)

7. That the principles are repeatedly enunciated in these statutes that the environment is worthy of protection and that government has a duty to protect the environment and to prevent environmental harm

a) “It is hereby declared that the protection of the environment is essential to the well-being of Canada.” (Canadian Environmental Protection Act, 1988, C 22)

b) “Whereas the presence of toxic substances in the environment is a matter of national concern.” (Canadian Environmental Protection Act, 1988, C 22)

c) In the Department of the Environment Act, under the division of "Powers, duties and functions of the Minister, it is stated that “the duties of the Minister include providing for

a) the preservation and enhancement of the quality of the natural environment, including water, air and soil quality; and to

2(i) endeavour to protect the environment from the release of toxic substances.” (Canadian Environmental Protection Act, 1988, C 22)

d) “The duty of the Federal Government is that it shall (a) take both preventative and remedial measures in protecting the environment,” (section 2, Canadian Environmental Protection Act, 1988, C 22).

a) “5 (1) c to provide education and training related to civil preparedness or emergencies.” (Emergency Preparedness Act, 1988, C 11)

b) "5 (1) e to analyze and evaluate civil preparedness for emergencies and conduct related research." (Emergency Preparedness Act, 1988, C 11)

()

Tuesday, December 23, 1992

Contact Joan Russow 1230 St Patrick Street, Victoria, B.C.
604-598-2740 FAX 604-721-7767

() THAT in 1992, Dr Fred Knelman and I wrote The "Not-too-hidden agenda" of the International Atomic Energy Agency (IAEA) at UNCED: Nukespeak, and Seductive Devices, Doctrines, Dogmas, Strategies and Fallacies

By Fred Knelman and Joan Russow
EXHIBIT

Dr Fred Knelman is the Vice President of the Whistler Foundation for a Sustainable Environment, and Joan Russow, was the delegate for the Whistler Foundation at the New York Preparatory Committee for UNCED and at the Earth Summit at Rio. The Whistler Foundation and the Nuclear Age Peace Foundation had circulated a Declaration that was signed by 37 Nobel Laureates; this declaration called for the phasing out of Nuclear energy. They requested permission to read this declaration at one of the plenary sessions at Rio Centro; permission was denied.

The International Atomic Energy Agency (IAEA) was initially set up in the 1960's to regulate Nuclear energy; they have, however, become one of the strongest proponents of nuclear energy. A fundamental regulatory principle of the "separation of function" is that "the agency entrusted for regulating a technology cannot be the same agency that promotes the use of that technology"(Knelman, 1975). IAEA, through its UNCED document entitled "Nuclear Techniques and Sustainable Development." acted as a major proponent, not only of the current use, but of the increased use of nuclear energy.

Agenda 21-- the 700 page far-reaching action-plan document from UNCED, was adopted unanimously by the global community represented at the Earth Summit in Rio. In Agenda 21 the following concern about radiation was expressed:

The deterioration of environmental quality, notably air, water and soil pollution owing to toxic chemicals, hazardous wastes, radiation and other sources, is a matter of growing concern.
(Chapter 16. subsection 12),

The extent of the consequences of the nuclear industry were also identified in Agenda 21:

Annually about 200,000 m³ of low-level and intermediate-level waste and 10,000 m³ of high-level waste (as well as spent nuclear fuel destined for final disposal) is generated worldwide from nuclear power production. These volumes are increasing as more nuclear power units are taken into operation, nuclear facilities are decommissioned and the use of radionuclides increases. (Chapter 22, subsection 1)

Yet at one of the plenary sessions, Mr. Hans Blix, Director-General of the IAEA, was given permission to present a document advocating nuclear energy as being a safe alternative energy for the future. The International Non-Governmental Organizations, (NGOs), however, recognized that the fundamental regulatory principle had been violated, and gave IAEA, the dubious honour of being presented with the International NGO Community's "Most Preposterous Proposal Award" "for presenting nuclear power as the environmental solution in energy and successfully keeping its problems out of the documents."

We would like to highlight some of the SEDUCTIVE DEVICES, STRATEGIES, DOCTRINES, DOGMAS and FALLACIES that have made the IAEA worthy of this honour. The examples will be drawn from IAEA document which was prepared for UNCED. Also references will be made to other UNCED Documents such as Agenda 21 and the Rio Declaration-- the Earth Charter-- 1992, and the Canada's National Report for UNCED, 1992

The seductive devices, strategies and fallacies used by the IAEA all draw upon the fundamental language of 'nukespeak.'" Knelman (1986, 1992) has expanded on the euphemistic nature of Nukespeak:
(term first used in Hilgartner S., R. Bell, and R. O'Connor 1982)

The rule is sanitize by euphemism: political euphemism is of course older than nuclear power. How many of us recognize the "elimination of unreliable elements"? There are forbidden words in the language of civil nuclear power. For example, the words "accident", "pollution" or "disease" are never used. Accidents are either "transients," "events," "significant events," "anomalies," "occurrences," or "abnormal occurrences." In the extreme, they become "normal abnormalities," i.e. truth becomes lies. Explosions are "events of rapid disengagement" or "prompt criticality." Waste dumps are "residue areas." Thermal pollution becomes "thermal effects" and pollution becomes "impacts." Disease becomes "health effects"; This is a euphemism for cancer and genetic malformations. And missing plutonium, which is the link to clandestine acquisition of nuclear explosives is "material unaccounted for" or simply MUF! (Knelman, 1986.) Other names relating to nuclear accidents are criticality, nuclear excursions, abnormal evolution, normal aberration, plant transients, unnecessary ignition sources. "Nukespeak" is perpetuated through "nuclear acceptance campaigns" by the PR departments of the nuclear establishment, designed to find

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() **THAT in 1992**, I prepared a criticism of the BC Environmental Assessment Program

EXHIBIT

1992 Principle of Environmental impact assessment should be carried out on projects likely to have significant impacts upon biological diversity

• Introduce appropriate environmental impact assessment procedures for proposed projects likely to have significant impacts upon biological diversity....
(Agenda 21, 15.5 k)

The British Columbia government has failed to insist on an environmental impact assessment on the potentially significant impact of current forest practices, such as clear-cut logging, on biodiversity. Even though, as admitted by Dale Lovick, the Chair of public hearings on the B.C. Environmental Assessment Act, the public was demanding for forest practices to be included on the list of projects and activities which should require an environmental assessment., forest practices appear to be excluded from this Act.

In jurisdictions where an environmental impact assessment has been carried out, practices, typical of those carried out currently in BC forests, have been assessed as being destructive of biodiversity. For example, a German biologist specializing in biodiversity indicated that:

The practice of clearcutting, followed by artificial reforestation has undoubtedly many technical and organizational advantages. In the course of time, however, soil scientists and ecologists found out that the practice of clearcutting automatically leads to considerable drawbacks:

-wounding of the soil surface through logging operations.

- Risk of erosion

-High irradiation and higher climatic extremes alter the microclimate, the flora and the microflora and deteriorate the growing conditions for a number of valuable tree species. - -Soil compression and a reduction of species richness

-An accelerated decomposition of organic matter occurs, combined with a wash out of nutrients, and the eutrophication of ground water, rivers and lakes occur

(Dr Schutt, Biological Department, University of Munich, Environmental Ethics Conference, 1992, Vancouver)

Principle of full life cycle analysis of activities that could have significantly adverse effects.

This principle if complied with in the forest industry would entail an examination of the environmental impacts of each stage of current forest practices. At UNCED there was also a call for "environmental audits", and "full environmental accounting of aspects related to life cycles of ...resources", and "for taking into account the costs of any ecological consequences."

- Governments, in collaboration with industry and appropriate international organizations, should develop procedures for monitoring the application of the cradle to grave approach, including environmental audits (20.20 e)
- Ensure that relevant decisions are preceded by environmental impact assessments and also take into account the costs of any ecological consequences (7.42)

A full environmental audit of current forest practices has not been undertaken in B.C. the Auditor general has not been requested by government to carry out a full-scale audit of the true costs of the current logging practices, and to compare these costs to those incurred by alternative forestry practices such as Eco forestry.

Principle related to positive mandate-to conserve

- Establishing, expanding and managing, as appropriate to each national context, protected area systems, which includes systems of conservation units for their environmental, social and spiritual functions and values, including conservation of forests in representative ecological systems and landscapes, primary old-growth forests, conservation and management of wildlife, nomination of world Heritage Sites under the World Heritage ... and conservation of biological diversity and the traditional forest habitats of indigenous people, forest dwellers and local communities"; (Agenda 21, 11.15 b)

This principle is a reaffirmation of the principle established and endorsed by Canada in 1972 in the Convention for the Preservation of Cultural and Natural Heritage.

- Noting that the cultural heritage and the natural heritage are increasingly threatened with destruction not only by the traditional causes of decay, but also by changing social and economic conditions which aggravate the situation with even more formidable phenomena of damage or destruction"
- Considering that deterioration or disappearance of any item of the cultural or natural heritage constitutes a harmful impoverishment of the heritage of all the nations of the world."
- Considering that the existing international conventions, recommendations and resolutions concerning cultural and natural property demonstrate the

importance, for all the peoples of the world, of safeguarding this unique and irreplaceable property, to whatever people it may belong"

"Considering that parts of the cultural or natural heritage are of outstanding interest and therefore need to be preserved as part of the world heritage of [humankind] as a whole"

"Considering that, in view of the magnitude and gravity of the new dangers threatening them, it is incumbent on the international community as a whole to participate in the protection of the cultural and natural heritage of outstanding universal value, by the granting of collective assistance which, although not taking the place of action by the State concerned, will serve as an effective complement thereto,"

Canada has not lived up to its international commitment to preserve a significant area of international worth: a network of intact old growth watershed, conservation corridors including Clayoquot sound (this type of extensive preservation has currently been carried out in Australia, and Australia has applied to have this network of temperate rainforests designated as an international heritage site at the recent meeting in 1993 of the World Heritage Committee at UNESCO.

4. The positive-duty-to-protect-indigenous-lands principle. This principle reads as follows:

"...recognition that the lands of indigenous people and their communities should be protected from activities that are environmentally unsound or that the indigenous people concerned consider to be socially and culturally inappropriate "(Agenda 21, 16.3. ii)

A fifth principle that came out of UNCED and was agreed to by Canada is the recognition of non-damaging-use value principle. This principle reads as follows:

"The implications of the harvesting of forest resources for other values of the forest should be taken fully into consideration in the development of forest policies. It is also possible to increase the value of forest through non-damaging uses such as eco-tourism ..." (Agenda 21, 11.22)

() **THAT** in 1992, I co-authored a paper criticizing the Department of Education's brief on "Towards Sustainability" as justifying corporate intrusion into education

EXHIBIT

() **THAT in 1992**, I made a presentation to the Senate Committee on National Security, where I criticized the Federal government for issuing an Order in Council to permit the berthing of nuclear powered and nuclear arms capable vessels and thus to have bypassed its statutory obligations

EXHIBIT

() THAT in 1992, I Submitted recommendations to the Constitutional discussions on the need to enshrine Ecological Rights in the Charter of Rights and Freedoms

() THAT in 1992, I was elected to steering committee of CORE

() SEPTEMBER 9, 1992 REVISED DOCUMENT FOR NAMI MEETING
Theme LIVE AND LEARN, LEARN AND LIVE
Education for an Economically Competitive and Socially Responsible North America
• 1992 Participated on the Steering Committee of the Commission on Resource and Environment (CORE)

MOVE: meeting out at the University with two indigenous men who were arrested in Oka. One of the men . This meeting was organized by the social justice group of the Anglican church [Contact: Susan Gage]. the man who was depicted as a terrorist juxtaposed with an innocent army officer was in fact an economics student from Uof T who had never been involved before. I talked to him after

I was invited to participate to participate in a meeting with a speaker from the Federal government who gave what he determined was the legal background for first Nations rights. I pointed out a significant omission which was the court case in 1988 McMillan vs Manson Contact: Michael Manson Friends of Clayoquot. In that Treaty process participating in the community group. In the Munson? case, the court decided that the ecological rights of the First Nations would be jeopardized if MacMillan Bloedel would be granted an injunction.

In MacMillan Bloedel vs Mullin it was decided that an injunction would not be granted because granting an injunction could deprive the native community of their "ecological rights" in the case of a pending land-title claim, and that MacMillan Bloedel would not suffer "irreparable harm"

the claim by an Indian band for 'aboriginal " title to land cannot be 'rejected summarily' and certainly not at the early stages of litigation. Nor must the right to log crown land given by licence to a logging Company be ignored. However in light of the fact that **unless the issue of title to the subject land is settled before logging occurs the Indians, if successful, will be deprived of valuable ecological rights, and in further light of**

the fact that irreparable harm will not result to the logging Company if timber harvest is delayed pending an expedited adjudication of issue of title, the principles applicable to the issue of interlocutory injunctions will militate that the status quo. be maintained.

We believe that because Canada has made these commitments, and because these commitments are inconsistent with the continuing to log in significant stands of unfragmented watersheds that the injunction should be rescinded because the injunction is contributing the non-fulfillment of international, national and provincial obligations.

MOVE: ATTEMPTS TO SET UP COMMON SECURITY CLUB AT THE UNIVERSITY

() That in 1992 OCTOBER I was selected to be on the steering Committee for CORECORE

• Attended a meeting between VINE steering Committee for VINE and CORE discussing what would be VINE'S CONDITIONS AT THE TABLE
10 hours

() THAT 1992 i Submitted "Statement of Obligation: Conservation and Ecologically Sound Practices" to Conservation sector of the CORE (Commission on Resources and Environment).

EXHIBIT

SEPTEMBER 28, 1992
1992 ANALYSIS OF THE PROPOSED DRAFT OF THE LAND USE CHARTER

LEGEND OF TYPE
PLAIN TYPE IS FOR THE ORIGINAL CHARTER
ITALICS ARE FOR SECTIONS THAT ARE SUGGESTED FOR DELETION
BOLD FOR SECTIONS THAT ARE DEEMED NECESSARY TO ADD
[BOLD] IN BRACKETS STATEMENT OF REASONS FOR CHANGING SECTIONS

A Land Use Charter

[inappropriate name because the Charter must address land air and water.]

A charter of ecological preservation and ecologically safe and sound use of resources

•Recognizing the urgency of the current environmental situation and for the need to address the destruction of the environment, the violation of

human rights, the disregard for social justice and the perpetuation of inequity.

•Concurring with the assessment of the current urgency as expressed in Agenda 21, we acknowledge the following:

“Erosion, degradation, deforestation and desertification have led to increased land degradation, and the creation of reservoirs has, in some cases, resulted in adverse effects on ecosystems. Many of these problems have arisen from a development model that is environmental destructive and from a lack of protection.” (Agenda 21, 18.45)

• Convinced that it is time in British Columbia to redress the imbalance that has been caused by ecologically unsound use of land, air and water, by immediately ceasing resource use in areas that could be lost for preservation, in particular the little remaining examples of significant old growth, and in fulfillment of commitments made at the Earth Summit we shall be committed to the following:

“Establishing, expanding and managing, as appropriate to each national context, protected area systems, which includes systems of conservation units for their environmental, social and spiritual functions and values, including conservation of forests in representative ecological systems and landscapes, primary old-growth forests, conservation and management of wildlife, nomination of world Heritage Sites under the World Heritage Conventions, as appropriate, conservation of genetic resources,”
(Agenda 21, 11.15 b., Deforestation), 1992)

• Convinced that humanity must be guided by a moral code of action to respect the inherent worth of nature, and in fulfillment of commitments made in the World Charter of Nature, we shall be committed to the following:

“...every form of life is unique, warranting respect regardless of its worth to [humans], and to accord other organisms such recognition [humans] must be guided by a moral code of action.” (a, World Charter of Nature, 1982)

• Concurring with the global commitment under the "Convention for the Protection of Cultural and Natural Heritage" (1972) to fulfil our international duty to identify and protect natural heritage for future generations:

“Each State Party to this convention recognizes that the duty of ensuring the identifications, protection,

conservation, presentation and transmission to future generations of the cultural and natural heritage..."
(Convention for the Protection of the World Cultural and Natural heritage)

- **Concurring with the global commitment under the World Charter of Nature (1982) to avoid activities which are likely to cause irreversible damage to nature**

"Activities which are likely to cause irreversible damage to nature shall be avoided; and activities which are likely to pose a significant risk to nature shall be preceded by an exhaustive examination; their proponent shall demonstrate that expected benefits outweigh potential damage to nature, and where potential aversive effects are not fully understood, the activities should not proceed" (Agenda 21, section 11b)

- **Concurring with the enshrinement of the precautionary principle and in fulfillment of commitments made in the Rio Declaration and in Agenda 21, we shall be committed to the following:**

" Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation." (Rio Declaration, 1992).

- **Recognizing that causes of irreversible environmental damage may not be fully understood or predictable, and in fulfillment of commitments made in Agenda 21, we shall recognize the following:**

"In the face of threats of irreversible environmental damage, lack of full scientific understanding should not be an excuse for postponing actions which are justified in their own right. The precautionary approach could provide a basis for policies relating to complex systems that are not yet fully understood and whose consequences of disturbances cannot yet be predicted" (Agenda 21, 35.4)

- **Concurring with the enshrinement of the principle of prior environmental impact assessment and in fulfillment of commitments made in Agenda 21, we shall enshrine the following principle:**

"Ensure that relevant decisions are preceded by environmental impact assessments and also take into account the costs of any ecological consequences" 7.42 b
" Ensure prior assessment of activities that may have significant adverse impacts upon the marine environment; (17.23 b Marine)

- **Concurring with the global condemnation of the transfer or relocation of harmful activities or substances, and in fulfillment of our commitments made in the Rio Declaration, we shall condemn the following:**

“...the transfer and relocation to other states of any activities and substances that cause severe environmental degradation or are found to be harmful to human health.”(Principle 14 Rio Declaration)

- **Concurring with the need to examine the "cradle to grave," or "full life cycle" approach to industry, and in fulfillment of our commitments made in Agenda 21, we will require and undertake the complete analysis of each industry's intervention into the ecosystem**

should develop procedures for monitoring the application of the cradle to grave approach, including environmental audits (Agenda 21 20.20 e)

THE PROVINCIAL COMMITMENT

The government of British Columbia is committed to:

- **preserving significant representative ecosystems**, protecting and restoring the quality and integrity of the environment, and
- **ensuring *securing ecologically safe and sound employment securing a sound and prosperous economy***

This commitment is made to the people of British Columbia and to the global community. A healthy environment and **ecologically safe and sound employment healthy economy**. *are essential British Columbia. to the social, cultural, material, physical and spiritual well-being of British Columbians.* Furthermore, the Province recognizes its obligations **under various international declarations, conventions and charters, to preserve representative ecosystems, and** to protect, and manage *and use its resources and environment to fulfill its responsibility to global well-being.* **in an ecologically safe and sound way its land, air and water resources.** Finally, the Province shall ensure that present-day decisions do not compromise **the integrity and inherent worth of preserved ecosystems** and the ability of future generations to meet their own environmental and economic needs.

- **recognizing the current change in global political situation, the province will make a request to the Federal Government to transfer a substantial segment of the military budget to be used for the preservation of significant areas of land and water bodies, for allowing for the regeneration of areas that have been destroyed, for providing for the restoration of areas that have suffered environmental degradation, and for the creation of ecologically safe and sound employment through value added jobs**

- recognizing that human understanding of nature is incomplete the province will undertake to preserve significant ecosystems
- recognizing that injunctions are usually granted to prevent irreparable harm, the issuing of injunction against those who are attempting to prevent irreversible harm is untenable

PRINCIPLES

Sustainable Environment

[the preserving of ecosystems, the engaging in ecologically safe and sound practices and the entrenching of social programs are not separated here}

A healthy environment is the foundation upon which a sound economy and society depend. [Ecosystems do not only have a role to support society]. The essential role that ecosystems play in supporting our society establishes an environmental imperative that must be respected in all land, resource and economic decisions. Our priority must be to maintain natural systems for present and future generations.

1. To redress the imbalance resulting from years of non-compliance to the spirit of international Conventions such as the Convention for the Protection and Preservation of Cultural and Natural heritage, and Charters such the World Charter of Nature (1972), the Province shall immediately preserve the little remaining significant unfragmented old growth areas for ecological heritage and for the maintenance of natural systems.

The Province shall preserve, maintain and enhance the life-supporting capacity of air, water, land and ecosystems. The Province shall respect **and preserve** the integrity of **intact** natural systems and **will allow for regeneration** will seek to restore previously degraded environments. **The Province will concurrently transfer funds into the creation of ecologically safe and sound employment.**

to redress the imbalance resulting from years of addressing the errors of previously ecologically unsound practices, the province shall support and fund research not into technological fixes for rectifying the harm caused by ecologically unsafe and unsound practices, but into new and viable ecologically safe and sound practices.

to redress the imbalance resulting from years of non-arm's length research reflecting conflict of interest, the province shall support independent non vested interest, arm's length research.

to redress the imbalance resulting from the misplaced onus of proof, the province shall shift the burden of proof from those opposing the intervention having to demonstrate harm to those proposing the intervention having to demonstrate the ecological safety and soundness of the intervention

2. The Province shall preserve significant areas that contain biodiversity and shall conserve biological diversity in genes, species and ecosystem and shall condemn, ban disallow any practices that contribute to loss of biodiversity. including current practices of clear-cut logging. The province will not permit the redefining of the term Biodiversity to accommodate ecologically unsound practices such as clear-cut logging.

3. The province shall attempt to anticipate and prevent adverse environmental impacts. When making land and resource decisions, the province shall exercise caution and special concern for natural values, recognizing that human understanding of nature is incomplete.

4. The Province shall ensure that the true environmental and social costs are accounted for prior to making a decision for a project or an activity that will affect air, water or land. in land resource use and economic to proceed the true environmental social costs will have to consider the costs required by society not only to repair the harm but also to do research into repairing the harm, and to monitor ecologically unsound practices and to enforce regulations and in assessing the true environmental costs those who have been responsible will be required to pay for past as well as present damage (polluter pay principle as enunciated in Agenda 21)

3.The province shall also establish high provincial standards for ecologically safe and sound practices and products taking into consideration fundamental international principles of preservation and ecologically safe and sound employment.

The province shall establish a series of independent panels reflecting community concern, not vested interests to attempt to establish province wide guidelines for ecologically safe and sound practices

The province shall establish a list of industries or industrial practices that have not been able to satisfy the ecologically safe and sound conditions of the life cycle approach and disallow these industries to function in the province

The province shall subject all interventions that could have a potential adverse effect to environmental assessment review

The province will disallow any practice that has been deemed ecologically unsound by a panel of independent, non-vested concerned body

5. The province shall recognize its responsibility **to preserve significant representative ecosystems**, to protect, and restore the global environment

the province shall reduce consumption to sustainable levels, **engage in alternative practices that reduce consumption**, and avoid importing or exporting ecological *stresses activities or substances that could cause harm to human health or to the environment [statement in harmony with wording in the Rio Declaration]* and to help meet the global challenge of sustainably supporting the human population

the province shall establish ecologically safe and sound working environments for all employees. No employee shall ever be dismissed from work for demanding to have ecologically safe and sound environment

The province shall not be required to pay compensation for the transferring of resource use into non-use or preservation reverting to the ecological commons.

the province shall undertake to assist with funds transferred from the military budget to convert ecologically unsound employment to ecologically safe and sound employment.

6. the Province shall preserve and protect the environment for its inherent value and for the use and enjoyment of humans

Sustainable Economy

[preservation of ecosystems, and then the engaging in ecologically safe and sound practices and the entrenchment of strong social programs are not separated here}

The province shall recognize that the preservation of significant areas is a global requirement and is conditional not on economic development but on political will. Similarly, the willingness to ensure ecologically safe and sound employment in an ecologically safe and sound environment is all dependent on political will. The establishment of the commitment to preservation and to ecologically safe and sound employment will drive the community to fulfill these requirements.

Given the urgency of the current global situation, the province undertakes to ensure that employment shall be ecologically safe and sound.

The Province shall ensure that ecologically sound practices prevail, and will fund only appropriate technology beyond simply allowing for the prevailing of currently unsound practices.

The province shall ensure that ecologically unsound practices will be phased out and eventually eliminated

the province shall recognize that it is impossible to balance two values when the fulfillment of one is the denial of the other.

1. The Province shall promote a dynamic and competitive **ecologically safe and sound** economy that maintains options for **land air and water preservation and ecologically safe and sound use** future land and resources uses.

The Province shall advocate international ecologically safe and sound standards so that the province in advocating the highest tenable standards will not be at a global disadvantage

The Province shall make a representation to GATT to insist that high international standards be established for preservation of nature, conservation of resources, and ecologically safe and sound practices so that no action in the Province taken to address the need for ecologically safe and sound employment will be overturned as being a subsidy. For example, the decision by the province to stop the export of raw logs (as per section 135 in the Forest Act) so as to create ecologically sound employment shall not be construed as a subsidy.

2. The Province shall encourage diversified economic development **in an ecologically safe and sound way that** increases the employment and other benefits derived from a given stock of resources.

3. The Province shall *encourage* **insist that pollution is controlled at the source and that there will be eventually zero harmful emissions into the ecosystem encourage, and shall insist on proposal for development that make ecologically safe and sound and efficient use of resources**
development that reduces waste and makes efficient use of resources

4. *The Province shall encourage optimum use of natural systems and resources, consistent with their inherent capability to support our economic, social and environmental needs.* **{vacuous statement unclear what that would entail}**

5. The province shall ensure that renewable resources are used in an **ecologically safe and sound** manner **so** that they will be sustainable over the long term. **and the Province will not jeopardize long term ecological rights to natural heritage and to ecologically safe and sound employment for short-term economic gain**

6. The Province shall ensure that the use of non-renewable resources is **phased out and that funding be placed immediately into discovering**

ecologically safe and sound alternatives (Agenda 21, Energy section) avoids **avoiding** their exhaustion and addresses the needs of future generations

7. *The Province shall stimulate environmentally sound economic activity and innovation through a system of economic instruments* [**environmental sound economic activity should not be introduced only in this section it should be a precondition for all future activity. By having it in this section it suggests that the reference to economic activity in other sections does not mean environmentally sound**]

8. the Province shall provide a regulatory framework which promotes stability and predictability for business and investment. **The Province, through the development of standards of ecologically safe and sound practices will minimize the need to monitor as the engaging in ecologically safe and sound practices will entail a different type of monitoring; a monitoring to determine if industry is engaging in these practices rather than a monitoring to determine whether the practices are having a significant adverse impact on the environment.**

Social Sustainability

[**preservation of ecosystems, and then the engaging in ecologically safe and sound practices, and the entrenchment of strong social programs are not separated here**]

Social equity requires that the concerns of individuals and communities are respected **as ecological preservation and ecologically safe and sound employment are established.** *environmental and economic needs are balanced.*

1 The Province shall aim for a fair distribution of the costs and benefits of *land use decisions about land, air and water.* **and undertake to propose measures that will bring about a more equitable distribution of resources. This could entail the giving of a guaranteed annual income to anyone who is displaced as a result of conversion to ecologically sound employment, and ensure that the person will be appropriately retrained. In this way those whose jobs have been converted will not be required to move from the community.**

2. The Province is committed to social stability, and will support economic and social measures to address the economic effects of land use decisions **These measures could entail the giving of a guaranteed annual income to anyone who is displaced as a result of conversion to ecologically**

sound employment, and ensure that the person will be appropriately retrained. In this way those whose jobs have been converted will not be required to move from the community.

3. The Province shall promote a good quality of life by fostering opportunities to;

* **earn a living in an ecologically safe and sound way**

* **obtain education and training by putting additional funding into the creation of post-secondary institutions**

* **access social, cultural and recreation services and**

* **enjoy a quality environment through the preservation of significant ecosystem, the creation of ecologically safe and sound employment, and the entrenching of social equity programs**

4. In addition, equity requires that land use and related resources and environmental decisions be made in a fair and open manner **without the participation of those who have a vested economic interest in not adhering to ecologically safe and sound practices**

REXAMINATION OF THE TERMS OF REFERENCE OF CORE AND THE "LAND USE CHARTER" IN THE LIGHT OF THE TWO FOLLOWING EXTENUATING CIRCUMSTANCES;

1. THE REQUESTED INVESTIGATION BY THE OMBUDSMAN'S OFFICE INTO THE ENVIRONMENTAL DEGRADATION CAUSED BY THE MINISTRY OF FOREST'S NON-COMPLIANCE WITH THE FOREST ACT SECTION 60. OF INTERNATIONAL AGREEMENTS.

In September 1991, we submitted a complaint the Ombudsman office, while Steven Owen was still the ombudsman, calling for the investigation into forest practices that were causing damage to the natural environment to support the claim we submitted a document from the Ministry of Fisheries indicating the destruction of fish habitat (a violation of section 33 of the Fisheries Act, caused by current logging practices We were notified that the complaint would be addressed.

While Steven Owen was the ombudsman little was done to investigate this complaint.

In January 1992, CORE was established, and Stephen Owen was named as the Commissioner,

in June forestry Minister, Miller, suddenly became cognizant of the degradation that had occurred through logging practices.

One of the implications of this complaint is that if the complaint is deemed justified, and if the Ministry of Forests, and industry through noncompliance with the Forest Act caused damage to the natural environment, the whole discussion of 'compensation" for areas that will be taken out of TFL and put into wilderness areas will be reassessed.

2. THE COMMITMENTS BY CANADA TO PRINCIPLES ENUNCIATED IN INTERNATIONAL AGREEMENTS.

practices. and calling for the enforcing of section 60 of the Forest Act was initiated prior to the completion by the Ombudsman's office
CORE was initiated at a time prior to the deliberations of UNCED. As a result of many of the deliberations of UNCED, a few key principles emerged that need to reassess the terms of reference of CORE

Given the recognition of the urgency of the global situation
" Establishing, expanding and managing, as appropriate to each national context, protected area systems, which includes systems of conservation units for their environmental, social and spiritual functions and values, including conservation of forests in representative ecological systems and landscapes, primary old-growth forests, conservation and management of wildlife, nomination of world Heritage Sites under the World Heritage Conventions, as appropriate, conservation of genetic resources, involving in situ and ex situ measures and undertaking supportive measures to ensure sustainable utilization of biological resources and conservation of biological diversity and the traditional forest habitats of indigenous people, forest dwellers and local communities;" (11.15 b., Deforestation)

"Many of these problems have arisen from a development model that is environmental destructive and from a lack of protection. Ecological and human health effects are the measurable consequences... although the means to monitor them are inadequate or non-existent in many countries. There is a widespread lack of perception of the linkages between the development, management use and treatment of water resources and aquatic ecosystems."
(18.45 Fresh water)

"There are few regions of the world that are still exempt from the problems of loss of potential sources of freshwater supply, degraded water quality and pollution of surface and groundwater sources. Major problems affecting the water quality of rivers and lakes arise, in variable order of importance according to different situations, from inadequately treated domestic sewage, inadequate controls on the discharges of industrial waste waters, loss and destruction of catchment areas, ill-considered siting of agricultural practices. This gives rise to the leaching of nutrients and pesticides. Aquatic ecosystems are disturbed and living freshwater resources are threatened...Erosion, degradation, deforestation and desertification have led to increased land degradation, and the creation of reservoirs has, in some cases, resulted in adverse effects on ecosystems. Many of these problems have arisen from a development model that is environmental destructive and from a lack of protection. Ecological and human health effects are the measurable consequences... although the means to monitor them are inadequate or non-existent in many countries. There is a widespread lack of perception of the linkages between the development, management use and treatment of water resources and aquatic ecosystems. A preventive approach,

where appropriate, is crucial to the avoiding of costly subsequent measures to rehabilitate, treat and develop new water supplies.” (18.45 Fresh water)

" to promote patterns of consumption and production that reduce environmental stress and will meet the basic needs of humanity (4.7.a Changing Consumption Patterns)

Decision making process

a distinction must be made between vested interests and public concern

1992. Co-drafted policy resolutions on peace, environment and human rights for the 1993 Convention on the NDP party

- November ? 1992 Drafted and circulated "A Charter of ecological preservation and ecologically safe and sound employment. for the Vancouver Island Network of Environmentalists (VINE). Analysis of Charter "CORE land use charter" in the context of Canada's obligations and Commitments

EXHIBIT

SEPTEMBER 28, 1992

1992 ANALYSIS OF THE PROPOSED DRAFT OF THE LAND USE CHARTER

LEGEND OF TYPE

PLAIN TYPE IS FOR THE ORIGINAL CHARTER

ITALICS ARE FOR SECTIONS THAT ARE SUGGESTED FOR DELETION

BOLD FOR SECTIONS THAT ARE DEEMED NECESSARY TO ADD [BOLD] IN BRACKETS STATEMENT OF REASONS FOR CHANGING SECTIONS

A Land Use Charter

[inappropriate name because the Charter must address land air and water.]

A charter of ecological preservation and ecologically safe and sound use of resources

•Recognizing the urgency of the current environmental situation and for the need to address the destruction of the environment, the violation of human rights, the disregard for social justice and the perpetuation of inequity.

•Concurring with the assessment of the current urgency as expressed in Agenda 21, we acknowledge the following:

“Erosion, degradation, deforestation and desertification have led to increased land degradation, and the creation of reservoirs has, in some cases, resulted in adverse effects

on ecosystems. Many of these problems have arisen from a development model that is environmentally destructive and from a lack of protection.” (Agenda 21, 18.45)

- Convinced that it is time in British Columbia to redress the imbalance that has been caused by ecologically unsound use of land, air and water, by immediately ceasing resource use in areas that could be lost for preservation, in particular the little remaining examples of significant old growth, and in fulfillment of commitments made at the Earth Summit we shall be committed to the following:

“Establishing, expanding and managing, as appropriate to each national context, protected area systems, which includes systems of conservation units for their environmental, social and spiritual functions and values, including conservation of forests in representative ecological systems and landscapes, primary old-growth forests, conservation and management of wildlife, nomination of world Heritage Sites under the World Heritage Conventions, as appropriate, conservation of genetic resources, (Agenda 21, 11.15 b., Deforestation),” 1992)

- Convinced that humanity must be guided by a moral code of action to respect the inherent worth of nature, and in fulfillment of commitments made in the World Charter of Nature, we shall be committed to the following:

“...every form of life is unique, warranting respect regardless of its worth to [humans], and to accord other organisms such recognition [humans] must be guided by a moral code of action.” (a, World Charter of Nature, 1982)

- Concurring with the global commitment under the "Convention for the Protection of Cultural and Natural Heritage" (1972) to fulfil our international duty to identify and protect natural heritage for future generations:

“Each State Party to this convention recognizes that the duty of ensuring the identifications, protection, conservation, presentation and transmission to future generations of the cultural and natural heritage...” (Convention for the Protection of the World Cultural and Natural heritage)

- Concurring with the global commitment under the World Charter of Nature (1982) to avoid activities which are likely to cause irreversible damage to nature

“Activities which are likely to cause irreversible damage to nature shall be avoided; and activities which are likely to pose a significant risk to nature shall be preceded by an exhaustive examination; their proponent shall demonstrate that expected benefits outweigh potential damage to nature, and where potential aversive effects are not fully understood, the activities should not proceed” (Agenda 21, section 11b)

- **Concurring with the enshrinement of the precautionary principle and in fulfillment of commitments made in the Rio Declaration and in Agenda 21, we shall be committed to the following:**

" Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation." (Rio Declaration, 1992).

- **Recognizing that causes of irreversible environmental damage may not be fully understood or predictable, and in fulfillment of commitments made in Agenda 21, we shall recognize the following:**

"In the face of threats of irreversible environmental damage, lack of full scientific understanding should not be an excuse for postponing actions which are justified in their own right. The precautionary approach could provide a basis for policies relating to complex systems that are not yet fully understood and whose consequences of disturbances cannot yet be predicted” (Agenda 21, 35.4)

- **Concurring with the enshrinement of the principle of prior environmental impact assessment and in fulfillment of commitments made in Agenda 21, we shall enshrine the following principle:**

**"Ensure that relevant decisions are preceded by environmental impact assessments and also take into account the costs of any ecological consequences" 7.42 b
" Ensure prior assessment of activities that may have significant adverse impacts upon the marine environment; (17.23 b Marine)**

- **Concurring with the global condemnation of the transfer or relocation of harmful activities or substances, and in fulfillment of our commitments made in the Rio Declaration, we shall condemn the following:**

the transfer and relocation to other states of any activities and substances that cause severe environmental degradation or are found to be harmful to human health."(Principle 14 Rio Declaration)

- **Concurring with the need to examine the "cradle to grave," or "full life cycle" approach to industry, and in fulfillment of our commitments made in Agenda 21, we will require and undertake the complete analysis of each industry's intervention into the ecosystem**

“...should develop procedures for monitoring the application of the cradle to grave approach, including environmental audits” (Agenda 21 20.20 e)

THE PROVINCIAL COMMITMENT

The government of British Columbia is committed to:

- **preserving significant representative ecosystems**, protecting and restoring the quality and integrity of the environment, and
- **ensuring *securing ecologically safe and sound employment securing a sound and prosperous economy***

This commitment is made to the people of British Columbia and to the global community. A healthy environment and **ecologically safe and sound employment healthy economy. are essential British Columbia. to the social, cultural, material, physical and spiritual well-being of British Columbians.** Furthermore, the Province recognizes its obligations **under various international declarations, conventions and charters, to preserve representative ecosystems, and to protect, and manage and use its resources and environment to fulfill its responsibility to global well-being. in an ecologically safe and sound way its land, air and water resources.** Finally, the Province shall ensure that present-day decisions do not compromise **the integrity and inherent worth of preserved ecosystems** and the ability of future generations to meet their own environmental and economic needs.

- **recognizing the current change in global political situation, the province will make a request to the Federal Government to transfer a substantial segment of the military budget to be used for the preservation of significant areas of land and water bodies, for allowing for the regeneration of areas that have been destroyed, for providing for the restoration of areas that have suffered environmental degradation, and for the creation of ecologically safe and sound employment through value added jobs**

- **recognizing that human understanding of nature is incomplete the province will undertake to preserve significant ecosystems**

- **recognizing that injunctions are usually granted to prevent irreparable harm, the issuing of injunction against those who are attempting to prevent irreversible harm is untenable**

PRINCIPLES
Sustainable Environment

[the preserving of ecosystems, the engaging in ecologically safe and sound practices and the entrenching of social programs are not separated here]

A healthy environment is the foundation upon which a sound economy and society depend. [Ecosystems do not only have a role to support society]. The essential role that ecosystems play in supporting our society establishes an environmental imperative that must be respected in all land, resource and economic decisions. Our priority must be to maintain natural systems for present and future generations.

1. To redress the imbalance resulting from years of non-compliance to the spirit of international Conventions such as the Convention for the Protection and Preservation of Cultural and Natural heritage, and Charters such the World Charter of Nature (1972), the Province shall immediately preserve the little remaining significant unfragmented old growth areas for ecological heritage and for the maintenance of natural systems.

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wording in the Rio Declaration] and to help meet the global challenge of sustainably supporting the human population

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REXAMINATION OF THE TERMS OF REFERENCE OF CORE AND THE "LAND USE CHARTER" IN THE LIGHT OF THE TWO FOLLOWING EXTENUATING CIRCUMSTANCES;

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Conventions, as appropriate, conservation of genetic resources, involving in situ and ex situ measures and undertaking supportive measures to ensure sustainable utilization of biological resources and conservation of biological diversity and the traditional forest habitats of indigenous people, forest dwellers and local communities;" (11.15 b., Deforestation)

"Many of these problems have arisen from a development model that is environmentally destructive and from a lack of protection. Ecological and human health effects are the measurable consequences... although the means to monitor them are inadequate or non-existent in many countries. There is a widespread lack of perception of the linkages between the development, management use and treatment of water resources and aquatic ecosystems."

(18.45 Fresh water)

"There are few regions of the world that are still exempt from the problems of loss of potential sources of freshwater supply, degraded water quality and pollution of surface and groundwater sources. Major problems affecting the water quality of rivers and lakes arise, in variable order of importance according to different situations, from inadequately treated domestic sewage, inadequate controls on the discharges of industrial waste waters, loss and destruction of catchment areas, ill-considered siting of agricultural practices. This gives rise to the leaching of nutrients and pesticides. Aquatic ecosystems are disturbed and living freshwater resources are threatened. ...Erosion, degradation, deforestation and desertification have led to increased land degradation, and the creation of reservoirs has, in some cases, resulted in adverse effects on ecosystems. Many of these problems have arisen from a development model that is environmentally destructive and from a lack of protection. Ecological and human health effects are the measurable consequences... although the means to monitor them are inadequate or non-existent in many countries. There is a widespread lack of perception of the linkages between the development, management use and treatment of water resources and aquatic ecosystems. A preventive approach, where appropriate, is crucial to the avoiding of costly subsequent measures to rehabilitate, treat and develop new water supplies." (18.45 Fresh water)

" to promote patterns of consumption and production that reduce environmental stress and will meet the basic needs of humanity "(4.7.a Changing Consumption Patterns)

Decision making process

a distinction must be made between vested interests and public concern

• 1992 Initiated and distributed a Report card on Canada's failure, through practices in British Columbia, to comply with the Biodiversity Convention

Have been extracting underlying principles and processes, formulating concepts and discerning patterns from different disciplines as a means of better understanding each discipline; and as a means of integrating different disciplines, and establishing a framework for interdisciplinary thought

() I was invited to participate in a meeting with a speaker from the Federal government who gave what he determined was the legal background for First Nations rights. I pointed out a significant omission which was the court case in 1988 *McMillan vs Mullin* Michael Mullin Friends of Clayoquot. In this case, the court decided that the ecological rights of the First Nations would be jeopardized if *McMillan Bloedel* would be granted an injunction.

In *MacMillan Bloedel vs Mullin* it was decided that an injunction would not be granted because granting an injunction could deprive the native community of their "ecological rights" in the case of pending land title, and that *MacMillan Bloedel* would not suffer "irreparable harm"

the claim by an Indian band for 'aboriginal " title to land cannot be 'rejected summarily' and certainly not at the early stages of litigation. Nor must the right to log crown land given by licence to a logging Company be ignored. However in light of the fact that **unless the issue of title to the subject land is settled before logging occurs the Indians, if successful, will be deprived of valuable ecological rights, and in further light of the fact that irreparable harm will not result to the logging Company if timber harvest is delayed pending an expedited adjudication of issue of title, the principles applicable to the issue of interlocutory injunctions will militate that the status quo. be maintained.**

We believe that because Canada has made these commitments, and because these commitments are inconsistent with the continuing to log in significant stands of unfragmented watersheds that the injunction should be rescinded because the injunction is contributing the non-fulfillment of international, national and provincial obligations.

() THAT in 1992, I prepared A Report Card on the BC government's failure to comply with the Convention on Biological Diversity for the International Law and Obligations Institute (project) and presented this report to various Ministries on the coming into force of the Convention on Biological Diversity

() THAT, in November, 1992 I Attended VINE steering committee meeting in Strathcona.

COMMENT

Vicky Husband Conservation chair of the Sierra Club of Western Canada and ... from the Canada wilderness committee had worked on a revamping The participation of sectors at the CORE table required a Statement of interest. I read through the "Statement of Interest" coming from the Conservation sector I found that what had become their "wish list" was in fact a statement of what the government was obliged or committed to do through international agreements or through Federal or provincial Acts or statutes. I spoke with Steven Owen, the chair of CORE about the necessity of having CORE a principle based decision-making

process rather than an arena of competing interests. I pointed out to him that most of what the Conservation sector was asking for in their interest statement was already an obligation or a commitment. He showed little interest and I believe cited the notorious 1937 Labour Convention case. [At that time I was not aware that the BC cabinet had endorsed the Convention on biological Diversity and the Framework Convention on Climate Change at the cabinet level: something I had found out later through obtaining cabinet documents from freedom of information]
At the meeting, when I heard that activists were being arrested in the forests, I stepped down from the CORE PROCESS, and wrote for VINE, A PIECE ON “Who are the real criminals”

EXHIBIT

() THAT in 1992 in December I wrote
ARRESTS IN B.C. FORESTS: WHO ARE THE REAL CRIMINALS?

Since 1948, Canada has made significant international commitments to human rights, equity, social justice, ecological preservation, and ecologically sound practices, (Universal Declaration of Human Rights , 1948; International Covenant of Social, Cultural Rights; Environmental Conference in Stockholm, 1972; UN Conservation of Natural Heritage, 1972; the World Charter of Nature, 1982; Global Biodiversity Strategy, 1992; the Caracas Declaration 1992; Biodiversity Convention, Climate Change Convention and Agenda 21, 1992) The action to condemn and in some cases imprison individuals who call for Canada's compliance to these international, national and provincial commitments has been in direct violation of principles of equity, social justice and human rights.

For years, through its forest practices, Canada as well as the forest Industry has been in violation of international law., and even in violation of its own federal and provincial law. Through non-compliance with its international commitments, and with national and provincial Acts , the government has permitted devastation of its forests; this devastation is now recognized widely and condemned by the international community

The practice of clear-cutting, followed by [broadcast burn] artificial reforestation has undoubtedly many technical and organizational advantages. In the course of time, however, soil scientists and ecologists found out that the practice of clear-cutting automatically leads to considerable drawbacks:

- wounding of the soil surface through logging operations. risk of erosion
- high irradiation and higher climatic extremes alter the microclimate, the flora and the microflora and deteriorate the growing conditions for a number of valuable tree species. Soil compression and a reduction of species richness occur
- An accelerated decomposition of organic matter occurs, combined with a wash out of nutrients, and the eutrophication of ground water, rivers and lakes (Dr Schutt, Biological

Department, University of Munich, Environmental Ethics
Conference, 1992, Vancouver)

Section 60 of the Forest Act calls for suspension of tree farm licensees if industry, through non-compliance to the Forest Act, has caused harm to the natural environment. Throughout B.C. environmentalists have been documenting evidence of non-compliance to the Forest Act. The Fisheries Department has documented evidence of violation by the forest industry of section 33 of the Fisheries Act. The Forest Act has not been enforced because most of the sections in the act are discretionary. One of the only recourses for environmentalists has been to call upon the Ombudsman to investigate whether government has fairly complied with its own legislation. In September of 1991, a complaint was filed with the Ombudsman's office to investigate whether government's has fairly complied with the Forest Act. This complaint has only now begun to be seriously investigated. The Ombudsman's office has not, however, been given the mandate to investigate whether or not the government of Canada is fairly complying with its international commitments.

The protesters, like the government and industry have not complied with the law. Governments and industry in Canada continue to violate international agreements, ignore the enforcement of federal and provincial Acts, and allow irreparable harm to the environment. Over 200 Vancouver Island protesters from environmental groups and from the Native community have been arrested, condemned as criminals and in some cases imprisoned because they call for compliance to commitments, attempt to prevent irreparable harm, and demand that environmental law be enforced in a less discretionary manner.

In the latest case, the protesters in Clayoquot Sound have been condemned as criminals because of their non-compliance with an injunction to prevent them from preventing irreparable harm. On the other hand McMillan Bloedel has been fined in Clayoquot Sound for causing irreparable harm. Traditionally, the equitable remedy of injunctions is deemed necessary to prevent irreparable harm. In 1985, the court concurred with this conception in McMillan Bloedel vs. Mullin where it was decided that

Indians, ...will be deprived of valuable ecological rights, and in further light of the fact that irreparable harm will not result to the Logging Company if timber harvest is delayed pending an expedited adjudication of issue [1985, BCD Civ 1892-08]

Now, the courts have appeared to misconstrue the concept of irreparable harm: those who cause irreparable harm (industry) through non-compliance with international, national and provincial commitments are granted injunctions to facilitate their continuing to cause irreparable harm , while those, (environmentalist and native leaders) are condemned as criminals for not complying with the injunctions granted to facilitate irreparable harm. The most that has happened to industry when it has been found in fault is a fine not criminal condemnation; thus, the causing of irreparable damage is deemed to be compensable through fines, whereas attempting to prevent irreparable

damage by ignoring an injunction is deemed to be rectified through criminal proceedings.

If governments do not comply with their commitments, if the courts misconstrue equitable law, and if the ombudsman has a limited scope of jurisdiction, where can the public turn for justice?

Joan Russow
for
VINE

Vancouver Island Network of Environmentalists

Tuesday, December 23, 1992

Contact Joan Russow 1230 St Patrick Street, Victoria, B.C.

604-598-2740 FAX 604-721-7767

Copies of this letter was sent on Tuesday December 23, 1992, to the Vancouver Sun, the Globe and Mail, Web international network, and to UNEP (United Nations Environmental Programme)

Since 1972, Canada has made significant international commitments to human rights, equity, social justice. ecological preservation, and ecologically sound practices, (Universal Declaration of Human Rights , 1948; International Covenant of Social, Cultural Rights; Environmental Conference in Stockholm, 1972; UN Conservation of Natural Heritage, 1972; the World Charter of Nature, 1982; Global Biodiversity Strategy, 1992; the Caracas Declaration 1992; Biodiversity Convention, Climate Change Convention and Agenda 21, 1992). The action to condemn and in some cases imprison individuals who call for Canada's compliance to these international, national and provincial commitments has been in direct violation of principles of equity, social justice and human rights.

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Now, the courts have appeared to misconstrue the concept of irreparable harm: those who cause irreparable harm (industry) through non-compliance with international, national and provincial commitments are granted injunctions to facilitate their continuing to cause irreparable harm, while those (environmentalist and native leaders) are condemned as criminals for not complying with the injunctions granted to facilitate irreparable harm. The most that has happened to industry when it has been found in fault is a fine not criminal condemnation; thus, the causing of irreparable damage is deemed to be compensable through fines, whereas attempting to prevent irreparable damage by ignoring an injunction is deemed to be rectified through criminal proceedings.

If governments do not comply with their commitments, and if the courts misconstrue equitable law, where can the public turn for justice?

Often intact ecosystems that have been deserving of preservation have been irreversibly destroyed because it was deemed necessary, if these ecosystems were to be withdrawn from an existing tree farm licence, for governments to pay compensation. In the past,

compensation has been assessed purely from an economic basis without taking into consideration the true environmental costs. In order to assess the environmental costs of the destruction of significant ecosystems one may need to examine if damage to the natural environment within a significant ecosystem has occurred. Section 60 of the Forest Act does permit the suspension of licensees if environmental damage to the natural environment has occurred. The potential environmental costs of destroying significant ecosystems as a result of the Ministry of Forests not suspending tree farm licensees when there was evidence of destruction to the natural environment is necessary to include in the assessment of compensation. Although, often the companies that have contributed in the past to the destruction of significant ecosystems may not be the current holders of the specific tree farm licence in the area containing the significant ecosystem, most of the companies are still functioning in British Columbia. This investigation of the environmental costs would involve the whole province so that there would need to be a global assessment of environmental costs incurred by the companies, not a valley to valley assessment.

Canada violates or ignores international environmental documents to which it has been a signatory while deluding the world community into thinking that it is genuinely concerned about the environment.

At the press conference given by Federal Minister of the Environment, Jean Charest at the UNCED conference in Rio, a representative of the United Nations introduced Charest as being from a country which was truly concerned about the environment. During the question period I indicated that " UNCED should be a time to dispel myths not perpetuate them and that Canada is not an ecologically sound country and that we should be honest with the rest of the world

Evidence that could dispel the myth that Canada is truly concerned about the environment has been occurring for years throughout B.C. in the forest industry, and is occurring currently in the dispute in Clayoquot Sound.

Rather than the courts in Canada insisting on adherence to international environmental documents such as the World Charter of Nature (UN Resolution 37/7, 1982) or to the current Convention on Biological Diversity (1992), Canadian courts condemn those who strive to call for the adherence to international law (environmentalists) , and condone those who ignore International Law. (industry).

For Example, Canada is a signatory of the World Charter of Nature, 1982 (UN resolution 37/7) which states the following:

11. Activities which might have an impact on nature shall be controlled, and the best available technologies that minimize significant risks to nature or other adverse effects shall be used; in particular;
 - a) all activities which are likely to cause irreversible damage to nature shall be avoided;

c) Activities which are likely to pose a significant risk to nature shall be preceded by an exhaustive examination; their proponents shall demonstrate that expected benefits outweigh potential damage to nature and where potential adverse effects are not fully understood, the activities should not proceed;

Have governments in Canada since 1982 "avoided" industrial activities such as ecologically unsound logging practices that have caused irreversible damage to nature.? Have governments in Canada called upon forest companies to not proceed with ecologically unsound practices whose adverse effects are not fully understood?

In 1992, Canada is now a signatory of the Convention on Biological Diversity which notes the following:

that it is vital to anticipate, prevent and attack the causes of significant reduction or loss of biological diversity at source.

Also where there is a threat of significant reduction or loss of biological diversity, lack of full scientific certainty should not be used as a reason for postponing measures to avoid or minimize such a threat.

Is Canada reducing the loss of biological diversity at the source, when it is prepared to log old growth forests before it has carried out adequate non-arms length research into the true biodiversity of the old growth forests? Is there not strong enough evidence in place that clear-cut logging has destroyed biodiversity, yet we appear to wait for "scientific certainty" before we are prepared to avoid or minimize such a threat? By that time there may be very little biodiversity left.

At the Press Conference where Mulroney signed the Convention on Biological Diversity in Rio de Janeiro, I asked him " if the signing of this document would mean that the government of Canada would condemn ecologically unsound practices such as clear-cut logging that destroy biodiversity." He replied that "he did not want to deal with issues "

If Mulroney is willing to sign a document professing to adhere to the preservation of biodiversity, and if he is not willing to deal with the practices that contribute to the loss of biodiversity, then the Canadian public will have to bring this discrepancy between rhetoric and action to the attention of the international community...

The environmentalists who have continually been striving to preserve the little remaining old growth forests, and to call for the need to identify and do research into biodiversity are the ones who have been adhering to the principles `1992 Nations Convention on Biological Diversity. Yet it is those

who act to prevent "irreversibility" that are prosecuted as criminals, and those who cause "irreversibility" that are protected by Canadian courts

() THAT in 1992 December, , I Prepared for the International Law and Obligations Institute (project), a Report Card on the BC governments compliance with the Convention on Biological Diversity on the coming into force of the Convention on Biological Diversity

THAT in December 1992, I wrote a piece, on behalf of the VINE (Vancouver Island Network of Environmentalist) on the arrest of citizens

EXHIBIT

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Joan Russow

for
VINE
Vancouver Island Network of Environmentalists

~1993

() **THAT** in 1993, I received an Award Research and Teaching Grants
Policy Analyst in environment, human rights, social justice, peace
issues, and education issues

() **THAT** in February 1993, I carried out research in Ottawa related to NAFTA, and
found information about

On an Environmental assessment review of NAFTA from November 1992.

I noted serious discrepancies between what the Canadian government
said was in NAFTA and what was actually in NAFTA

**I made a diagram showing the discrepancy between the NAFTA agreement and
what was actually in the NAFTA agreement**

() **THAT** I met, Arthur Campeau, the former Canadian ambassador to the United
Nations and he told me that he had seen a document showing that, at the BC
cabinet level, there was a commitment to ratify the two UNCED Conventions: the
Convention on Biological Diversity and the UN Framework on Climate Change. His
comment was very relevant to accessing information from Freedom of information. I
had been previously been told that there was no information, at the cabinet level on
UNCED; Now I could ask for a specific document which I then received.

Through Freedom of Information, I obtained cabinet document in which the BC
government had endorsed the Framework Convention on Climate Change, and the
Convention on Biological Diversity.

() **THAT** in 1993, I drafted, prepared and submitted a compilation of UN Human
Rights

Documents entitled "Rights and Responsibilities": An Ideagraph—
a diagrammatic mode of expressing issues—delineating the
interdependence of human rights, environment, peace
and social justice issues". Distributed, in Ottawa to senior officials attending
the United Nations Conference on Human Rights in Vienna

COMMENT

This Ideagraph "Rights and Responsibilities" was updated from the diagram that I
had prepared for my masters.

In Ottawa, met with the Canadian representative who was going to be one of the
members of the Canadian delegation in Vienna **and presented her with the**
Ideagraph "Rights and Responsibilities"

**I sent the diagram as well to the contact person in New York in the Human
Rights section**

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() THAT, in 1993, I was selected by the British Columbia Environmental Network (BCEN) to sit on the British Columbia Government Working Group set up to "Establish province-wide-standards for discharge emission" 1993-95

() THAT in 1993, I Revised and updated the paper "Miseducation Through Industrial Rhetoric: a Tragic Outcome of UNCED." Paper accepted for presentation at the 1993 NARST (National Association of Research into the Teaching of Science) and submitted to conference

() THAT in February 1993, I went as a delegate to a meeting of EECOM in Merrickville near Ottawa of the compromising group that came out of ECO-ED
COMMENT

At ECO-ED, when I attended a working group with environmental educators, I introduced myself and indicated my concern about industry's intrusion into education and the misinterpretation of Chapter 36 from Agenda 21; Then the others introduced themselves and most of them were associated with industry- forests and petroleum. Out of this meeting, the network EECOM of "environmental educators" was formed. I went to the meeting to try to change the direction of EECOM away from corporate influence. They continued to misinterpret Chapter 36, and I left the group.

() THAT in 1993, in Ottawa, I went into the building where the IDRC office was and asked the concierge which floor the IDRC was on and I was stunned, when he said the whole building. I asked for the section on biodiversity and met with the researchers in the section. I asked them what was going to be done about Canada's non-compliance with the Convention on Biological Diversity; I was told that they were only going to be addressing compliance with the Convention of Biodiversity in developing countries.

() THAT in 1993 in Ottawa, I went to a meeting with Federal Forest minister, Jag Maini in Ottawa, and passed on to him our composite document on the forest principles

EXHIBIT

RE-EXAMINATION OF "FOREST PRINCIPLES" DOCUMENT ("NON-LEGALLY BINDING AUTHORITATIVE STATEMENT OF PRINCIPLES FOR A GLOBAL CONSENSUS ON THE MANAGEMENT, CONSERVATION, AND SUSTAINABLE DEVELOPMENT OF ALL TYPES OF FORESTS") IN THE LIGHT OF COMMITMENTS MADE IN AGENDA 21, RIO DECLARATION, BIODIVERSITY CONVENTION, CLIMATE CHANGE CONVENTION AND OTHER INTERNATIONAL DOCUMENTS; AS WELL AS IN THE LIGHT OF RECOMMENDATIONS MADE BY ERA

**ECOLOGICAL RIGHTS ASSOCIATION. WITH THE ASSISTANCE OF
OTHER ENVIRONMENTAL GROUPS (1992)**

CONTACT:

JOAN RUSSOW.
ERA ECOLOGICAL RIGHTS ASSOCIATION
1230 ST PATRICK, VICTORIA, B.C. V8S 4Y4, 604-598-2740
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DIRECTOR SIERRA CLUB OF WESTERN CANADA
502 CRAIGFLOWER AVE, B.C. 385-0195
FAX 604 - 385- 0068

STYLE LEGEND:

10-point plain text drawn from Land Resources: Deforestation. the
unofficial final text dated June 16, 1992 from UNCED

10-point italics; suggested deletions from final text

10 point plain underlined drawn from various sections of Agenda
21(1982) and the Rio Declaration, (1992) World Charter of Nature
(1982) and Preservation of cultural and Natural Heritage (1972)

*10-point underlined italics: sections that should be eliminated from
Agenda 21 or Rio Declaration*

**10 bold drawn from various recommendations made by
environmental groups**

12 CAPITALS COMMENTS AND TITLES

TABLE OF CONTENTS:

**1. THE NEED FOR HARMONIZATION WITH OTHER INTERNATIONAL
DOCUMENTS P. 1**

**2. BACKGROUND DISCUSSION RELATED TO "DECLARATION OF
FOREST PRINCIPLES P.5.**

3. SECTION BY SECTION ANALYSIS P.5

**1.THE NEED FOR HARMONIZATION OF THE "LAND RESOURCES:
DEFORESTATION" DOCUMENT WITH RELEVANT SECTIONS IN
AGENDA 21 (1992), IN THE RIO DECLARATION (1992), THE
BIODIVERSITY CONVENTION, THE CLIMATE CHANGE CONVENTION,
THE WORLD CHARTER OF NATURE (1982), AND THE PRESERVATION
OF CULTURAL AND NATURAL HERITAGE (1972). TO HARMONIZE WITH
AGENDA 21, THE "LAND RESOURCES; DEFORESTATION" DOCUMENT
MUST ADDRESS THE FOLLOWING SECTIONS ADOPTED BY THE**

GLOBAL COMMUNITY THROUGH AGENDA 21, AND THE RIO DECLARATION:

- THREAT OF UNCONTROLLED DEGRADATION
- THREAT OF CONVERSION TO OTHER TYPES OF USE
- HARMFUL MISMANAGEMENT SUCH AS UNSUSTAINABLE COMMERCIAL LOGGING

"Forests world-wide have been and are being threatened by uncontrolled degradation and conversion to other types of land uses, influenced by increasing human needs; agricultural; expansion, and environmentally harmful mismanagement, including, for example, lack of adequate forest-fire control and anti-poaching measures, unsustainable commercial logging, overgrazing and ... the impacts of loss and degradation of forests are in the form of soil erosion; loss of biological diversity, damage to wildlife habitats and degradation of watershed areas, deterioration of the quality of life and reduction of the options for development. (Agenda 21, 11.12. Deforestation)

- ECOLOGICAL DETERIORATION OF WATERSHEDS
- EXCESSIVE DEFORESTATION

"There are serious problems of ecological deterioration in these watershed areas. ... In many areas this is accompanied by excessive livestock grazing, deforestation and loss of biomass cover. (Agenda 21 -13.13 Fragile ecosystems)

- INAPPROPRIATE AND UNCONTROLLED LAND USE

" Inappropriate and uncontrolled land uses are a major cause of degradation and depletion of land resources. Present land use often disregards the actual potentials, carrying capacities and limitations of land resources as well as their diversity in space. (Agenda 21 - 14.34 Agriculture)

- LOSS OF BIODIVERSITY FROM OVER-HARVESTING
- LOSS OF BIODIVERSITY FROM HABITAT DESTRUCTION
- LOSS OF BIODIVERSITY FROM POLLUTION

" Despite mounting efforts over the past 20 years, the loss of the world biological diversity, mainly from habitat destruction, over-harvesting, pollution and the inappropriate introduction of foreign plants and animals has continued. (Agenda 21, 15.3 Biodiversity)

- WATER QUALITY AFFECTED BY DEFORESTATION
- WATER QUALITY AFFECTED BY LOSS AND DESTRUCTION OF CATCHMENT AREAS
- LAND DEGRADATION FROM DEFORESTATION
- PROBLEMS ARISE BECAUSE OF DEVELOPMENT MODEL IS ENVIRONMENTALLY DESTRUCTIVE
- INADEQUATE MONITORING
- NEED FOR PREVENTIVE APPROACH

"Major problems affecting the water quality of rivers and lakes arise, in variable order of importance according to different situations, from inadequately treated domestic sewage, inadequate controls on the discharges of industrial waste waters, loss and destruction of catchment areas, ill-considered siting of agricultural practices. This gives rise to the leaching of nutrients and pesticides. Aquatic ecosystems are disturbed and living freshwater resources are threatened. ...Erosion, degradation, deforestation and desertification have led to increased land degradation, and the creation of reservoirs have, in some cases, resulted in adverse effects on ecosystems. Many of these problems have arisen from a development model that is environmental destructive and from a lack of protection. Ecological and human health effects are the measurable consequences... although the means to monitor them are inadequate or non-existent in many countries. There is a widespread lack of perception of the linkages between the development, management, use and treatment of water resources and aquatic ecosystems. A preventive approach, where appropriate, is crucial to the avoiding of costly subsequent measures to rehabilitate, treat and develop new water supplies. (Agenda 21, 18.45 Fresh water)

- CONSERVATION OF BIODIVERSITY

" Promote cooperation between the parties to relevant international conventions and action plans with the aim of strengthening and coordinating efforts to conserve biological diversity and the sustainable use of biological resources. (Agenda 21, 15.8 e. biodiversity)

" Strengthen support for international and regional instruments, programmes and action plans concerned with the conservation of biological diversity and the sustainable use of biological resources. (15.8 f, Biodiversity)

- NEED TO REORIENT EXISTING PRODUCTION AND CONSUMPTION PATTERNS

"Achieving the goals of environmental quality and sustainable development will require efficiency in production and changes in consumption patterns in order to emphasize optimization of resource use and minimization of waste. In many instances, this will require reorientation of existing production and consumption patterns that have developed in industrial societies and are in turn emulated in much of the world. (4.15 Changing Consumption Patterns, Agenda 21).

- PROMOTION OF PATTERNS OF CONSUMPTION TO MEET BASIC NEEDS

" To promote patterns of consumption and production that reduce environmental stress and will meet the basic needs of humanity (4.7.a Changing Consumption Patterns, Agenda 21)

- PRECAUTIONARY PRINCIPLE

"Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation." (Rio Declaration, 1992).

Noting also that where there is a threat of significant reduction or loss of biological diversity, lack of full scientific certainty should not be used as a reason for postponing measures to avoid or minimize such a threat, (Biodiversity Convention)

- PROVISION FOR NOMINATION OF WORLD HERITAGE SITES FOR OLD GROWTH

"Establishing, expanding and managing, as appropriate to each national context, protected area systems, which includes systems of conservation units for their environmental, social and spiritual functions and values, including conservation of forests in representative ecological systems and landscapes, primary old-growth forests, conservation and management of wildlife, nomination of world Heritage Sites under the World Heritage Conventions, as appropriate, conservation of genetic resources, involving in situ and ex situ measures and undertaking supportive measures to ensure sustainable utilization of biological resources and conservation of biological diversity and the traditional forest habitats of indigenous people, forest dwellers and local communities; (11.15 b., Deforestation, Agenda 21)

- VALUE OF FORESTS THROUGH NON-DAMAGING USES

It is also possible to increase the value of forests through non-damaging uses such as ecotourism and the *managed* supply of genetic materials. Concerted action is needed in order to increase people's perception of the value of forests and of the benefits they provide. (11.22. Deforestation, Agenda 21)

- VALUE OF ECOTOURISM

"To promote more comprehensive use and economic contribution of forest areas by incorporating eco-tourism into forest management and planning. (11.23 d Deforestation, Agenda 21)

- SUPPORT OF ARMS-LENGTH RESEARCH

Governments and institutions, in collaboration where necessary with appropriate international agencies and organizations, Universities and non-governmental organizations should undertake assessments and systematic observations of forests and related programmes and processes with a view to their continuous improvement. (11.34 Deforestation)

the promotion of sustainable production systems such as traditional methods of agriculture, agroforestry, forestry, range and wildlife *management*, which use, maintain or increase biodiversity (15.5 Biodiversity, Agenda 21)

• PROMOTION OF TRADITIONAL METHODS OF FORESTRY THAT MAINTAIN OR INCREASE BIODIVERSITY

" Take effective economic, social and other appropriate incentive measures to encourage the conservation of biological diversity and the sustainable use of biological *resources*, including the promotion of sustainable production systems, such as traditional methods of agriculture, agroforestry, forestry, range and wildlife *management*, which use, maintain or increase biodiversity (15.5 Biodiversity, Agenda 21)

• LIMITATION OF THE SOVEREIGN RIGHT TO EXPLOIT

States have the sovereign right to exploit their own biological *resources* pursuant to their environmental policies, as well as the responsibility to conserve their biodiversity and use their biological resources sustainably, (15.3 Biodiversity, Agenda 21)

• ENVIRONMENTAL ASSESSMENT OF ALL ACTIVITIES THAT COULD HAVE SIGNIFICANT IMPACTS (INCLUDE FOREST ACTIVITIES)

Ensure that relevant decisions are preceded by environmental impact assessments and also take into account the costs of any ecological consequences (7.42 Settlement, Agenda 21)

(a) Introduce appropriate procedures requiring environmental impact assessment of its proposed projects that are likely to have significant adverse effects on biological diversity with a view to avoiding or minimizing such effects and, where appropriate, allow for public participation in such procedures; (Biodiversity Convention) From the Climate Change Convention

• RECOGNITION OF THE IMPORTANCE OF FORESTS AS SINKS FOR GREEN HOUSE GASES

Aware of the role and importance in terrestrial and marine ecosystems of sinks and reservoirs of greenhouse gases,

(d) Promote sustainable management, and promote and cooperate in the conservation and enhancement, as appropriate, of sinks and reservoirs of all greenhouse gases not controlled by the Montreal Protocol, including biomass, forests and oceans as well as other terrestrial, coastal and marine ecosystems;

• NEED TO DISCOURAGE OR PREVENT TRANSFER OF ACTIVITIES AND SUBSTANCES THAT CAUSE ENVIRONMENTAL DEGRADATION

"States should effectively cooperate to discourage or prevent the relocation and transfer to other States of any activities and substances that cause severe environmental degradation or are found to be harmful to human health."(Principle 14 Rio Declaration)

2. BACKGROUND DISCUSSION RELATED TO A "DECLARATION OF FOREST PRINCIPLES"

Agenda 21, which was adopted by the global community, was all-inclusive of its examination of "sustainable development," the "Land Resources - Deforestation" document, however, is a narrow sectoral document. Principles related to the inherent worth of forest ecosystem, the sustainability of forest use, and the necessity of international ecologically sound standards must reflect the complexity and all-inclusiveness of many of the enunciated principles in Agenda 21, the Rio declaration as well as the fundamental ecologically sound approach to forests.

Given that " We have come to realize that threats to the biosphere, which sustains all life on earth, have changed in rate, magnitude and scale, to such an extent that inaction would be negligent. (Alternate Earth Charter, Global Forum, 1992), we propose the following:

Rather than a "Land resources: Deforestation" document which deals with forests in a narrow sectoral way, a broad "Declaration of Forest Principles" is proposed. The following declaration is based on the "unofficial Land Resources: Deforestation", text from June 16, 1992). The complete text is printed here in 10 point plain. This text, however, has been expanded and altered: sections that are recommended for deletion are in *10-point italics*. Sections drawn from various sections of Agenda 21 (1992), the Rio Declaration (1992), World Charter of Nature (1982) and Preservation of cultural and Natural Heritage (1972) are in 10 point plain underlined. Recommendations made by environmental groups are in **10 bold drawn from various recommendations, and comments and titles are in **12-point CAPITALS****

3. SECTION BY SECTION ANALYSIS OF "LAND RESOURCES: DEFORESTATION" DOCUMENT WITH SUGGESTED DELETIONS AND ALTERATIONS IN ORDER TO ACHIEVE A PROPOSED "DECLARATION OF FOREST PRINCIPLES" DOCUMENT COPY OF TEXT WITH ADDITIONS FROM ENVIRONMENTAL GROUPS AND FROM AGENDA 21 AND THE RIO DECLARATION.

LAND RESOURCES: DEFORESTATION

Non-legally binding [legally binding] authoritative statement of principles for a global consensus on the *management* conservation and sustainable development of all types of forests.

PREAMBLE

(a) The subject of forests is related to the entire range of environmental and development issues and opportunities including **the right to conservation of representative ecosystems, right to non-consumptive enjoyment of forests and the right to ecologically sound employment** *the right to socio-economic development on a sustainable basis.*

b) The guiding objective of these principles is to contribute to the **conservation of forest ecosystems, and to the establishment of ecologically sound forest practices** *of the management, conservation and sustainable development of forests, and to provide for the setting aside of wilderness, for the preservation of significant unfragmented old growth systems, and for the establishment of international ecologically sound standards of true sustainability. their multiple and complementary function and uses.*

c) Forestry issues and opportunities should be examined in an holistic and balanced manner within the overall context of environment and development, taking into consideration **the mandate to set aside untouched wilderness areas, to preserve significant unfragmented old-growth forest ecosystems, as well as the non-consumptive and ecologically sound uses** *multiple functions and uses of forests, including traditional uses, and the likely economic and social stress when these uses are constrained or restricted, as well as the potential for development that sustainable forest management can offer. It is also possible to increase the value of forests through non-damaging uses such as eco-tourism and the managed supply of genetic materials. Concerted action is needed in order to increase people's perception of the value of forests and of the benefits they provide. (11.22. Deforestation)*

d) These principles reflect a first global consensus on forests. In committing themselves to the prompt implementation of these principles, countries also decide to keep them under assessment for their adequacy with regard to further international cooperation on forest issues **and for the establishment of international enforceable ecologically sound standards. These standards must give primacy to the understanding of the forest as a complex interacting ecosystem, including the "cradle to grave approach" assessment of all intrusions into the ecosystem.**

Governments, in collaboration with *industry and appropriate international organizations, should develop procedures for monitoring the application of the cradle to grave approach, including environmental audits (20.20 e Hazardous wastes)*

e) These principles should apply to all types of forests, both natural and planted, in all geographic regions and climatic zones, including austral, boreal, sub-temperate, temperate, sub-tropical and tropical.

f) All types of forests embody complex and unique ecological processes **which are of intrinsic value in themselves (World Charter of Nature)** and which are the basis for their present and potential capacity to provide resources to satisfy human needs as well as environmental values and as such **their ecologically sound use *sound management* and their conservation** is of concern to the Governments of the countries to which they belong **[and to the world community]** and are of value to local communities and to the environment as a whole.

g) *Forests are essential to economic development and the maintenance of all forms of life.* **have intrinsic value and are essential to all forms of life**

h) **Even though** *Recognizing that* the responsibility for forest *management, conservation and sustainable development* is in many States allocated among federal/national, state/provincial and local levels of government, each State, in accordance with its constitution and/or national legislation should pursue **international ecologically-sound standards** *these principles* at the appropriate level of government

Principles/elements

1. a) *States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction and* States have the sovereign right to exploit their own biological resources pursuant to their environmental policies, as well as the responsibility to conserve their biodiversity and use their biological resources sustainably, (15.3 Biodiversity, Agenda 21) **and the responsibility to ensure that activities within their jurisdiction do not cause damage to the environment both within and beyond their own state, and providing that they do not violate internationally ecologically sound standards, and the responsibility to recognize the inherent worth of the forest ecosystem itself (World Charter of Nature), to promote the setting aside of undisturbed wilderness, and to allow the forest ecosystem to renew itself**

(b) **Recognizing the importance of preservation of forest ecosystem and the setting aside of undisturbed wilderness.** The agreed full incremental cost of achieving benefits associated with forest conservation and sustainable development requires increased international cooperation and should be equitably shared by the international community. **Due consideration should be given to the designating of an increased number of unfragmented forest ecosystems under the UN Convention for the Preservation of Cultural and Natural Heritage.**

2. (a) States have the sovereign *and inalienable* right as well as the responsibility to conserve their biodiversity and use their biological resources sustainably, (15.3 Biodiversity) **and the responsibility to ensure that activities within their jurisdiction do not cause damage to the environment both within and beyond their own state, and providing that they do not violate internationally ecologically sound standards** *to utilize,*

manage and develop their forests in accordance with their development needs and level of socio-economic development and on the basis of national policies consistent with sustainable development and legislation, including the conversion of such areas for other uses within the overall socio-economic development plan based on rational land-use policies." Inappropriate and uncontrolled land uses are a major cause of degradation and depletion of land resources. Present land use often disregards the actual potentials, carrying capacities and limitations of land resources as well as their diversity in space. (14.34 Agriculture). **Recognizing that since the term 'management' implies that we are in fact capable of truly managing forests in a sustainable way, and since we must recognize that the forest ecosystem is complex and indeterminate, and that many of our intrusion have unexpected consequences, that we should proceed with caution by observing and drawing upon the expertise evidenced in the few existing unfragmented original growth ecosystems.**

(b) **The precautionary principle is followed in all proposed logging activity because of the potential for logging activity to cause 'serious and irreversible' damage. Forest resources and forest lands should be preserved for their inherent value (world Charter of Nature) so as to leave open a full range of non-consumptive options.**

Other Forests should be used as resources providing that ecologically sound practices are used for harvesting and restoring the forest resources should sustainably managed to meet the social, economic, ecological, cultural and spiritual human needs of present and future generations. These needs are for forest products and services, such as wood and wood products, water, food, fodder, medicine, fuel, shelter, employment, recreation, habitats for wildlife, landscape diversity, carbon sinks and reservoirs, and for other forest products. Appropriate measures should be taken to protect forests against harmful effects of pollution, including air-borne pollution, fires, pests and diseases, and from harmful logging practices and from harmful chemicals that are used for forest "management" in order to maintain their full multiple value. to leave open options for non-consumptive use.

(c) The provision of timely, **arms-length** reliable and accurate information on forests and forest ecosystems is essential for public understanding and informed decision-making and should be ensured.

(d) Governments should promote and provide opportunities for the participation **in the establishing of terms of reference and throughout the decision-making process** of interested parties, including local communities and indigenous people, industries, labour, non-governmental organizations and individuals, forest dwellers and women, in the development, implementation and planning of national forest policies. **taking fully into consideration adherence to international ecologically sound standards. A distinction should be made between input from vested short-term economic interest for economic gain and long-term concern about the ecological commons.**

3. (a) **International ecological standards shall provide a framework for development and strengthening of conservation and sustainable development.** National policies and strategies should provide a framework for increased efforts, including the development and strengthening of institutions and programmes for the *management, conservation and sustainable development of forests and forest lands*. **Implementation of international ecologically sound standards. These standards shall apply to all forests on public and private lands, and should draw upon ecologically sound indigenous and traditional practice that have been demonstrated to preserve biodiversity.**

b) International institutional arrangements, building on those organizations and mechanisms already in existence, as appropriate, should facilitate international cooperation in the field of forests.

c) All aspects of environmental protection and social and economic development as they relate to forests and forest lands should be integrated and comprehensive.

4. The vital role of all types of forests in maintaining the ecological processes and balance at the local, national, regional and global levels through, inter alia, their role in protecting fragile ecosystems, watersheds and freshwater *resources sources* and as rich storehouses of biodiversity ... **and International ecological sound guidelines shall be in place to ensure this vital role and the vital role of biological resources and sources of genetic material for biotechnology products, as well as photosynthesis, should be recognized, and international standards shall be in place as guidelines to ensure this vital role.**

5 (a) **Developed states and companies shall be responsible in their own country and in their country of operation for restoring the land that had previously been destroyed through ecologically unsound logging practices and through ecologically unsound silviculture practices. In developing countries, international assistance shall be given to restore land destroyed through subsistence forestry.** National forest policies should recognize and duly support the identity, culture and the rights of indigenous people, their communities and other communities, and forest dwellers. Appropriate conditions should be promoted for these groups for them **to have a representative ecosystem preserved, access to independent arms-length research, as well as** an economic stake in forest use, perform economic activities, and achieve and maintain cultural identity and social organization, as well as adequate levels of livelihood and well-being, through, inter alia, those land tenure arrangements which serve as incentives for **the sustainability the sustainable management** of forests. **A distinction should be made between "forest dwellers" and forest exploiters (those who go into the forest primarily to exploit the forest as a resource). The practice of destroying forest lands for the growing of cash crops for external markets as part of the current model of development should be halted.**

b) The full participation of women in all aspects of *management*, conservation and sustainable development of forests should be actively promoted.

6. (a) All types of forests play an important role in meeting energy requirements through the provision of a renewable source of bio-energy, particularly in developing countries, and the demands for fuelwood for household and industrial needs should be met through sustainable forestry *management*, afforestation and reforestation. *To this end, the potential contribution of plantations of both indigenous and introduced species care should be taken to resist the introducing of off-site planting for the provision of both fuel and industrial wood should be recognized. " Despite mounting efforts over the past 20 years, the loss of the world biological diversity, mainly from habitat destruction, over-harvesting, pollution and the inappropriate introduction of foreign plants and animals has continued. (15.3 Biodiversity, Agenda 21)*

b) National policies and programmes **in accordance with international ecologically sound standards** should take into account the relationship, where it exists, between the conservation, *management* and sustainable development of forests and all aspects related to the production, consumption, recycling and/or final disposal of forest products, **and that international trade agreement shall not require states to relax high environmental standards.**

(c) Decisions taken on the *management*, conservation and sustainable development of *forest resources* **forests** should benefit to the extent practicable from a comprehensive assessment of economic and non-economic values of forest goods and services and of the environmental costs and benefits. The development and improvement of methodologies for such evaluations should be promoted.

d) The role of planted forests and permanent agricultural crops as sustainable and environmentally sound sources of renewable energy and industrial raw material should be recognized, enhanced and promoted. The contribution to the maintenance of ecological processes, to offsetting pressure on primary/old-growth forest and to providing regional employment and development with the adequate involvement of local inhabitants should be recognized and enhanced.

(e) Natural forests also constitute a source of goods and services and their conservation; sustainable *management* development and use should be promoted.

7. An effort should be made to promote a supportive international economic climate conducive to sustained and environmentally sound development of forests in all countries, which include, inter alia, the promotion of sustainable patterns of production and consumption, the eradication of poverty, and the promotion of food security.

8. (a) Efforts should be undertaken towards the greening of the world. All countries, notably developed countries **in accordance with international**

ecologically-sound standards, should take positive and transparent action towards reforestation, afforestation and forest conservation, as appropriate.

(b) Efforts to maintain and increase forest cover and forest productivity should be undertaken in ecologically, economically and socially sound ways through the rehabilitation, reforestation and re-establishment of trees and forests on unproductive, degraded and deforested lands, as well as through **allowing previously destroyed forests to regenerate themselves** *the management of existing forest resources*.

(c) The implementation of national policies and programmes aimed at forest *management*, conservation and sustainable development, particularly in developing countries, should be supported by international financial and technical cooperation, **in accordance with International ecologically sound standards**, including through the private sector, *where appropriate*, **and should not violate principle 14 of the Rio Declaration, or the principles in the Biodiversity Convention**.

(d) Sustainable forest *management and use* should be carried out in accordance with national development policies **that do not violate international conventions such as Biodiversity as well as international ecologically-sound standards**, *and priorities and on the basis of environmentally sound national guidelines. In the formulation of such guidelines account should be taken, as appropriate, and if applicable, of relevant internationally agreed methodologies and criteria*.

(e) Forest *management conservation and use* should be integrated with *management of adjacent areas* so as to maintain ecological balance and **sustainability sustainable productivity**.

(f) National policies and/or legislation aimed *at management*, conservation and sustainable development of forests, should include the protection of ecologically viable representative or unique examples of forests, including primary/old-growth forests, cultural, spiritual, historical, religious and other unique valued forests of national importance; **these forests should be distributed widely throughout each state and throughout the world**,

(g) Access, **shall be required to comply with international ecologically sound standards**, to biological resources - including genetic material, shall be with due regard to the sovereign rights of the countries where the forests are located and to the sharing on mutually agreed terms of technology and profits from biotechnology products that are derived from these resources.

(h) National policies should ensure that environmental impact assessments should be carried out where actions are likely to have significant adverse impacts on important forest resources, and where such actions are subject to a decision of a competent national authority. **Conversely it must also be recognized that forest practices have and continue to have significant adverse impacts on the land and water base, and that the impact of forest practices must also be under the purview of environmental impact assessment. To determine the environmental impact, states shall apply international ecologically sound standards, established by an independent, arms-length research body, and**

Ensure that relevant decisions are preceded by environmental impact assessments and also take into account the costs of any ecological consequences (7.42 Settlement, Agenda 21)

9 (a) The efforts of developing countries, to strengthen the *management*, conservation and sustainable development of their forests resources should be supported by the international community taking into account the importance of redressing external indebtedness, particularly where aggravated by the net transfer of resources to developed countries, as well as the problem of achieving at least the replacement value of forests through improved market access for forest products, especially processed products. In this respect, special attention should also be given to countries undergoing the process of transition to market economies. **No state shall be required to log a forest to service international debt or to comply with international trade regulations. Debt remission for preservation of significant forest areas should be instituted.** "States should effectively cooperate to discourage or prevent the relocation and transfer to other States of any activities and substances that cause severe environmental degradation or are found to be harmful to human health."(Principle 14, Rio Declaration)

(b) The problems that hinder efforts to attain the conservation and sustainable use of forests *resources* and stem from the lack of alternative options available to local communities, in particular the urban poor and poor rural populations who are economically and socially dependent on forests *and forest resources*, should be addressed by Governments and the international community.

(c) National policy formulation with respect to all types of forests **shall give primacy to the fulfillment of high international ecological standards and not compromise those long-term ecological principles for the sake of short-term economic gain, but rather attempt to convert ecologically unsound practices to ecologically sound practices.** *should take account of the pressures and demands imposed on forest ecosystems and resources from influencing factors outside the forest sector and intersectoral means of dealing with those pressures and demands should be sought.*

11. New and additional financial resources should be provided to developing countries to enable them to sustainably *manage*, conserve and develop their **forests forest resources**, including afforestation, reforestation and combating deforestation, forest and land degradation **through the use of ecologically sound practices and substances such as selective logging, safe alternative pest control method.**

12. In order to enable in particular developing countries to enhance their endogenous capacity and to better *manage*, conserve and develop their **forests forest resources**, the access to and transfer of environmentally sound technologies and corresponding know-how on favourable terms, including on concessional and preferential terms, as mutually agreed, in accordance with the relevant provisions of Agenda 21, should be promoted, facilitated, and financed, as appropriate, **and in accordance with principle 14 (anti-dumping principle) of the Rio Declaration, and in accordance with the precautionary principle.**

13 (a) Scientific **arms-length** research, forest inventories and assessment, carried out by national institutions, **in accordance with international ecologically-sound standards**, which take into account, where relevant, **wilderness**, biological, physical, social and economic variables, as well as the technological development and its application in the field of *sustainable forest management*, conservation and development, should be strengthened through effective modalities, including international cooperation. In this context, attention should also be given to research and development of sustainably harvested non-wood products. (WHAT WOULD THIS INCLUDE? HUNTING?, MEDICINES?)

(b) National and where appropriate, regional and international institutional capabilities in, education, training, science, technology, economics, anthropology and social aspects of forests, **wilderness** and forest **sustainability management** are essential to the conservation and sustainable development of forests and should be strengthened.

(c) International exchange of information **on the results of the intrinsic worth of forest ecosystems, on significance of wilderness and on ecologically sound forest practices** *forest and forest management* research and development should be enhanced and broadened, as appropriate, making full use of education and training institutions, including those in the private sector. **The international community shall set up an independent body to determine the accuracy of the claims made by multinational forest companies, and to establish a set of international standards of ecologically sound forest practices.**

(d) Appropriate indigenous capacity and local knowledge regarding the conservation and sustainable development of forests should, through institutional financial support and in collaboration with the people in local communities concerned, be recognized, respected, recorded, developed and, as appropriate, introduced in the implementation of programmes, **and their input sought in the establishment of international standards of ecologically sound forest practices.** Benefits arising from the utilization of indigenous knowledge should therefore be equitably shared with such people.

14. (a) **Given the urgency of deforestation and soil degradation that was recognized by the global community in Agenda 21, fundamental environmentally sound principles must be given primacy in any trade negotiations.** *the Trade in forest products should be based on non-discriminatory and multilaterally agreed rules and procedures consistent with international trade law and practices. In this context, open and free international trade in forest products should be facilitated.*

(b) *reduction or removal of tariff barriers and impediments to the provision of market access and better prices for higher value-added forest products and their local processing should be encouraged to enable producer countries to better conserve and manage , sustain and allow for the renewal of their forests their renewable forest resources, and the export of resources, such as raw logs, cants and wood chips, that detract from value-added forest production, must be discontinued.*

(c) **Since true environmental costs, assessed by an independent environmental audit, have been ignored in the process of decision making about forest use, environment costs and benefits must be assessed.** Incorporation of environmental costs and benefits into market forces and mechanisms. In order to achieve forest conservation and sustainable development, should be encouraged both domestically and internationally, and

(d) **Forest conservation and sustainable development policies shall be given primacy and should not be compromised by economic policies** *should be integrated with economic, trade and other relevant policies.*

(e) Fiscal, trade, industrial, transportation, and other policies and practices that may lead to forest degradation should **shall** be avoided. Adequate policies, aimed at *management*, conservation and sustainable development of forests, including *where appropriate incentives for the conversion from ecologically unsound practices* should be encouraged.

15(a) Unilateral measures, obligations or agreements, to restrict and /or ban international trade in timber of other forest products should be removed or avoided, in order to attain long-term sustainable forest management

16. Pollutants, particularly air borne pollutants, including those responsible for acidic deposition, that are harmful to the health of forest ecosystems at the local, national regional and global levels should be controlled, **and the use of harmful pesticides in forestry should be reduced and eventually eliminated.**

Governments, in cooperation with relevant international organizations and programmes, should carry out national reviews, as appropriate, of previously accepted pesticides whose acceptance was based on criteria now recognized as insufficient or outdated and of their possible replacement with other pest control methods, particularly in the case of pesticides that are toxic, persistent and/or bio-accumulative. (19.55 b Toxic chemicals))

" Integrated pest *management*, which combines biological control, host plant resistance and appropriate far practices and minimizes the use of pesticides, is the best option of the future as it guarantees yields, reduces costs, is environmentally friendly and contributes to the sustainability of agriculture. (14.74 Agriculture)

"Promoting the use of environmentally less harmful pesticides and fertilizers and alternative methods for pest control, and considering the prohibition of those found to be environmentally unsound (17.28 i)

() THAT in March 1993, I prepared for the International Law and Obligations Institute (project) a Report Card on the BC governments compliance with the Framework Convention on Climate Change on the occasion of the coming into force of the Convention [I received a note from the BC Law Society which informed me that I could not use ‘ international law” in the title; their concern surprised me because generally the Law Society had little interest in international law .

() THAT 1993 Modified, extended and circulated Climate change report card

() THAT 1993, I created a Composite diagram on "Climate Change: identification of issue, response, evaluation, monitoring, enforcement" linking information from 8 different countries. A follow-up to a project based in Harvard on Social Learning related to climate change.

() THAT in 1993, I analyzed and co-authored “An Analysis of the Discrepancy between NDP policies passed through resolutions at NDP Conventions and NDP Government Policy” in context of Canadian obligations; this paper was distributed at a Press Conference at the BC Legislature.

() THAT in 1993, I Co-authored the paper “A Critique of the Roundtable proposal for Education for Sustainability” in the context of Canadian obligations Submitted to the Roundtable on Environmental Education

() THAT in 1993, I co-drafted and circulated the paper “Criteria for determining the appropriateness of educational material on environmental issues.” These criteria were submitted to the Environmental Educators Professional Association and we collaborated with the Environmental Educators Committee of the BCTF on the formulation of criteria for judging the appropriateness of issue-related educational materials in the classroom. (1993)

() THAT in 1993 I went to meeting in Vancouver on Canada's proposal for addressing the issue of climate change. I asked a question about the reason for Canada caving into to the lobbying from the greenhouse gas producers.

() THAT in 1993, I represented the Vancouver Peace Society and the Greater Victoria Disarmament group and I submitted a brief to Defence Policy Review Panel. A Commander said, at one point, Don't you wish that when hostilities break out that there are strong men to protect you.”

() THAT in from 1991—1994 I Reviewed provincial policy documents such as CORE Charter, B.C. Environmental Bill of Rights, the B.C. Prevention Act, the Forest Practices Code; B.C. Standards for Pollution Prevention, and indicated the inconsistency of these documents with other Federal and international documents.

() THAT in 1993, I co-authored a proposal for Principle-based education
EXHIBIT

Interdependence of issues in principle-based education

by Joan Russow, sessional lecturer in global issues, Environmental studies Program, University of Victoria, attended the Earth Summit at Rio. On the

Board of Directors of the Vancouver Island Peace Society; Greater Victoria Disarmament Group, Vancouver Island Human Rights Coalition, and the World Federalists. Co-founder of the ERA Ecological Rights Association

and

David White, teacher, Path Finder's Program, ESL, environmental educator, Board of directors of B.C.E.N., of the Canadian Partnership for International Community Forestry (Treeroots); of the Vancouver Island Network of Environmentalist (VINE);

C.E.N. Education Caucus; Chair of Sierra Club (Victoria Group).

Too often international crises have been fragmented into component crises which are examined independently, rather than striving to address the complex of crises concurrently. This fragmentation is reflected in separate international documents that focus on human rights, such as: the Universal Declaration of human Rights and the two complementary international covenants; other documents that focus on peace such as Atmospheric Test Ban ; Nuclear Non-proliferation, SALT 1 and II , START 1 and START II; and further documents that focus on the environment - World Charter of Nature, United Nations Conference on the Human Environment (UNCHE) among many others.

In many cases, however, there is a momentary recognition of the interdependence of crises, followed by the persistent fragmentation into components. For example, in the preamble to Agenda 21, from UNCED, the following assessment of the interdependence of crises was made:

“Humanity stands at a defining moment in history. We are confronted with a perpetuation of disparities between and within nations, a worsening of poverty, hunger, ill health and illiteracy, and the continuing deterioration of the ecosystems on which we depend for our well-being...” (1.1 Preamble, Agenda 21, UNCED, 1992)

[it is important to note that, in general - except for one reference - any mention of the military was excluded, other than in their affirmation in the Rio Declaration of the Stockholm convention which contained the following principle: Principle 26

“Man, and his environment must be spared the effects of nuclear weapons and all other means of mass destruction. States must strive to reach prompt agreement, in the relevant international organs, on the elimination and complete destruction of such weapons.”(Stockholm, 1972)]

In chapter 33, however, there is an important statement about the military budget;
member states of the United Nations made a commitment to the "the reallocation of resources presently committed to military purposes" (33.18e)

The drafters of Agenda 21 then proceeded to fragment the complexity of issues and crises into 22 substantive chapters.

There has not only been a reluctance to link different issues such as concern for the destruction of the environment, the escalation of war, the violation of human rights, the disregard for social justice and the perpetuation of inequity; but also, a reluctance to translate stated principles into action.

Throughout international documents there has been expressed concern for different components of the complex of issues and crises. Underlying this expressed concern have been fundamental principles that, if followed, could address this concern. Although there has often been and continues to be a convergence between stated concerns and fundamental principles, there is little convergence between stated concerns/principles and action. One reason for this lack of convergence could be that these principles have not been used as moral suasion to encourage governments to act. Little change will occur if there is no convergence between expressed concern/fundamental principles and concerted action to address the concerns. The public cannot call for government to comply with these principles if they are not aware that the principles exist.

We have been examining international documents, and have carried out a content analysis of the different principles enunciated in these documents. We have attempted to examine the complex of interdependent issues and corresponding crises, and extract some fundamental principles that could be

used as a basis of education. We are describing this approach to examining the interdependence of issues through internationally established principles, "Principle-based issue education "

Principle-based issue education is one-way educators could begin to make students and the general public aware of both the interdependence of issues and of these internationally agreed-to principles which have been promulgated as solutions to crises arising from these issues. The essence of "principle-based education" resides in the conviction that as an international community we have agreed to some fundamental principles, and that the introduction of these fundamental principles in the educational system could provide a framework for the discussion of the interdependence of issues.

In 'principle-based education, principles related to preventing the destruction of the environment, the escalation of war, the violation of human rights, the disregard for social justice and the perpetuation of inequity have been extracted from international documents. These internationally endorsed principles become the foundation for an educational program.

Often in "education about issues," in the name of objectivity, a "both-sides", or "balanced" approach is advocated. Issues are presented as reflecting different values, and because of the difference, opposing views are considered to be legitimate. In this "both-sides" approach, students are often encouraged to explore positions which may be in contradistinction to principles that have been endorsed internationally. The justification for this "both sides" approach is the need to counteract indoctrination that could often result from "value-based" indoctrination.

A distinction, however, should be made between value-based indoctrination and principle-based education. In indoctrination the values that are presented are usually those that comprise the belief system of the educator. In principle-based education, on the other hand, the ideas around which the lessons are developed are drawn, not from an educator's particular belief system, but from internationally endorsed principles.

1 "Principle-based education" was introduced in 1985 in Russow, J. " A Method of teaching Human Rights;" In this publication, the concept of "principle-based issue education" and the method of "Issue-principle analysis" were introduced and "the violation of Human Rights" was extended to include

the destruction of the environment, the escalation of war, the disregard for social justice and the perpetuation of inequity.

Principle-based education, which has been used to expand on issues within single disciplines and to integrate different disciplines, will be analyzed in the following way:

- through exploration of the complexity and interdependence of issues and principles;
- through documentation of fundamental principles that emerged from UNCED and from other international conventions, declarations, conferences and agreements, such as the following:

Universal Declaration of Human Rights, 1948; Atmospheric Test Ban (1963); Nuclear Non-proliferation, 1968; International Covenant of Social, Cultural Rights ; Stockholm Conference on the Human Environment, 1972; UN Conservation of Natural Heritage, 1972; Convention on International trade in Endangered Species of Wild Fauna and flora (Washington), 1973; the World Charter of Nature, 1982; Non-proliferation of Nuclear weapons, SALT Montreal protocol on substances that deplete the ozone layer 1987; Convention on the Rights of the Child 1989; Convention for the Control of trans-boundary movements of hazardous wastes Basel Convention 1989; the Caracas Declaration 1992; Rio Declaration and Agenda 21, 1992 .

- through preparation of ideagraphs² (diagrammatic representation of the complexity and interdependence of issues and principles); and through the introduction of ideographs as a mode of instruction³.
- through the preparation of an International Principle Diagram in which the complexity and interaction of international principles is delineated. In this diagram the principles that have been endorsed internationally can be seen in the larger context of a range of principles. The class will be encouraged to add as many principles as possible. Through this international principle diagram, students will be able to assess which principles have been globally endorsed, and which have not.
- through explanation of "issue-principle analysis" which is an approach to principle-based education. The following is an outline of a range of possible processes in "issue-principle analysis" that could be used to stimulate thinking about issues and principles

"Issue-principle analysis"

- Locating the principle within "International principle diagram" for example, the precautionary principle

" Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation." (Rio Declaration, 1992).

- clarifying terms and concepts within the principle through ordinary language analysis
- discerning a range of issues within principle
- introducing actual cases related to principle
- establishing criteria for determining whether the principle would apply to these cases
- applying principle to actual cases
- extending the principle or combining principles in response to cases
- generating hypothetical cases
- applying principle to hypothetical cases
- extending principle or combining principles in response to hypothetical cases
- clarifying range and limit of principle
- examining interconnection of principle with other principles

2. Russow, J: 1973-1992: Ideographs: collection of diagrams displaying complexity and interdependence of issues

3. White, D. & Russow, J. & (1992): Ideographs as a Mode of Instruction. Prepared for the Victoria School Board.

() THAT in 1993, I was asked by professor Rod Dobell to replace him at a meeting with Federal Forest minister Jag Maini in Vancouver. The meeting was to be a follow up to Rio. He was not able to attend and suggested that I take his place.

COMMENT

Around the table sat representatives from Fletcher Challenge, Mac Blo, Patrick Moore, and a former NGO. . Forester from New Zealand see notes. Jaq Maini welcomed everyone by saying: "this is just like Rio when we all met." I was thinking that certainly did not include me; I was not part of his pre-Rio corporate entourage. Everyone at the table introduced himself [I think that I was the only women there]. Patrick Moore introduced himself as being with Greenpeace but now he was "Reasonable" another NGO said the same thing. I realized that that "being

Reasonable was a code word for "being willing to compromise." I introduced myself as being involved in the protection of old growth forests

() THAT in 1993 I began to document Principles of Compliance based on international law
Russow, J (1993, this was updated yearly-2001)

1993 Prepared a content analysis of federal documents related to the continued berthing of nuclear-armed capable, or nuclear powered vessels in Victoria and Esquimalt harbours, as an affidavit for the Vancouver Island Peace Society's court case calling for an environmental Assessment review under Environmental Assessment Review Program (EARP) Guidelines

() THAT in 1993, I Submitted a policy document to the Roundtable on Pulp and Paper. "Principles" including principles from international law and a critique of the National Round Table on the Environment's set of Principles related to the pulp and paper industry,

EXHIBIT

() **THAT** as the Chair of the BCEN International Caucus, I was contacted about having input into the document emerging from the Pulp and Paper Roundtable. The document was a perfect example of the problems with the Round Table approach: compromise leading the lowest common denominator. I read the document in which there was a list of environmental groups, including the Sierra Club of Canada, that had already had input into the document but there was no reference to the obligations and commitments from Rio. Often, in the Roundtable process often there is misrepresentation of support; the government lists groups that have been consulted during the process and there is the presumption, because often the roundtable requires consensus. In many cases, those who were consulted during the process could be in disagreement with the resulting document

EXHIBIT

Pulp and Paper *Round Table* Principles
April 13, 1993

GENERAL PRINCIPLES

Many of these problems have arisen from a development model that is environmentally destructive and from a lack of protection. Ecological and human health effects are the measurable consequences... although the means to monitor them are inadequate or non-existent in many countries. (Agenda 21, UNCED18.45)

1. the members of the Pulp and Paper round Table believe that the **equitable and ecologically** sustainable production of pulp and paper is dependent on the cooperation and willingness of **citizens all stakeholders** to recognize and support the necessity for developing actions plans related to the following principles:

• reduction of consumption moving away from current model of consumption (Agenda 21)

- ecological limits
- **Ecosystem shall not be compromised for economic interests**
- **Principle shall drive industry not industry driving principles**
- ecosystem interaction
- **strengthen of standards and technical regulations to encourage prevention technology**
- **conservation and** protection of biodiversity (Biodiversity Convention)
- precautionary principle action in the face of uncertainty (Biodiversity Convention)
- education and safety of the public and the workforce
- meaningful public participation
- responsibility for employment
- recognition of Aboriginal rights and values
- socially responsible marketing practices
- marking of products that have not complied with ecologically safe and sound production and have led to a loss of biodiversity**
- **no old growth wood shall be used for pulp and no wood derived from ecologically unsound practices such as clear cutting**
 - " large-scale clearcutting is the cheapest, fastest and most profitable way for timber companies to log our land. about 90% of B. C's publicly-owned forest land is now logged by clear-cut. Not only do modern clear-cutting methods use fewer people and bigger machines, they are also an environmental disaster" p. 7 Jobs, trees and US the PPWC's Forest Policy
- **revelation of resource extraction practices on labels of all pulp and paper products**
- **Export permits shall not be granted for products arising from ecologically unsafe and unsound practices**
- role and responsibilities of consumers. **Con**
- compliance with regulations and use of other instruments
- **arm's length** research and development
- **replacement of ecologically unsafe and unsound technologies with ecologically safe and sound technologies**
- **government shall allot funding for alternatives to the use of pulp and paper and shall support research into alternatives and ensure that the research into alternatives is not controlled by an industry that could benefit from the alternatives not being introduced**
- global responsibility international **standards and technical regulations shall be considered as a minimum**
- **shift in the onus of proof: the proponents of an intervention shall demonstrate that the intervention is ecologically safe and sound**

2. WORKING WITHIN ECOLOGICAL LIMITS

The ecosystem shall be given primacy and human activities shall be determined by ecological limits

There are ecological limits to pulp and paper production. These limits include the capacity of the ecosystems to provide resources sustainably as well as the ability of ecosystems to cope with production wastes and cumulative impacts of human activities. *Over time these limits may be expanded or contracted*

3. ECOSYSTEM INTERACTION

the pulp and paper industry recognizes that its resource acquisition, manufacturing processes, use and disposal of products have impacts on regional and global ecosystems. **Governments shall set high emission standards that will ensure that the ecological limits are respected.** The industry will cooperate in researching, monitoring, and minimizing these impacts. It accepts its share of the responsibility for:

- adopting sustainable land-use and improved production practice such as **only accepting harvested wood from second growth through ecoforestry principles** pollution prevention, closed-loop technologies, recycling and recovery programs
- increasing efficiency in production, reducing, reusing and recycling of resources, and resource management practices which over time may affect either the forest base or its productivity

when pulp and paper activities are **thought known** to have unacceptable effects on ecosystems **governments to not have to wait for scientific certainty about the unacceptable effects to ban the activities. For example, it shall be mandatory for industry to submit plans for phase-out of use of chlorine, and mandatory to implement these plans**

"Most of the science on organochlorines shows us that the reason they are of concern is that they build up and move through the food chains and have impact on the progeny and on predator species (Gordon Perks Times Colonist Oct 2, 1992)

1989 B.C. promised regulations to require all B.C. pulp mills (1) to install secondary treatment and (2) to reduce organochlorine (AOX) discharges to 2.5 Kg per tonne of pulp production by the end of 1991 and to 1.5 by the end of 1994 (West Coast Environmental Law Research Foundation Spring 1990) Note even at the 1.5. level there will be almost 23 tonnes of AOX per day. ... this underscores the Pulp Pollution Campaign's argument that 1.5. is not low enough.

The strongest environmental regulations in Canada shall be the minimum; re of National and best available technology shall be incorporated into regulations. the National

PROTECTION OF BIODIVERSITY

4. An environmental assessment review of the impact of pulp and paper industrial activities and substances used that could contribute to the loss or reduction of biodiversity shall be carried out as required under the Biodiversity Convention. A life cycle analysis of all the environmental impacts of each stage of production, including the

destruction caused by extracting the resources for the production of pulp and paper, shall be carried out by government.

Pulp and paper industrial activities must protect the biodiversity of both source and receptor ecosystems

ACTION IN THE FACE OF UNCERTAINTY

Where there are threats of serious or irreversible damage to the environment or human health, decision makers **shall should act making use of the best information available to them.** they shall *should* not use lack of scientific certainty as a reason for postponing action to prevent environmental degradation and to protect human health.

Governments in their technical regulations shall invoke the precautionary principle in that governments do not have to wait until there is scientific certainty that environmental degradation will occur in relation to the pulp and paper industry for the use of substances such as chlorine and other ecologically unsound chemicals to be discontinued.

It is the duty of decision makers to ensure that not only shall they act to prevent environmental degradation and harm to human health but also, they shall anticipate ...

Follow not only the precautionary principles but also the cautionary and anticipatory principle

"...reasonable medical concerns ...long precede certainty. Yet the statutes - and common sense - demand regulatory action to prevent harm, even if the regulator is less than certain that harm is otherwise inevitable." Justice Wright, US. Court of Appeals, Ethyl Corp v E.P.A. 1976, 541 G 2d 1 (cited in Elimination of organochlorines: Round Table to Become Excuse for Inaction? [B.C.] "Special Pulp Pollution Edition, Spring 1990 West Coast Environmental Law Research Foundation

Sweden has set a zero organochlorine discharge limit for Swedish pulp mills by the year 2000 (the Pulp, paper and woodworkers of Canada local #10)

the use of Chlorine must be completely eliminated ... (the Pulp, paper and woodworkers of Canada local #10)

20.2. Prevention of the generation of hazardous wastes and the rehabilitation of contaminated sites are the key elements, and both require knowledge, experienced people, facilities, financial resources and technical and scientific capacities.
(Agenda 21)

20.6. Within the framework of integrated life-cycle management, the overall objective is to prevent to the extent possible, and minimize, the generation of hazardous wastes, as well as to manage those wastes in such a way that they do not cause harm to health and the environment.

Overall targets

20.7. The overall targets are:

(a) Preventing or minimizing the generation of hazardous wastes as part of an overall integrated cleaner production approach; eliminating or reducing to a minimum trans-boundary movements of hazardous wastes, consistent with the environmentally sound and efficient management of those wastes; and ensuring that environmentally sound hazardous waste management options are pursued to the maximum extent possible within the country of origin (the self-sufficiency principle). The trans-boundary movements that take place should be on environmental and economic grounds and based upon agreements between the States concerned;

ZERO EMISSIONS OF PERSISTENT TOXIC

that must be zero use, production, and release in all cases where a toxic substance is persistent or bioaccumulative. It also applies when a substance will generate persistent or bioaccumulative toxic byproducts or breakdown products during its productions, use or disposal (zero Toxics Alliance Statement of Principles) that must not be exceeded to protect the [ecosystem — water, air, sediment, soil or biota) and]

EDUCATION AND SAFETY OF THE PUBLIC AND WORKFORCE

6.

-Education about alternatives

The public must be informed about the real alternatives between selecting ecologically unsafe and unsound bleached and ecologically safe and sound bleached and unbleached paper and standards must be set so that ecologically safe and sound alternatives to the chlorine bleaching process be in place. Governments shall set an example by only buying paper that is unbleached or has been bleached by an ecologically safe and sound means. Industry shall discontinue attempting to persuade the public that ecologically unsound and unsafe practices such as the use of chlorine bleach is safe and sound.

Education about work place

Worker health, safety and well-being must be promoted and protected in the production, use and disposal of pulp and paper products.

Public health, safety and well-being must be promoted and protected in the production use and disposal of pulp and paper products.

All activities and substances that do not contribute to worker and public health and safety and well-being shall be discontinued

Education in the School system

In chapter 36 of Agenda 21, a very important distinction is made between promoting "education," promoting "public awareness," and promoting "training." It appears to be clear in Agenda 21 that non-governmental organizations, community-based groups, women's groups and aboriginal groups are called upon to assist educational authorities

in reorienting education. The role of industry is ascertained to be limited to specific areas of business and industrial and training programs.

" Educational authorities, with appropriate assistance of non-governmental organizations, including women's and indigenous peoples' organizations should promote all kinds of adult education programmes for continuing education in environment and development, basing activities around elementary/secondary schools and local problems. The authorities and industry should encourage business, industrial and agricultural schools to include such topics in their curricula. The corporate sector could include sustainable development in their education and training programmes. Agenda 21, section 36.5 l

In the section of Agenda 21 that addresses the "promoting of public awareness " industry is included not as the dispenser of "education" but as the recipient of needed education.

"Countries and regional organizations should be encouraged, as appropriate, to provide public environmental and development information services for raising the awareness of all groups, the private sector and particularly decision makers. (Agenda 21, section 36.10 c)

In the section of Agenda 21, that addresses the "promoting of training, an important role for industry is envisioned.

To strengthen national capacities, in training, to enable governments, employers and workers to meet their environmental and development objectives and to facilitate the transfer and assimilation of new environmentally sound, socially acceptable and appropriate technology and know -how (Agenda 21, 36.13 c)

This section gives industry a very important mandate to assist in the retraining of employees to environmentally sound and socially acceptable technology. Rather than fulfilling this significant mandate, industry has embarked on a campaign to persuade through educational institutions and through public relations campaigns that their practices which have been universally condemned are "ecologically sound," or protective of "biodiversity." They have interpreted their mandate to educate the students in the regular academic program on "sustainability; economic, environmental and social" thus with this re-designation they have eliminated both "environmental education," and "global education

To fulfill this mandate, they have undertaken a two-prong approach: a) to influence education by having direct access to the classroom and to classroom teachers .b) To influence education by being on boards of directors for National and Provincial Round tables that have been established to devise curriculum and develop educational materials for "sustainability",

7. Public and workforce education programs concerning pulp and paper issues should reflect the diverse aspects, values and viewpoints of all stakeholders. They should be based on education principles that encourage critical thinking, problem-solving, and an understanding of the complexity of sustainability issues.

Stakeholders in the pulp and paper industry will make a commitment to developing education and training programs which promote life-long learning so that the workforce will be capable of understanding, adapting and responding to sustainability issues

Educational programs shall reflect the primacy of the ecosystem and its limits and ecologically safe and sound practices and not the interests of stakeholders.

Education ... shall be prepared and passed by a panel composed not of vested interest stakeholders but of individuals reflecting various areas of expertise and experience in the protection of human health and the environment.

MEANINGFUL PUBLIC PARTICIPATION

8. decision makers must be committed to fair, effective and responsible processes of public participation in policy, planning and decision making affecting the ecosystem and the community

9. The pulp and paper industry will provide the public with information about its manufacturing processes and products that will allow the public to make informed decisions concerning the industry and its products.

RESPONSIBILITY FOR EMPLOYMENT

10. The pulp and paper industry recognizes the problems caused by employment losses in its industry and agrees to share responsibility with affected communities and others for early planning for cooperative and effective solutions. Protecting employment is the preferred course of action. Solutions to correct and/or alleviate the impacts of losses that cannot be avoided are diverse and often site-specific. These solutions should:

- should be community-based
- consider a wide range of options for new employment opportunities

- ensure that ecosystems should be remediated so as not to impede future sustainable economic development

Sustainably ecological use

RECOGNITION OF ABORIGINAL RIGHTS AND VALUES

11. Sustainable production of pulp and paper must honour the rights and values of Aboriginal people, and address the impacts of its activities on the health, economies and traditional lifestyles of Aboriginal communities.

Sustainable production of pulp and paper must neither compromise the rights and values of Aboriginal people nor adversely affect the health, economies and traditional lifestyles of Aboriginal communities.

Sustainable production of pulp and paper will not adversely affect the health, economies and traditional lifestyles of Aboriginal communities.

to be finalized

ECOLOGICALLY AND SOCIALLY RESPONSIBLE MARKETING PRACTICES

12. the pulp and paper industry recognizes its role and responsibility to promote and market pulp and paper products that are produced in a sustainable manner: This includes promoting products on the basis of environmental excellence, for example.

- made using methods that minimize the impact on ecosystems
- that maximize the efficient use of resources through conservation, durability, reusability and recyclability
- that add value to the resources and to create and maintain employment
- that encourages responsible use and discourages wasteful use of paper products

COMMITMENT TO RECOVERY SYSTEMS -to be finalized

Industry will share responsibility and work cooperatively with municipalities and others to develop *feasible and viable* systems for the collection, processing and re-use of recycling of the industry's products

ROLE AND RESPONSIBILITIES OF CONSUMERS

13. Consumers should **shall** eliminate the unnecessary consumption of paper products, and reduce, reuse and participate in recycling programs where possible.

Governments shall support recycling programs and make available products with recycled content, and regulations shall be in place to encourage companies marketing recycled products to find ecologically sound and efficient means of recycling products.

Government shall undertake to require recycled products in all government use and publications

Where available consumers should purchase products with recycled content

COMPLIANCE WITH REGULATIONS AND USE OF OTHER INSTRUMENTS

14. Achieving **ecological** sustainability in the pulp and paper sector requires mandatory compliance by the industry with standards and technical

regulations [wording in NAFTA] regulatory standards and strict enforcement of those standards by regulators

Technical regulations shall be high so as to encourage prevention technology [doing it right the first time- avoiding necessity for mitigative measures] and guided not only be the precautionary principle but also the cautionary and anticipatory principles

Given that there is a commitment to work within the limits to the ecosystem, the ecosystem shall be given primacy in all formulation of technical regulations.

An appropriate blend of economic and other incentives and practices should be used to achieve performance which exceeds minimum enforceable standards, provided they are used as a complement to, rather than a substitute for, regulatory standards.

Compliance with regulatory standards, incentives and practices must be monitored and audited with full disclosure to the public

there should be continuing examination and review of any overlapping and conflicting regulations with regard to policy, planning and uniform enforcement, Governments should design systems, with **input from a body of citizens with a wide range of experience and expertise at the time of formulating the terms of reference with stakeholders' input**, whereby jurisdictional responsibility is clear and consistent.

RESEARCH AND DEVELOPMENT

15.

Arm's length research. Industry will be required to contribute to a fund administered by an independent research industry to synthesize the research that has already being carried out into alternatives to forest derived paper. When forest practices ...

The Canadian pulp and paper industry will take a leadership role in carrying out and supporting research and development to improve the sustainability of its raw material base including alternative sources of fibre, its processes and its products. The industry will use the results of the research and cooperate with suppliers and others to create domestic employment opportunities for supply such developments to meet the needs of both domestic and export markets.

GLOBAL RESPONSIBILITY

16. International standards and technical regulations shall be used as a minimum not a maximum.

Canadian stakeholders will promote high environmental standards and sustainable production practices globally, in the manufacture and use of paper and paper products

ENVIRONMENT INDUSTRY

No activity that could cause environmental degradation shall be permitted for the reason that there is a coupling environment clean-up technology May, 22, 1993

DRAFT: for discussion purposes only

"NAFTA: THE DISCREPANCIES BETWEEN THE ENVIRONMENTAL PROVISIONS IN NAFTA AND THE CANADIAN GOVERNMENT'S PUBLISHED INTERPRETATION OF THESE PROVISIONS

() THAT IN 1993, I Prepared for presentation at a panel discussion on

NAFTA

by

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UNIVERSITY OF VICTORIA

May, 22, 1993

In all three countries, Canada, Mexico and the U.S., citizens and organizations are concerned about:

- the misplacing of government priorities,
- the delusion of public process,
- the exploitation of the labour force,
- the inequitable distribution of resources,
- the disenfranchisement of the many,
- the violation of human rights and
- the denigration of social justice

In all three countries, citizens and organizations are also concerned about the unquestioned imperative to grow, the over-consumptive pattern of behavior, the relentless destruction of the environment, and the irreversible loss of ecological heritage

These concerned citizens look with justified trepidation at NAFTA

In this talk I will be examining the potential discrepancy between the stated environmental provisions in NAFTA and the Canadian Governments published interpretation of these provisions in the Canadian Environmental Review.

Background

Within Canada, United States and Mexico there are laws, policies, and regulations in place which appear to conserve, preserve and protect the environment; yet industry is continually in non-compliance with these environmental provisions, and government is continually remiss in not requiring compliance.

The three countries negotiating the NAFTA all enunciate in their national legislation environmental provisions

Mexico

" Social liberalism therefore proposes a State that promotes and encourages private initiative, **but has the capability to firmly regulate economic activity and thus prevent the few from taking advantage of the many; a State that channels attention and resources towards meeting Mexicans' basic needs, is respectful of labor rights and union autonomy, and protects the environment."** (Carlos Salinas de Gortare, Social Liberalism: Our Path, Mexico: On the Record. Vol. 1. No. 4 (March 1992)

In March 1988, Mexico enacted its General Law for Ecological Equilibrium and Environmental Protection. it is a comprehensive statute designed to ensure that there is an adequate legal basis for protecting the environment. Indeed, the law is based in large part on U.S. law and experience.

A central element of the 1988 law is the requirement for environmental impact assessments to be completed on all new investment projects, in both the public and private sectors. To ensure they comply with these requirements, many privately owned companies have already created special environmental offices to analyze the environmental impacts of proposed business activities (U.S. government publication] Free trade Negotiations with Mexico Environmental matters, p. 3) ARMS LENGTH RESEARCH

In Canada, the government claims that :

Canada's Green Plan is second to none in its comprehensive approach to a full range of environmental challenges, funding, accountability and provision for public involvement ," he [Mr. de Cotret] added.

Canada's Green Plan offers new policies, programs and standards to clean up, protect and enhance our land, water and air, our renewable resources, the Arctic, parks and wildlife, and to reduce waste generation and energy use. it also includes measures to maintain global environmental security, foster environmentally responsible decision -making and improve our emergency preparedness....

. (Government of Canada's release " Federal Government releases environmental green plan" December, 1990.)

Goal

to ensure that citizens today and tomorrow have clean air, water and land essential to sustaining human health and the environment....p. 1

INITIATIVES

• **Over the next five years, strengthen federal inspection, information exchange and investigation programs to better enforce environmental regulations**

In 1991, develop and adopt a comprehensive Code of Environmental Stewardship covering all areas of federal operations and activities. The Code will be complemented by a list of targets on issues ranging from waste generation to contaminated sites clean-up and emission standards, establishment of an office of Environmental Stewardship and measures to ensure that federal purchasing policies and practices integrate environmental considerations. Implementation of the code will ensure that the activities and operations of the federal government meet or exceed the standards and practices it is recommending for others. (p. 21) Government of Canada's release " Federal Government releases environmental green plan" December, 1990.)

In the United States, President Bush stated that:

We will ensure that our right to safeguard the environment is preserved in the NAFTA

- we will maintain the right to exclude any products that do not meet our health or safety requirements and we will continue to enforce those requirements

- we will maintain our right to impose stringent pesticide, energy conservation, toxic waste, and health and safety standards

- we will maintain our right , consistent with other international obligations, to limit trade in products controlled by international treaties (such as treaties on endangered species or protection of the ozone layer). [TWO OF THE VERY FEW

INTERNATIONAL AGREEMENTS SIGNED BY THE US]

• **Enhancement and Enforcement of Standards:** we will seek a commitment to work together with Mexico to enhance environmental health and safety standards regarding produces and to promote their enforcement

- we will provide for full public and scientific scrutiny of any change to standards before they are implemented.

-we will provide for consultations on enhancing enforcement capability, inspection training, monitoring and verification

(Response of the Administration to issues raised in connection with the negotiation of a north American Free trade agreement.

May 1, 1991)p.p. 4, 5)

Response of the Administration to issues raised in connection with the negotiation of a north American Free trade agreement.

May 1, 1991)

- we will consult on national environmental standards and regulations, and will provide an opportunity for the public to submit data on alleged non-compliance. (Response of the Administration to issues raised in connection with the

negotiation of a north American Free trade agreement. May 1, 1991, p. 5)

YET the moment that either one of the three states attempts to "enhance" environmental protection the others call forth the spectre of the trade agreement GATT:

Each one of the three states involved has attempted to object to the other state's enhancing environmental standards and in each case GATT has supported the state seeking to object to high standards:

In Canada,

"The Canadian pulp and paper industry has urged Canada to challenge U.S. laws requiring the use of recycled fibre in newsprint. (Shrybman, 1991, p. 13) The Canadian government has argued that a U.S. environmental Protection Agency rule banning the use of all forms of asbestos violates the U.S. Canada FTA and GATT(Eric Christensen, "Pesticide Regulations and International Trade", Environment, Vol. 32. No. 9, November, 1990, p 45)

In the U.S.

The U.S. recently proposed in GATT negotiations that nations be prevented from adopting domestic pesticide standards more stringent than international standards. (Eric Christensen, "Pesticide Regulation and International Trade", Mark Ritchie, "GATT, Agriculture and the Environment: The US Double Zero Plan, " The Ecologist, Vol. 20, No. 6, November, 1990, p. 214.)

The U.S. based Non-Ferrous Metals Producers Committee is using the U.S.- Canada FTA to support its challenge to Canadian federal and provincial pollution control programs intended to reduce emissions from the Canadian smelting industry. (Shrybman "Selling the Environment Short: an environmental assessment of the first two years of free trade between Canada and the United States", Canadian Environmental Law Association, January, 1991, p. 13) (cited in Rolfe, Chris Environmental considerations regarding a possible Mexico-Canada Free trade Agreement for the West Coast environmental law association, February, 1991).

And in Mexico ...

When in 1990 the US. placed an embargo upon tuna products from Mexico, "Mexico complained that the tuna embargo was inconsistent with obligations owed to Mexico under GATT. The September 1991 report of a three-member panel of experts

established pursuant to the third-party dispute settlement procedures of GATT determined that the American embargo on Mexican tuna, even though designed to conserve dolphins [s] was inconsistent with the GATT (McDorman, T. 1991, p. 2)

It would appear that, in all three countries (including states and provinces) there is not the political will required to seriously address the urgency of the environmental crisis.

Will the NAFTA perpetuate the current North American environmental situation of strong but not-enforceable legislation and regulations, will the NAFTA worsen the current North American environmental situation or could an alternative to the NAFTA lead to stronger enforcement of environmental legislation

From the press release on Friday May 21, it would appear that the three day talks on the side environmental accords failed because the U.S. negotiator demanded the standards be enforceable through trade sanctions.

In the absence of any further information about the current discussion about the parallel accord related to the environment, I will only be able to refer to the actual NAFTA agreement itself. A representative from the Ministry of Environment, who was part of the parallel accord information loop, indicated that the purpose of the parallel accord was primarily to clarify some of the environmental provisions, and address some of the concerns expressed about some of these provisions.

"NAFTA: THE DISCREPANCIES BETWEEN THE ENVIRONMENTAL PROVISIONS IN NAFTA AND THE CANADIAN GOVERNMENT'S PUBLISHED INTERPRETATION OF THESE PROVISIONS

To make a comparison between the environmental provisions of NAFTA and the Canadian Government's published interpretation, I have extracted and compiled in this diagram, the provisions in the NAFTA related to the environment (see NAFTA GRAPH) and linked them to the statements published by the Canadian Government in their publication NAFTA: Canadian Environmental Review, Oct. 1992.

In this diagram I have attempted through to document five categories of statements:

1. statements in the NAFTA related to the environment
2. Statements by the Canadian Government in the Canadian Environmental Review, October, 1992. Re: the environmental implications of the NAFTA
3. Focal points to pursue related to statements in the NAFTA
4. Focal points to pursue related to statements made by the Canadian Government
5. Systemic "whereases" and "notwithstandings" within the documents that would prevent the implementation of environmental measures.

The diagram was then divided into key areas that are interrelated "standards-related measures" , "technical regulations," "relation to other documents that protect and preserve the environment," "Risk assessment and appropriate levels of protection," investment: performance requirements.

It would appear that the NAFTA does have in writing provisions to protect the environment

The NAFTA appears to involve a series of discrepancies

I will attempt to examine the discrepancies within the NAFTA and the interpretation of these discrepancies by the Canadian government in its "Canadian Environmental Review" of NAFTA along with the interpretation, by the Canadian government in the Canada U.S. Free Trade Agreement

1. RELATION BETWEEN ENVIRONMENTAL PROVISIONS AND OBJECTIVES

The discrepancy between Environmental provisions which limit economic pursuits in the preamble and economic pursuits in the objectives which ignore the environment

Compare preamble to Objectives

PREAMBLE

The Government of Canada, the Government of the United Mexican States and the Government of the United States of America, **resolved to:**

STRENGTHEN the special bonds of friendship and cooperation among their nations;

CONTRIBUTE to the harmonious development and expansion of world trade and provide a catalyst to broader international cooperation;

CREATE an expanded and secure market for the goods and services produced in their territories;

REDUCE distortions to trade;

ESTABLISH clear and mutually advantageous rules governing their trade;

ENSURE a predictable commercial framework for business planning and investment;

BUILD on their respective rights and obligations under the *General Agreement on Tariffs and Trade* and other multilateral and bilateral instruments of cooperation;

ENHANCE the competitiveness of their firms in global markets;

FOSTER creativity and innovation, and promote trade in goods and services that are the subject of intellectual property rights;

CREATE new employment opportunities and improve working conditions and living standards in their respective territories;

UNDERTAKE each of the preceding in a manner consistent with environmental protection and conservation;

PRESERVE their flexibility to safeguard the public welfare;

PROMOTE sustainable development;

STRENGTHEN the development and enforcement of environmental laws and regulations; and

PROTECT, enhance and enforce basic workers' rights;

HAVE AGREED as follows:

Article 102: Objectives

1. The objectives of this Agreement, as elaborated more specifically through its principles and rules, including national treatment, most-favored-nation treatment and transparency, are to:

(a) eliminate barriers to trade in, and facilitate the cross-border movement of, goods and services between the territories of the Parties;

(b) promote conditions of fair competition in the free trade area;

(c) increase substantially investment opportunities in the territories of the Parties;

(d) provide adequate and effective protection and enforcement of intellectual property rights in each Party's territory;

(e) create effective procedures for the implementation and application of this Agreement, for its joint administration and for the resolution of disputes; and

(f) establish a framework for further trilateral, regional and multilateral cooperation to expand and enhance the benefits of this Agreement.

2. The Parties shall interpret and apply the provisions of this Agreement in the light of its objectives set out in paragraph 1 and in accordance with applicable rules of international law.

Canadian interpretation of the preamble and objectives
In the introduction to the Canadian Environmental Review the following statement is made, which suggests that the environmental provisions are part of the objective section of the NAFTA:

Environmental objectives addressed during the negotiations included the identification of sustainable development and environmental protection and conservation **as fundamental objectives of the NAFTA**

In the Canadian Government document, the Canada/ US Free Trade Agreement Synopsis, the Canadian government indicates the important role of the preamble

The preamble states the political commitment ...in entering into the Agreement. It records the shared aspirations of the two countries in concluding the Agreement and summarizes their aims and objectives. In other words, it is an agreed statement of intent which will guide the countries in implementing the provisions of the Agreement and in resolving disputes. ...the object and purpose of the Agreement (13)

ACTION: to require that to fully express the intent of the document the government should call for the inclusion of environmental provisions in the Objectives section

2.INTERNATIONAL COMMITMENTS AND STANDARDS

There is a discrepancy between the "retention of rights in other documents" (even though NAFTA, in the case of inconsistency unless otherwise indicated, prevails) and the Canadian Government unqualified assertion that Canada has "preserved these rights in agreements"

In Article 103 of NAFTA states that NAFTA shall prevail in the event of an inconsistency between NAFTA and other international agreements (unless otherwise provided)

Article 103

1. the Parties affirm their existing rights and obligations with respect to each other under the GATT and other agreement to which such Parties are party.

[note exceptions related to the environment in GATT Article XX(b) include environmental measures necessary to protect human, animal or plant life or health, and GATT Article XXg applies to measures relating to the conservation of living and non-living exhaustible natural resources]

2. in the event of any inconsistency between this agreement and such other agreements, this Agreement shall prevail to the extent of the inconsistency, except as otherwise provided in this agreement

However, in Article 903, it would appear that "rights in other documents" are retained:

Article 903 Affirmation of Agreement on Technical Barriers to Trade and Other agreements

Further to Article 103, the Parties affirm with respect to each other their existing rights and obligations relating to standards-related measures under GATT and all other international agreements including environmental and conservation agreements to which those Parties are party.

the Canadian government in its *Canadian Environmental Review* has indicated the following

During the NAFTA negotiations, all three countries expressed the wish to retain their existing rights and obligations under those multilateral environmental and conservation agreements to which they have chosen to belong. The retention of these right was also assigned a high priority by the Canadian environmental organization in both their written and oral submissions to the government. Canada has preserved these rights in the NAFTA

ACTION: IT IS IMPORTANT TO DEMAND TO KNOW IF THE RETENTION OF RIGHTS IS NOT INCOMPATIBLE WITH THE NAFTA PREVAILING OVER THE INTERNATIONAL AGREEMENTS NOT SPECIFICALLY MENTIONED.

[NOTE: it is important to recognize the distinction between "standard" and "technical regulation"

Standard means a document approved by a recognized body that provides for common and repeated use, rules guidelines or characteristics for goods or related processes or production methods or for services or related operating methods, with which compliance is not mandatory

whereas, a "technical regulation" means a document which lays down goods or related processes or production methods or for services or related operating methods, including the applicable administrative provisions, with which compliance is mandatory]

3. EXTENT TO WHICH INTERNATIONAL AGREEMENTS WILL PREVAIL

There is a discrepancy between the extent to which international agreements prevail as mentioned in the NAFTA and the extent to which the Canadian government indicates these agreements will prevail

In the NAFTA, the following is stated:

Article 104.1 obligations will prevail in
convention on International Trade in endangered Species of
Wild Fauna and Flora (1973)
the Montreal Protocol (1990)
Basel convention on the Control of trans-boundary Movement of
Hazardous Wastes and their disposal (1989)
Annex 104-1 Bilateral and Other Environmental and
conservation Agreements
1. The agreement between the Government of Canada and the
Government of the U.S. concerning the trans-boundary
Movement of Hazardous Waste, signed at Ottawa, October 18,
1986
2. The agreement between the U.S and Mexico on cooperation
for the Protection and improvement of the Environment in the
Border Area, 1983.

Article 104.1. (f) Any subsequent international environmental or
conservation agreement that the Parties agree shall be included,
the international agreement will prevail

The Canadian government through its Canadian Environmental Review
indicated:

the prevalence, in the event of inconsistency, of trade
obligations set out in international environmental and
conservation agreements over the NAFTA trade disciplines
(Intro, CER)

In other words these international environmental or conservation
agreements will take precedence over the NAFTA (CER find
page ref)

**ACTION: THAT CANADA INSIST IN HAVING ALL THE INTERNATIONAL
AGREEMENTS RATIFIED BY CANADA INCLUDED IN THIS AGREEMENT
AND THAT THESE INTERNATIONAL AGREEMENT SHOULD TAKE
PRECEDENCE OVER THE NAFTA [UNLESS THE ENVIRONMENTAL
PROVISIONS IN THE NAFTA ARE STRONGER] AS STATED IN THE
CANADIAN GOVERNMENT'S INTERPRETATION OF NAFTA.
INTERNATIONAL AGREEMENTS SHALL INCLUDE MORAL
COMMITMENTS ARISING OUT OF INTERNATIONAL DOCUMENTS SUCH
AS UN CONVENTION FOR THE PRESERVATION OF CULTURAL AND
NATURE (1972), AND UNCED DOCUMENTS SUCH AS THE RIO
DECLARATION AND AGENDA 21 IN WHICH THE GLOBAL COMMUNITY
AGREED TO FUNDAMENTAL PRINCIPLES SUCH AS THE**

PRECAUTIONARY PRINCIPLE, THE NON-TRANSFERENCE OF HARMFUL SUBSTANCES OR ACTIVITIES AND THE REQUIREMENT OF A FULL LIFE CYCLE ANALYSIS OF SUBSTANCES AND ACTIVITIES.

4. STANDARDS-RELATED MEASURES

Discrepancy between "shall work jointly to enhance" and "shall to the greatest extent practicable make compatible" in the NAFTA, and "forbids downward harmonization," "mandate upward harmonization" in the Canadian government's interpretation of NAFTA

Article 906 Compatibility and Equivalence

1. Recognizing the crucial role of standards-related measures in achieving legitimate objectives, the Parties shall, in accordance with this Chapter, work jointly to enhance the level of safety and of protection of human, animal and plant life and health, the environment and consumers.

Note "legitimate objectives" have been defined in article 9.5 as

- a) safety
- b) protection of human, animal or plant life or health, the environment or consumers
- c) sustainable development

ARTICLE 906 Compatibility and Equivalence

2. Without reducing the level of safety or of protection of human, animal or plant life or health, the environment or consumers, without prejudice to the rights of any Party under this Chapter, and taking into account international standardization activities, the Parties shall to the greatest extent practical, make compatible their respective standards-related measures

In the Canadian Government publication "Canadian Environmental Review" it is stated:

Standards enhancement

NAFTA would do more than forbid downward harmonization it obligates Parties to work towards upward harmonization (CER, 19)

Environmental objectives addressed during the negotiations included...co-operation, on a continental basis, on the enhancement of environmental standards and their enforcement (Intro, CER)

Significant as it would in effect establish the highest current standards of the three parties (CER, 19)

ACTION: to call upon the Canadian government to have incorporated in the NAFTA the "forbidding of downward

harmonization" and the "obligating to work towards upward harmonization"

5. ALLOCATION OF BURDEN IN RELATION TO STANDARDS

Discrepancy between burden of establishing inconsistency within a chapter as indicated in NAFTA and The placement of the burden of proof in the whole document on the nation challenging an environmental standard of another country as indicated in the Canadian interpretation of the document.

Article 914 Technical consultations

4. The Parties confirm that a Party asserting that a standards-related measure of another Party is inconsistent with this Chapter shall have the burden of establishing the inconsistency

The Canadian Government in its Canadian Environmental Review stated:

Environmental objectives addressed during the negotiations included...placement of the burden of proof in a dispute on any nation challenging an environmental standard of another country. (Intro, CER)

and reaffirmed in the body of the text

"Furthermore, should Canada adopt an environmental standard under these international agreement, the burden of proof would be with any country challenging the provision (CER, 14)

It is only on page 22 that the actual text is presented

ACTION: TO ENSURE THAT IN ANY DOCUMENT RELATED TO THE ENVIRONMENT, THE BURDEN OF PROOF SHOULD LIE NOT ONLY ON THE COUNTRY THAT OBJECTS TO THE HIGHER STANDARD, BUT ALSO TO THE INDUSTRY THAT SEEKS TO INTRUDE INTO THE ECOLOGICAL COMMONS

6. RELATION BETWEEN ACTION OF ENVIRONMENTAL MEASURES AND INVESTMENT

The discrepancy between "recognizing inappropriateness" **should not waive** "**may request consultations**" as indicated in the NAFTA and "a commitment to refrain" in the Canadian government's analysis of the document

In the NAFTA Article 1114 (2) discourages the relaxing of environmental measures

In Article 1114 (2), Environmental Measures, the NAFTA states: The Parties recognize that it is **inappropriate to encourage** investment by relaxing domestic health, safety or environmental measures. Accordingly, a **Party should not waive** or otherwise derogate from, or offer to waive or otherwise derogate from,

such measures as an encouragement for the establishment, acquisition, expansion or retention in its territory of an investment of an investor. If a Party considers that another Party has offered such an encouragement, it **may request consultations** with the other Party and the two Parties shall consult with a view to avoiding any such encouragement

In the Intro of the Canadian Governments, "Canadian Environment Review", the environmental objectives is presented as being "a commitment to refrain"

Environmental objectives addressed during the negotiations included acceptance of a commitment that government refrain from offering derogations from generally applicable environmental measures for the purpose of encouraging an investment

ACTION : CALL UPON THE CANADIAN GOVERNMENT TO DEMONSTRATE TRUE COMMITMENT BY CHANGING "SHOULD" TO "SHALL"

Because of all these potential discrepancies between the NAFTA and the Canadian Governments interpretation of NAFTA, I would like to make the following recommendation

RECOMMENDATION:

GIVEN:

EITHER THE GOVERNMENT OF CANADA HAS MISINTERPRETED OR MISREPRESENTED ENVIRONMENTAL SECTIONS IN NAFTA, IN THEIR OCTOBER, 1992 ENVIRONMENTAL REVIEW, OR THE NAFTA HAS CHANGED AND IN THAT CASE IT WOULD BE NECESSARY TO HAVE ANOTHER ENVIRONMENTAL ASSESSMENT REVIEW OF THE ENVIRONMENTAL IMPLICATIONS OF NAFTA

THE CANADIAN GOVERNMENT NOT RATIFY THE DOCUMENT UNTIL THE STRONGER INTERPRETATION THAT HAS BEEN PRESENTED TO THE CANADIAN PUBLIC THROUGH THE GOVERNMENT INTERPRETATION OF THE DOCUMENT BECOME AN INTEGRAL PART OF THE ACTUAL DOCUMENT

THE CANADIAN GOVERNMENT NOT RATIFY THE DOCUMENT BECAUSE IT FALLS SHORT OF THE CANADIAN GOVERNMENT'S INTERPRETATION OF THE DOCUMENT.

RESOLUTION

GIVEN THAT THE TWO OF THE HEADS OF STATE THAT NEGOTIATED THE NAFTA ARE NO LONGER IN POWER,
GIVEN THAT THERE WILL BE AN ELECTION IN MEXICO IN JULY 1994

AND GIVEN THAT THE NAFTA HAS NOT BEEN AVAILABLE FOR FULL PUBLIC SCRUTINY PRIOR TO NEGOTIATION

GIVEN THAT THE NAFTA HAS BEEN MISREPRESENTED TO THE PUBLIC BY THE CANADIAN GOVERNMENT

BE IT RESOLVED THAT THE CURRENT NAFTA BE DISCARDED, AND THAT AN AGREEMENT THAT TAKES INTO CONSIDERATION THE FOLLOWING CONCERNS

In all three countries, Canada, Mexico and the U.S., citizens and organizations are concerned about

- the misplacing of government priorities,
- the delusion of public process,
- the exploitation of the labour force,
- the inequitable distribution of resources,
- the disenfranchisement of the many,
- the violation of human rights and
- the denigration of social justice

In all three countries, citizens and organizations are also concerned about the unquestioned imperative to grow,

- the over-consumptive pattern of behavior,
- the relentless destruction of the environment, and
- the irreversible loss of ecological heritage

THIS NEW AGREEMENT SHOULD NOT BE FULLY RATIFIED BY ANY OF THE THREE COUNTRIES UNTIL AFTER THE ELECTION IN MEXICO AND UNTIL THE AGREEMENT HAS THE SUPPORT OF THE CONCERNED CITIZENS IN ALL THREE COUNTRIES (see diagram B.)

ANNEX: **Re Water**

As to the risk of Canada being forced to export water to the U.S. (Water not being covered in the agreement), Political promises to the contrary are not enough. Once the free trade deal comes into effect, and in the absence of legislation forbidding it, Canada will be in a poor bargaining position against U.S pressure to divert water the most recent pressure being for diversion from the Great Lakes into the drought-stricken Mississippi basin

In all the on-going bargaining implicit in the Free Trade Agreement, Canada throughout will be the weaker party at the

negotiating table. Our lack of success on the acid rain issue is indicative of that (Margorie Bowker)

goods of a Party means domestic products as these are understood in the *General Agreement on Tariffs and Trade* or such goods as the Parties may agree, and includes originating goods of that Party;

4. establishment of levels of protection in pursuing its legitimate objectives
Discrepancy between
(Article 904,1)

1. Each Party may, in accordance with this Agreement, adopt, maintain or apply any standards-related measure, including any such measure relating to safety, the protection of human, animal or plant life or health, the environment or consumers, and any measure to ensure its enforcement or implementation.

"Right to Establish Level of Protection" (Article 904,2)

Notwithstanding any other provision of this Chapter, each Party may, in pursuing its legitimate objectives of safety or the protection of human, animal or plant life or health, the environment or consumers, establish the levels of protection that it considers appropriate in accordance with Article 907 (2)

Both the "non-discriminatory Treatment" and "Unnecessary Obstacles" appear to qualify a state's right to high standards

"non-discriminatory Treatment" (Article 904, 3)

Treatment no less favourable than that it accords to like goods, or in like circumstances to service providers, of any other country.

"Unnecessary Obstacles" (Article 904, 4)

No party may prepare, adopt maintain or apply any standards-related measure with a view to or with the effect of creating an unnecessary obstacle to trade between the Parties. An unnecessary obstacle to trade Shall not be deemed to be created where:

- a. the demonstrable purpose of the measure is to achieve a legitimate objective; and
- b) the measure does not operate to exclude goods of another Party that meet that legitimate objective.

Another constraint could be "disguised restrictions" (Article 712)

"No party may adopt, maintain or apply any sanitary or phytosanitary measure with a view to, or with the effect of, creating a disguised restriction on trade between the Parties.

PROBLEM 2 That there is a provision for respecting international standards, but UNCED failed to establish international environmental standards. International principles were in place

1. Each Party shall use, as a basis for its standards-related measures, relevant international standards or international standards whose completion is imminent, except where such standards would be an ineffective or inappropriate means to fulfil its legitimate objectives, for example because of fundamental climatic, geographical, technological or infrastructural factors, scientific justification or the level of protection that the Party considers appropriate. (article 905, Use of international standards)

In the section on Compatibility and equivalence

"1. Recognizing the crucial role of standards-related measures in achieving legitimate objectives, the Parties shall, in accordance with this Chapter, work jointly to enhance the level of safety and protection of human, animal and plant life and health, the environment and consumers.

2. Without reducing the level of safety or of protection of human, animal or plant life or health, the environment or consumers, without prejudice to the right of any Party under this Chapter, and taking into account international standardizations activities, the parties shall, to the greatest extent practicable, make compatible their respective standards-related measures so as to facilitate trade in a good or service between the parties.

Note that International standard is defined as "a standards-related measure, or other guide or recommendation, adopted by an international standardizing body and made available to the public, and "international standardizing body" is defined as

a standardizing body whose membership is open to the relevant bodies of at least all the parties to the GATT, including the International Organization for Standardization (ISO), the international electrotechnical Commission (IEC), Codex Alimentarius Commission, WHO, FAO, ITU International Telecommunication Union (ITU); or any other body that the Parties designate;

ACTION: to advocate the inclusion of bodies that have embodied environmental provisions; UNEP, IUCN

PROBLEM 3: HARMONIZING OF STANDARDS TO LOWEST COMMON DENOMINATOR

Article 713: International Standards and Standardizing Organizations

1. Without reducing the level of protection of human, animal or plant life or health, each Party shall use, as a basis for its sanitary and phytosanitary measures, relevant international standards, guidelines or recommendations with the objective,

among others, of making its sanitary and phytosanitary measures equivalent or, where appropriate, identical to those of the other Parties.

[does this mean never below international standards?]

2. The balance between environmental provisions and "notwithstanding" or "provided that" concepts such as legitimate objectives.... , providing ...

Provision for urgency

provision for exclusion

provision for harmonization without reducing....

Non-discriminatory treatment

not providing and unnecessary obstacle to trade

Measures that are applied in an unjustifiable manner

Measures that constitute a disguised risk

measures applied in an arbitrary way

providing measures are consistent with Chapter

3. The balance between impact assessment to prevent a project from proceeding and impact assessment to determine how to mitigate the impact

"A. Environmental review process and method

Since 1990, the federal government has required that all new policy or program initiatives having potentially significant environmental implications undergo an environmental review. The environmental review process can be used to develop an understanding of the general nature of the possible environmental effects of a policy, and to provide a framework for addressing environmental concerns that could arise when subsequent decisions are being taken relative to the implementation of the policy. (CEA, 69)

similarly the Mexican government indicates

"The Mexican government has attached priority to key public and private activities that are the most likely to cause ecological imbalances or to exceed the limits established in the Law, its regulations and ecological standards. The government has imposed regulations on the evaluation of the environmental impact of a broad range of public and private activities and has made them subject to prior authorization. Based upon an environmental review, the appropriate federal, state, or municipal government authority must authorize and impose conditions on both public and private activities that may cause adverse ecological effects or violate environmental laws. (CEA, 89)

4. The balance between environmental enhancement and not recognizing extraterritoriality

Extraterritoriality occurs when one country unilaterally attempts to extend, directly or indirectly, its policies into the jurisdiction of another country.

Extraterritoriality was not advocated by the negotiators of Canada (nor by the ENGO— those involved in the consultative process)

For example the USA has no right to try to imposed their standards on the Victorians who continue to dump raw sewage into the ocean, or on the Logging companies that continue to clear cut Canadian forests and Canada has no right to try to impose its higher pesticide residue standards on the USA

5. The balance between impact assessment and absolute prohibition (no acceptable residue)

6. The balance between the reliance on international standards but the reluctance to list any other agreements than those ratified by the USA

The USA has been notorious for not signing international agreements

United Nations Convention on the Protection and preservation of Cultural and Natural heritage

positive duty to identify areas of significant natural heritage

3.

1. Extraterritoriality harmonization of standards

Discussion of document:

The preamble is very strong. To a certain extent, it would appear that environment has primacy over employment: the preamble reads,

"Create new employment opportunities and improve working conditions and living standards in their respective territories; and this is qualified by the statement " undertake each of the preceding in a manner consistent with environmental protection and conservation:

YET

Without a commitment to achieve an enforceable means to attain a limit to growth, and without a commitment to set up an infrastructure to enforce regulations; the current North American situation which is now urgent will become irreversible.

The preamble also calls for "the development and enforcement of environmental laws and regulations;

(Note discussion with John Fried about legal implications)

PROBLEM 1.

A state cannot establish a higher environmental standard of production and exclude goods that do not meet that standard of production, and cannot require the other states to live up to higher standards

The following two sections appear to permit each state to establish as high standards as they deem necessary:

"Right to take Standards-related Measures"

Article 906 Compatibility and Equivalence

1. Recognizing the crucial role of standards-related measures in achieving legitimate objectives, the Parties shall, in accordance with this Chapter, work jointly to enhance the level of safety and of protection of human, animal and p

(Article 904,1)

1. Each Party may, in accordance with this Agreement, adopt, maintain or apply any standards-related measure, including any such measure relating to safety, the protection of human, animal or plant life or health, the environment or consumers, and any measure to ensure its enforcement or implementation.

"Right to Establish Level of Protection" (Article 904,2)

Notwithstanding any other provision of this Chapter, each Party may, in pursuing its legitimate objectives of safety or the protection of human, animal or plant life or health, the environment or consumers, establish the levels of protection that it considers appropriate in accordance with Article 907 (2)

Both the "non-discriminatory Treatment" and "Unnecessary Obstacles" appear to qualify a state's right to high standards

"non-discriminatory Treatment" (Article 904, 3)

Treatment no less favourable than that it accords to like goods, or in like circumstances to service providers, of any other country.

"Unnecessary Obstacles" (Article 904, 4)

No party may prepare, adopt maintain or apply any standards-related measure with a view to or with the effect of creating an unnecessary obstacle to trade between the Parties. An unnecessary obstacle to trade Shall not be deemed to be created where:

- a. the demonstrable purpose of the measure is to achieve a legitimate objective; and
- b) the measure does not operate to exclude goods of another Party that meet that legitimate objective.

Another constraint could be "disguised restrictions" (Article 712)

"No party may adopt, maintain or apply any sanitary or phytosanitary measure with a view to, or with the effect of, creating a disguised restriction on trade between the Parties.

PROBLEM 2 That there is a provision for respecting international standards, but UNCED failed to establish international environmental standards. International principles were in place

1. "Each Party shall use, as a basis for its standards-related measures, relevant international standards or international standards whose completion is imminent, except where such standards would be an ineffective or inappropriate means to fulfil its legitimate objectives, for example because of fundamental climatic, geographical, technological or infrastructural factors, scientific justification or the level of protection that the Party considers appropriate." (article 905, Use of international standards)

In the section on Compatibility and equivalence

"1. Recognizing the crucial role of standards-related measures in achieving legitimate objectives, the Parties shall, in accordance with this Chapter, work jointly to enhance the level of safety and protection of human, animal and plant life and health, the environment and consumers.

2. Without reducing the level of safety or of protection of human, animal or plant life or health, the environment or consumers, without prejudice to the right of any Party under this Chapter, and taking into account international standardization activities, the parties shall, to the greatest extent practicable, make compatible their respective standards-related measures so as to facilitate trade in a good or service between the parties.

Note that International standard is defined as "a standards-related measure, or other guide or recommendation, adopted by an international standardizing body and made available to the public, and "international standardizing body" is defined as

a standardizing body whose membership is open to the relevant bodies of at least all the parties to the GATT, including the International Organization for Standardization (ISO), the international electrotechnical Commission (IEC), Codex Alimentarius Commission, WHO, FAO, ITU International Telecommunication Union (ITU); or any other body that the Parties designate;

ACTION: to advocate the inclusion of bodies that have embodied environmental provisions; UNEP, IUCN

PROBLEM 3: HARMONIZING OF STANDARDS TO LOWEST COMMON DENOMINATOR

Article 713: International Standards and Standardizing Organizations

1. Without reducing the level of protection of human, animal or plant life or health, each Party shall use, as a basis for its sanitary and phytosanitary measures, relevant international standards, guidelines or recommendations with the objective, among others, of making its sanitary and phytosanitary measures equivalent or, where appropriate, identical to those of the other Parties.

[does this mean never below international standards?]

PROBLEM 4: LIMITED REFERENCE TO INTERNATIONAL DOCUMENTS ON THE ENVIRONMENT (NOTE NO MENTION OF RIO- unless in Annex 104, check in Annex 104); Note only reference is to "specific trade obligations" in the environment treaties:

[ACTION; TO OPEN UP NAFTA TO ENSURE THAT THE DOCUMENT IS COMPATIBLE WITH UNCED DOCUMENTS]

Treaties mentioned:

- convention on International Trade in endangered Species of Wild Fauna and Flora (1973)
- the Montreal Protocol (1990)
- Basel convention on the Control of trans-boundary Movement of Hazardous Wastes and their disposal (1989)
- Annex 104-1 Bilateral and Other Environmental and conservation Agreements
 1. The agreement between the Government of Canada and the Government of the U.S. concerning the trans-boundary Movement of Hazardous Waste, signed at Ottawa, October 18, 1986
 2. The agreement between the U.S and Mexico on cooperation for the Protection and improvement of the Environment in the Border Area, 1983.

*** see Annex 104-1 for other agreements**

Such obligations shall prevail to the extent of the inconsistency, provided that where a Party has a choice among equally effective and reasonably available means of complying with such obligations, the party chooses the alternative that is the least inconsistent with the other provisions of this Agreement.

ACTION: note that there is the provision to add other environmental agreements.

The parties may agree in writing to modify Annex 104.1 include any amendment to an agreement referred to in Paragraph 1 and any other environmental or conservation agreement.

PROBLEM 5: PRIMACY IS GIVEN TO NAFTA OVER OTHER INTERNATIONAL AGREEMENTS

NOTE: THAT IN ARTICLE 103, "Relation to Other Agreements, this agreement is given primacy

1. the Parties affirm their existing rights and obligations with respect to each other under the GATT and other agreements to which such Parties are party.
2. In the event of any inconsistency between this Agreement and such other agreement, this Agreement shall prevail to the

extent of the inconsistency, except as otherwise provided in this Agreement.

Background:
NAFTA

Perspectives and Actions

DEPARTMENTS

1. External Affairs

Documents:

North American Free Trade Agreement Implementation Act: The NAFTA Partnership. March 1993

Content:

It is primarily a document about Canadian Business interests

"NAFTA will provide further new opportunities for Canadian goods and services. Canadian firms will be able to expand sales in sectors that were previously highly restricted, such as autos, financial services, trucking, energy and fisheries. "

Mexico Canada's largest trading partner (3 billion, 1991)

"Canadian business has already begun to take advantage of these new trade measures to increase their presence in Mexico. "

Participants:

The Export Development Corporation (EDC)

The Business Co-operation Program of the CIDA

CIDA/Inc (several environmental protection and control projects related to air and water pollution, hazardous waste disposal and rehabilitation of wetlands in proximity to industrial and residential areas.)

Investment Canada is also developing a program to encourage Mexican investment in Canada

EAITC has organized a trade promotion program in Mexico directed at specific sectoral opportunities, to introduce as wide a cross section as possible of potential exporters to the marketplace.

In order to capitalize on existing opportunities in Mexico and give depth to heightened economic relations as envisaged under the NAFTA, the Canadian private sector is preparing to position itself effectively in this growing market.

The most likely sectors of concentration for Canadian entrepreneurs are mining, agro-industry, food, transportation, environment and tourism development.

Successful Canadian exporters

SR Telecom, Du Pont, Canada Export Award Winner in 1992,

Dare Foods, Cansec Systems, Royal Plastics, Garden Grove Produce, Rebound Rig international oil equipment (900,000);

Bovar-Western research (1.5. M) instrumentation control of their sulphur recovery units

Chronology:

Note: March 18. (1992). Canada provides Mexico with 1\$ million worth of environmental assistance. [what was the nature of the assistance]

September 17 (1992) Washington, D.C. — Environment ministers of the NAFTA countries agree to establish a Trilateral Environmental commission to explore co-operation on environmental issues.

November 3, 1993 the Canadian Environmental review of the NAFTA is released.

But will these pronouncements be enough to ensure long term preservation and protection of the environment without the concomitant political will?

Would those provisions prevent the government from waiving sections of the Federal fisheries Act , and bypassing the Environmental Assessment Review Process to allow Alcan to proceed with the Kemano II Project

But would those provisions prevent Governments that are against in principle the mining of Uranium to acquiesce to the uranium miners and permit uranium mining

But would those provisions prevent the disposal of nuclear wastes on the land of disenfranchised- the indigenous peoples of the US

But would those provisions prevent the destruction of significant ecosystems

But would those provisions prevent the transfer of chemicals that are deemed to be unsafe in one country to another country with less stringent regulations.

Throughout the document there is a mention of "standards"

Regardless of NAFTA there are serious systemic constraints preventing significant change in addressing the seriousness of the current environmental crisis in North America

Some constraints are

i. The reluctance of the political and industrial community to address the need to limit growth and over consumption and the concomitant reluctance to acknowledge the implications of ignoring the limiting of growth and over-consumption.

In the process of wrapping the semantic capsule 'sustainable development' around this potentially unpalatable two sided world-view was born the genteel ploy of emphasizing the growth imperative for consumption in the South and the industrial communities comfortable with "business (much) as usual", while focusing on sustainability for purposes of dealing with the increasingly

strident and influential concerns of environmental movements and scientific bodies documenting the possible dangers of global change. Thus there remains latent much of the old Stockholm debate between environmentalists and industrialist in the North and between developed nations of the North and developing nations of the south. (Dobell, 1992, p. 4)

Since our economies are growing and the ecosystems within which they are embedded are not, the consumption of resources everywhere has begun to exceed sustainable rates of biological production. Seen in this light, much of today's wealth is illusion derived from the irreversible conversion of productive natural capital into perishable human-made capital. (Rees, 1991, Draft. p. 9)

The result of unchecked growth has been the following:

“Encroaching deserts (6 million ha/year; deforestation (11 million ha/yr of tropical forests alone); acid precipitation and forest dieback (31 million ha damaged in Europe alone); soil oxidation and erosion (26 billion tonnes/yr in excess of formation; toxic contamination of food supplies; draw-down and pollution of water tables; species extinction (1000s/yr); fisheries exhaustion; ozone depletion (5% loss over North America [an probably globally] in the decade to 1990); greenhouse gas buildup (25% increase in atmospheric CO₂ alone); potential climatic change (1.5-4.5C⁰ mean global warming expected by 2040); and rising sea-levels (1.2-2.2 m by 2100) and like trends are the result of either excess consumption or the thermodynamic dissipation of toxic by-products of economic activity into the ecosphere ” (Data from: Brown et al [Annual]; Brown and Flavin 1988; Canada 1988; WCRP 1990; Schneider 1990; US Environmental Protection Agency [reported in Stevens 1991]). (reported in Rees, 1991, Draft. p. 11)

“...development [and growth has even been perceived as a basic truth by the president of the World Bank: Barber Conabb CHECK SPELLING. stated that " a basic truth is that development cannot be halted, only directed". (Conabb, 1989, p. 15)

and he then continued to reassure the developing nations that

"With the developing nations, we must go on learning by doing..."(Connabb, 1989, p. 15)

ii. The discrepancy between the establishment of environmental policy through international commitments and the denial of the policy through free trade agreements:

In June 1988 both the US and Canada participated actively in a world conference on The Changing Atmosphere: Implications for

Global Security. The conference concluded that global atmospheric problems were the product of 'an unintended, uncontrolled, globally pervasive experiment whose ultimate consequences could be second only to a global nuclear war.' and recommended national efforts to reduce carbon emissions by 20 % by the year 2005. yet later that year the Canada-US Free trade Agreement was ratified, entrenching energy and resource policies that are fundamentally at odds with the policy directions endorsed by representatives of the countries at the global warming conference. Under the terms of the free trade agreement; both countries forego, for as long as the agreement stands, "the use of regulatory devices that could prevent the development of fossil fuel resources for export." (Shrybman, S. 1990, p. 22)

iii. The discrepancy between government and industry rhetoric embodied in laws and regulations and the political will to enforce these regulations

iv. The discrepancy between institutional rhetoric embodied in publications and the traditional role that is played by the institution (the usurping of the environmental movement to the point of making it redundant) (see "eco-development" in Colby, M., Environmental management in development; the evolution of paradigms, 1990, World Bank discussion papers V. 39)

v. The advocating of a new found role of international governance for industry as a potential replacement for government. Ramphal at Globe 92 described the new found role as " enlightened long-term thinking": He described the newly found enlightenment in the following way:

"The private sector has been traditionally regarded as trammled by short-term profit considerations. Enlightened long-term thinking was a preserve of the State, of governments. Today the greatest flaw in governance at the national level is the ascendancy of the short-term in the political calculus, as leaders respond frenetically to democratic pressures for immediate results. It is the private sector, and particularly the larger enterprises within it, that have the intellectual space to think beyond tomorrow..." (Ramphal, S. 1992)

vi. The advocating of self regulation by industry; the moving away from compliance, imposed regulations etc.

QUOTE FROM SESSION AT GLOBE 92

vii. The discarding of the principle of arms-length research in industrial projects

viii. The revealing of the true intent by industry in in-house documents.????
from statements from industry about industry's perceived advantages of
tripartite free trade.

McCrae, Jim World Bank Environmental division
"dirty technology belongs in third world"
Basel convention related to third world dumping

The Royal Bank conveys in Econoscope, that " the new rules [in Mexico] automatically allow 100% foreign ownership of Mexican companies provides that less than US100 million is involved and that certain other criteria are met (for example, the funds must come from abroad and the investment must not be in areas which are already industrialized)Royal Bank of Canada p 4.

Note: no mention of safe industry

The move towards a free trade agreement with the United States is seen by the Mexican government as a powerful tool to modernize its economy. Such an alliance leading to a greater integration of Mexico into the North American economy could provide an anchor of stability for Mexico's monetary and fiscal policies. (Royal Bank of Canada p. 4)

...On the plus side, the United States will find that an improved Mexican economy, particularly if it can help to reduce the flow of economic refugees into the United States, and improved co-operation on narcotics and the environment sufficiently compelling reasons to pursue free trade talks. The greater competition offered by Mexican low-cost labor-intensive products had to be kept in perspective. A central tenet of international trade theory is that countries specialize in the production and export of goods according to comparative advantage rather than absolute advantage.

Man developing countries have failed to convert their advantages with respect to plentiful and cheap labour into a comparative advantage because of a number of factors impeding overall labour productivity. (Royal Bank of Canada p. 9)

...For Mexico the comparative advantage offered by low-cost labour is offset to a certain extent by the lower level of manufacturing productivity except perhaps for the most recent manufacturing plants built in the in-bond maquiladora sector). Moreover, Mexico is faced with a number of other problems such as heavy state involvement, absenteeism and poor transportation and communication infrastructures." (Royal Bank of Canada p. 11)

NOTE mention of pollution controls

There are several areas in which Canadian expertise could find a market in Mexico. These include agriculture, fishing , forestry and pollution control . Royal Bank of Canada p. 11

[Note the only mention of anything that is related to the environment is the possibility of a market for Canadians in pollution control.]

On the issue of whether or not ' export protectionism' would grow, one must ask what the multinational corporations want to use the spoke countries for. Do they want them as markets or as production bases? If they want them as export markets, the ;multinationals would then favor export protections. If, however, they want them as production bases--as is increasingly the case with Mexico--then the multinationals gain no advantage from maintaining export protections." (Weintraub, Sidney, in Hill, R. et al 1991, p. 9)

"...the multinational might well prefer an expanding free trade area to rationalize their production. ...U.S. multinationals have distribution systems set up to take advantage of the preferences it provides; they may well want it to continue." (Wonacott, R.in Hill, R. et al 1991 p. 9)

"First, it sets a timetable that lends itself to the 'Yankee trader' attitude that you cannot conclude a deal until the deadline (indeed after the deadline), because if a deal is reached earlier, it is because you have not squeezed enough and ended up leaving ;money on the table. Mexican negotiators have not experienced this, but they soon will...Second, the fast-track process lends itself to some very damaging side deals between the administration and Congress. In the Canadian case, while approval was given for the process by Congress, the price was a side deal whereby the administration essentially promised to restrict the Canadian forest products industry in any way it could. It did so with trumped-up cases against cedar shakes and shingles and softwood lumber." (Ritchie in Hill, R. et al 1991, p. 11)

To increase Canada's Weight in Settling Trade Disputes

"A trilateral resolution of disputes would provide Canada and Mexico together with greater weight in holding the United States to its commitments than either would have alone. But for precisely this reason, it is far from clear that the United States would accept the trilateralizing of dispute settlement. ...Nor is it even clear that Canada would wish to trilateralize dispute settlement, since this could weaken, rather than strengthen, Canada's voice in disputes with the United States where Mexico did not support Canada's position." (Wonnacotte, R.J. "Canada and the U.S. - Mexico Free Trade Negotiations." Commentary. No.21, September 1990. C.D Howe Institute p. 3)

To Have a Low-Wage Partner in the Free Trade Bloc

" Finally, Canada, like the United States, needs a low-wage partner such as Mexico. Every other participating country in a

free-trade bloc has such a partner. Without access to a pool of low-wage labor, Canadian industry will find it more difficult to remain competitive in world markets. However, low wages in Mexico will raise the question: How can Canadian industry compete with cheap Mexican labor? .Wonnacotte, R.J. "Canada and the U.S. - Mexico Free Trade Negotiations." Commentary. No.21, September 1990. C.D Howe Institute. p. 4

Fear of trade with low-wage Mexico

"One major fear will be that Canadians cannot risk trading freely with Mexico because of that country's cheap supplies of labour, which will give Mexican goods an overwhelming competitive advantage.If we really had to worry about the competitive advantage conferred by low Mexican wages, then existing Canadian tariffs would provide little relief: if 'sixty-cent-an-hour wages' are a threat, then 'sixty-six cent-an-hour wages' are not much less of a threat. What matters in international competition is ;not how ;much local labor is paid in terms of purchasing power. What matters is how unit costs of production compare internationally at the going exchange rates. (Lipsey, R. "Canada at the U.S. -Mexico Free Trade Dance." Commentary. No.20, August 1990. C.D Howe Institute p. 10).

ix. The watering down of environmental resolve when action is require: policy to prevent pollution becomes translated in action to reduce or mitigate pollution

12. The Ministers agreed that, in order to achieve ESID, industry initiatives should include the following objectives:

a) "Adoption of pollution prevention, the approach that prevents pollution at the source in products and manufacturing processes rather than removing it after it has been created" (UNIDO, 1992, p. 7)

In the introduction to the Alumina Industry case study that was examined at the UNIDO conference the following statement was made: "Bauxite mining cause unavoidable ecological disturbance, and in some circumstances the issue of preservation of biodiversity is important" (UNIDO, Proceedings, 1992, p. 220)

Recommendations

"7. Industry experts summarized the most promising ways of reducing the negative environmental impact of the alumina industry at the plant level as follows:

What was a policy of "preventing pollution" has now become a mandate to "reduce pollution or mitigate pollution"

"the thrust of the world Bank's energy work is increasingly to promote development in the energy sectors of developing countries while taking prudent steps to mitigate damage to the environment" (the World Bank, 1989)

x. The compromising of the environment as a result of trade agreements

It [NAFTA] may limit Canada's or British Columbia's authority to establish relatively tough environmental standards; and it may limit the public's access to decision-making affecting the environment during the negotiation of an agreement and the operation of such an agreement.

therefore, the association urged the government of British Columbia to:

- undertake an environmental assessment (with full opportunity for public access to information and involvement) of the potential impact on British Columbia's environment and environmental decision-making process
- insist that the federal government do the same; and
- oppose any trade agreement with Mexico that:
 - i) would impair the province's ability to set relatively high environmental standards;
 - ii) does not specify that failure to establish and enforce reasonable environmental standards is considered to be a trade subsidy; or
 - iii) does not include mechanisms to facilitate public access to information regarding and public participation in, decision-making under the agreement"

(Environmental Law Association , Ministry of Development, Trade and Tourism,1991 p. 23)

Within Canada, United States and Mexico there are laws, policies, and regulations in place which appear to preserve and protect the environment; yet industry is continually in non-compliance with these environmental provisions and government is continually violating its own policies by not enforcing regulations. Without a commitment to achieve and enforceable means to attain a limit to growth, and without a commitment to set up an infrastructure to enforce regulations; the current North American situation which is now urgent will become irreversible.

2. POSSIBILITY OF COMMON CONCERNS BEING ADDRESSED WITHIN AND THROUGH NAFTA

Does NAFTA become the [further] realization of these dire predictions or an opportunity for significant change? Is it possible to summon up the political will to limit growth, to achieve respect for human rights, to attain social justice, to enshrine ecological rights and to entrench fair and ecologically sound employment?

BETTER QUOTES

"We need to do a lot more than admit there is a problem (Aridis, 1992)

"All measures taken so far are band aid solutions ... we need real solutions" (Carbajal, 1992)

"Future economic growth will compound existing problems unless specific steps are taken to integrate free trade and environmental protection."

(Emerson, 1991)

[and to limit growth]

" Human rights, labour rights and environment deserve equal treatment with trade rights" (Axworthy , 1991,)

For at least twenty years we have engaged in environmental rhetoric.

In June 1972 at the Stockholm convention on the Human Environment the following statement was made and principles enunciated:

To achieve this environmental goal will demand the acceptance of responsibility by citizens and communities and by enterprises and institutions at every level, all sharing equitably in common efforts. Individuals in all walks of life as well as organizations in many fields, by their values and the sum of their actions, will shape the world environment of the future. Local and national governments will bear the greater burden for large-scale environmental policy and action within their jurisdictions. states the common conviction that:

Principle 1

Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being and he bears a solemn responsibility to protect and improve the environment for present and future generations...

Principle 2:

The natural resources of the earth include the air, water, land, flora and fauna and especially representative samples of natural

ecosystems must be safeguarded for the benefit of present and future generations through careful planning or management, as appropriate

Principle 13

"In order to achieve a more rational management of resources and thus to improve the environment, States should adopt and integrated and coordinated approach to their development planning so as to ensure that development is compatible with the need to protect and improve the human environment for the benefit of their population. (Stockholm convention on the Human" Environment, June 1972)

Was this only rhetoric in 1972: empty words whose legacy of inaction we now have to face?

If we are to achieve significant change **{we must translate our rhetoric into realistic commitments to action within a trade agreement. }**

Now in June of 1992 we are entering into a new world agreement, the "Rio Declaration on Environment and Development" at UNCED, and in the near future into a trilateral trade agreement , NAFTA. Is there still just rhetoric or will there now be substantive action to support words.

The three countries negotiating the NAFTA all enunciate environmental objectives but will all three countries have the political will to ensure that there will be long term preservation and protection of the environment Mexico

" Social liberalism therefore purposes a State that promotes and encourages private initiative, but has the capability to firmly regulate economic activity and thus prevent the few from taking advantage of the many; a State that channels attention and resources towards meeting Mexicans' basic needs, is respectful of labor rights and union autonomy, and protects the environment." (Carlos Salinas de Gortari, Social Liberalism: Our Path, Mexico: On the Record. Vol. 1. No. 4 (March 1992)
...Observaciones: El esfuerzo di Gobierno en el combate a la contaminacion comprende acciones que abarcan a todos los sectores de la sociedad, las cuale han sido aplicadas con gran efectividad gracias al esfuerzo y al desarrollo de la conciencia ecologica del la poblacion con su conjunto. (documentation sent by Consulat of Mexico, latest news from April 12 and April 13 related to the environment)

"The Government of Mexico's three year environmental plan for the border communities calls for a doubling of the number of inspectors from the Secretariat of Urban Development and Ecology (SEDUE) by January 1992. This represents a four-fold increase from 1989. "By January 1992, The SEDUE team of 200 qualified inspectors will be ensuring that industries in the border

communities adhere strictly to Mexico's environmental laws and regulations. Businesses that refuse or cannot comply will be subject to penalties, including having their operations shut down. Information and data systems are being upgraded and decentralized. These improvements will allow for closer monitoring of raw materials and dangerous wastes. Already, in the last three years almost 1 million tons of hazardous materials have been prohibited from entering Mexico.

Progress can already be seen in the "maquiladora" industries where compliance with regulations on operating licenses, on the declaration of the production of hazardous wastes and on the proper disposal of hazardous wastes has increased dramatically since 1989. All existing maquiladora plants must be entirely re-certified by 1992. All new investment must present environmental impact statements." ("Protecting the Environment Mexico's public works program for the Border Region," undated, and unsigned document)

"Mexico and the United States are committed to a cooperative program that will encourage sustained economic growth and environmental protection in both countries. President Bust and president Salinas believe that the two are complementary and must be pursued together." (Free trade Negotiations with Mexico Environmental matters, p. 1)

"Mexico has established a good basis for progress on environmental protection and conservation of natural resource. President Salinas has states that, while seeking to stimulate foreign investment, Mexico will not accept investments that have been rejected by the United States or Canada for environmental reasons." (U.S. government publication] Free trade Negotiations with Mexico Environmental matters, p. 2)

"In March 1988, Mexico enacted its General Law for Ecological Equilibrium and Environmental Protection. it is a comprehensive statute designed to ensure that there is an adequate legal basis for protecting the environment. Indeed, the law is based in large part on U.S. law and experience.

A central element of the 1988 law is the requirement for environmental impact assessments to be completed on all new investment projects, in both the public and private sectors. To ensure they comply with these requirements, many privately owned companies have already created special environmental offices to analyze the environmental impacts of proposed business activities" (U.S. government publication] Free trade Negotiations with Mexico Environmental matters, p. 3) ARMS LENGTH RESEARCH

In 1990.. the Government [of Mexico] shut down all 24 Military industrial installation in the Mexico City area because of

potential environmental risks." (Free trade negotiations with Mexico, Environmental matters, U.S. government publication]

“Convenio con las industrias en el valle de Mexico para combatir la contaminacion ambiental

Por su parte el jefe del Departamento del Distrito Federal, Manuel Camacho Solis, explico las medidas tomadas en el pacto con la industria, entre las que destacan las siguientes;

- establecer la verificación obligatoria de las emisiones industriales, principalmente de las partículas de monóxido de carbono, azufre, óxidos de nitrógeno, plomo, hidrosulfatos y compuestos orgánicos volátiles para lo cual en un plazo máximo de 18 meses, 220 empresas que consumen el 53% del total de combustibles en el valle de México deberán contar con equipos anticontaminantes

- se integra un programa de capacitación de inspectores, auditores y verificadores, así como operadores de calderas y equipos de combustión.

- Se crea un cuerpo especial de inspección y asesoría profesional en la materia, y que actualmente las partículas de origen industrial son las de mayor riesgo para la salud, pues contienen químicos inorgánicos y metales pesados y constituyen el 65% de las partículas tóxicas suspendidas en el aire.

- se otorgará asesoría y equipo tecnológico a la industria para que instale equipos anticontaminantes

- se desarrollarán políticas de energía (ahorro, consumo racional, entre otras), además de que se controlarán y reformularán solventes de pintura

- Se cuenta con un billón de pesos para financiar el control de emisiones, cambiar procesos y descentralizar industrias. Es importante señalar que por primera vez en un programa de esta naturaleza intervienen siete bancos comerciales: Multibanco Mercantil de México, Banca Serfin, Banca Confía, Bancomer, Banco Internacional, Multibanco Comermex y Banco BCH, así como ocho arrendadoras.

Note. Need for sustained monitoring and implementation of regulations cannot only be implemented as a means to an end. Implementation of standards and regulations as a means to an end without the provisions in place to continue to impose, implement these regulations.. relax regulation

- SE continuarán actualizando y desarrollando normas cada vez más estrictas para la industria, hasta alcanzar reducciones en la emisión de partículas entre un 70 y 90%

...Observaciones: El esfuerzo del Gobierno en el combate a la contaminación comprende acciones que abarcan a todos los sectores de la sociedad, las cuales han sido aplicadas con gran

efectividad gracias al esfuerzo y al desarrollo de la conciencia ecológica de la población con su conjunto." (documentation sent by Consulat of Mexico, latest news from April 12 and April 13 related to the environment)

Canada

Canada's Green plan for a healthy environment is a co-ordinated package of actions to help Canadians work together in partnership to achieve, within this decade, a healthy environment and a sound, prosperous economy.

Canada's Green Plan is second to none in its comprehensive approach to a full range of environmental challenges, funding, accountability and provision for public involvement," he [Mr. de Cotret] added.

Canada's Green Plan offers new policies, programs and standards to clean up, protect and enhance our land, water and air, our renewable resources, the Arctic, parks and wildlife, and to reduce waste generation and energy use. It also includes measures to maintain global environmental security, foster environmentally responsible decision-making and improve our emergency preparedness....

Canada's Green Plan is a major step forward of our country. It greatly expands, organizes and focuses our environmental activities. It is an optimistic document about the future of our environment," Mr. de Cotret said. (Government of Canada's release "Federal Government releases environmental green plan" December, 1990.)

Goal

to ensure that citizens today and tomorrow have clean air, water and land essential to sustaining human health and the environment....p. 1

Legislative, Regulatory and Market tools for change

Goal

the balanced use of strong and effective environmental laws, with market-based approaches for environmental protection. p. 20

INITIATIVES

- Over the next five years, strengthen federal inspection, information exchange and investigation programs to better enforce environmental regulations

In 1991, develop and adopt a comprehensive Code of Environmental Stewardship covering all areas of federal operations and activities. The Code will be complemented by a list of targets on issues ranging from waste generation to contaminated sites clean-up and emission standards, establishment of an office of Environmental Stewardship and measures to ensure that federal purchasing policies and practices integrate environmental considerations.

Implementation of the code will ensure that the activities and operations of the federal government meet or exceed the standards and practices it is recommending for others. (p. 21) Government of Canada's release " Federal Government releases environmental green plan" December, 1990.)

"Whereas the Government of Canada in demonstrating national leadership should establish national environmental quality objectives, guidelines and codes of practice "(Canadian Environmental protection act, 1988)

"Whereas toxic substances, once introduced into the environment, cannot always be contained within geographic boundaries (Canadian Environmental protection act, 1988) section 2. a Government of Canada shall... take both preventative and remedial measures in protecting the environment" (Canadian Environmental protection act, 1988)

In the Department of the Environment Act, under the division of "Powers, duties and functions of the Minister , it is stated that "the duties of the Minister include providing for

a) the preservation and enhancement of the quality of the natural environment, including water, air and soil quality; and to

2(i) endeavor to protect the environment from the release of toxic substances". (Canadian Environmental Protection Act, 1988, C 22)

[" deleterious substance means:

a) any substance that, if added to any water would degrade or alter or form part of a process of degradation or alteration of the quality of that water so that it is rendered or is likely to be rendered deleterious to fish or fish habitat or to the use by man of fish that frequent that water

(Fisheries act, statutes of Canada 1976077, c35)

yet raw sewage is still dumped into the waters around Vancouver Island and fish have lesions]

" whereas... no present activity should compromise activities... fulfill the needs of future generations (CHECK WORDING IN C13)

United States

"A NAFTA offers an historic opportunity to bring together the energies and talents of their great nations, already bound by strong ties of family, business and culture. Prime Minister Mulroney and president Salinas are both leaders of great vision. They believe as do I, that a NAFTA would enhance the well-being of our peoples. They are ready to move forward with us in this unprecedented enterprise. In seeking to expand our economic growth, I am committed to achieving a balance that recognizes the need to preserve the environment, protect worker safety, and facilitate adjustment. ... At my direction, Ambassador Hills and my Economic Policy Council have undertaken an intensive review of our NAFTA objectives and strategy to ensure thorough considerations of the economic, labor and environmental issues raised by you and your colleagues.

Based on my discussions with President Salinas, I am convinced that he is firmly committed to strengthened environmental protection, and that there is strong support for this objective among the Mexican people. Because economic growth can and should be supported by enhanced environmental protection, we will develop and implement an expanded program of environmental cooperation in parallel with the free trade talks. ...thus, our efforts toward economic integration will be complemented by expanded programs of cooperation of labour and the environment." (Letter from George Bush to Chairman Rostenkowski and Majority Leader Gephardt; similar letter sent to every member of Congress, May 1, 1991)

Mexico's commitment to environmental protection

- Mexico has no interest in becoming a pollution haven for U.S. companies.
- Mexico's comprehensive environmental law of 1988, which is based on U.S. law and experience, is a solid foundation for tackling its environmental problems.
- All new investments are being held to these higher legal standards and an environmental impact assessment is required to show how they will comply.
- Enforcement has in the past been a key problem, but Mexico's record has been improving dramatically. Since 1989, Mexico has ordered more than 980 temporary and 82 permanent shutdowns of industrial facilities for environmental violations; the budget of SEDUE" (Mexico ' EPA) has increased almost eight-fold

Response of the Administration to issues raised in connection with the negotiation of a north American Free trade agreement. May 1, 1991)

Environmental issues in the NAFTA

- Protection of Health and Safety: We will ensure that our right to safeguard the environment is preserved in the NAFTA (YET NOTE US NOT PREPARED TO HAVE THAT ENSHRINED IN AN INTERNATIONAL CHARTER)

- we will maintain the right to exclude any products that do not meet our health or safety requirements and we will continue to enforce those requirements

- we will maintain our right to impose stringent pesticide, energy conservation, toxic waste, and health and safety standards

- we will maintain our right , consistent with other international obligations, to limit trade in products controlled by international treaties (such as treaties on endangered species or protection of the ozone layer).

- Enhancement and Enforcement of Standards: we will seek a commitment to work together with Mexico to enhance environmental health and safety standards regarding produces and to promote their enforcement

- we will provide for full public and scientific scrutiny of any change to standards before they are implemented.

- we will provide for consultations on enhancing enforcement capability, inspection training, monitoring and verification ”(Response of the Administration to issues raised in connection with the negotiation of a north American Free trade agreement. May 1, 1991)p.p. 4, 5)

Response of the Administration to issues raised in connection with the negotiation of a north American Free trade agreement. May 1, 1991)

- we will consult on national environmental standards and regulations, and will provide an opportunity for the public to submit data on alleged non-compliance. (Response of the Administration to issues raised in connection with the negotiation of a north American Free trade agreement. May 1, 1991, p. 5)

The current global ecological crisis is urgent and a serious shift in perspective is necessary if the crisis is to be addressed. This shift in perspective must permeate all future considerations of trade and development related to the environment, health, human rights and social justice. This shift in perspective must move away from perceiving that states have "the sovereign right to exploit their resources pursuant to their own environmental and developmental policies [and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other states or of areas beyond the limits of national jurisdiction." (Principle 2 in the Rio Declaration on Environment and Development)] . This shift in perspective must move away from perceiving that states have " the right to development [being fulfilled] so as to equitable meet developmental and environmental needs of present and future generations" (Principle 3 in the Rio Declaration on Environment and Development). Through this new

perspective we must begin perceiving that the ecological preservation and protection must be given primacy and that an integral part of ecological preservation and protection is the limiting of industrial growth.

If states entering into the free-trade agreement acknowledge the need to limit growth and ecological preservation and protection as fundamental principles of negotiation, then any departure from this principle will have to be justified. The onus of proof would then shift from those objecting to increased growth and to potentially ecologically unsound interventions having to demonstrate harm to those advocating interventions having to demonstrate worth and safety.

Although all of the three countries do not recognize the need to limit growth they have spent years enunciating the goal of protecting and preserving the environment.

What we need to do is achieve the highest attainable synthesis of our common goals in the coordination of policy in a North American community, not some lowest common denominator achieved through some process of mechanical compromise [re - integrative bargaining]. [Need to achieve a bargaining set with sufficient diversity to be able to trade off objectives for one country in one area with goals for others in others.]

There is a need for common standards based not only on the highest tenable principles drawn from all three countries but also on the highest tenable principles not yet embodied in policy and legislation. These standards should be related to environmental, social justice, human rights and health provisions. The enshrining of high standards conforms in principle to declared objectives of all three countries. These declared objectives are present not only in legislation from all three countries but also in many international covenants and declarations to which all three countries to varying degrees subscribe [have ratified] . These declared objectives are evident in [Out Common Security Palmer] in the preamble to C 13 Environmental Assessment Review Act in Canada, in the intent behind the Mexican Constitutional law for the ecological equilibrium and protection of the environment CHECK and in the U.S...

So I am not here to wring hands about the threat posed by Mexico as a pollution haven in a North American community. In fact, in many ways all of North America could be described as a pollution haven for industry. **Rather, on the assumption that we will, for political reasons, have a little time before a final agreement is reached, I want to ask how we can use this lull to translate some of our nice rhetoric into realistic commitments to action within a trade agreement.**

On the issue of a North American Free Trade Agreement there has already accumulated a great deal of literature [refs. Hart, CD Howe, Murray Smith, Conference volumes, etc., BC consultation [and commissioned] documents, etc.]

On the more particular question of trade and environment, there is also beginning to accumulate a vast literature. The issue is being addressed by a GATT working party, and is a major topic for discussion at UNCED. Also a number of reports [IISD conference, GATT report,...]

But indications to date suggest that the discussions at UNCED will not resolve the basic tensions between environmental goals and economic principles [ecological rights and economic privileges]. The Draft text for the RIO Declaration [on the Environment and Development] reveals still far too strong an overhang of orientation to a model of the nation-state and national sovereignty and a reluctance to curb growth or to come up with international environmental standards, with an international court of environmental law, with the enshrinement of the right to a safe environment and to an environmental heritage; and with establishing any form of international environmental governance

Even though the international scientific community that does not have a vested interest in development recognizes the urgency of the global situation (include reference to document signed by 20 Nobel Laureates see Fred Knelman's letter to Nobel Laureates) the U.N. delegates meeting in the Prep Com in New York have failed to give the environment primacy and have instead enshrined the right, though qualified, to develop and exploit resources.

In principle 2. "States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental and developmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction." (2 April 1992, Rio Declaration on Environment and Development]

In principle 3.

The right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations (2 April 1992, Rio Declaration on Environment and Development]

The Prep Com delegates also failed to define explicitly what is meant by development: there is a fundamental distinction between exploitative and humanitarian development. Even the chair of committee on "Rio Declaration on Environment and Development" continued to perpetuate the simplistic myth that the north is concerned about [only] the environment and the south is concerned about [only] development. (March 26, 1992, personal communication in presence of the press). Are they continuing to ignore concerns as embodied in declarations such as those embodied in the "Constitutional Law for the Ecological Equilibrium and Protection of the Environment" Mexican document, 1988)

Not only have the delegates been reluctant to limit growth and to give the environment primacy within the sustainable development context they have

also failed to recognize the urgency of the global situation by their not recognizing more fundamental non-anthropocentric rights

Principle 1 human beings are at the centre of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature.

(2 April 1992, Rio Declaration on Environment and Development]

Other agreement such as GATT have succeeded in resolving the tension **between environmental goals and economic principles** [ecological rights and economic privileges] by giving primacy to **{unimpeded flows of goods and all) and ignoring environmental values (pursuit of a sustainable society through conservation of resources and preservation of biodiversity) }**

GATT is built on the premise of nation states and meaningful national borders. Indeed the whole apparatus of international law has to presume that the relevant actors are national government.

GATT fails to permit "power of governments to implement environmental regulation ..." and brings about "increased economic pressures to reduce environmental standards." (from FAX sent by West Coast Environmental Law Association with comments by Rolfe, C. Environmental considerations regarding a possible Mexico-Canada Free trade Agreement for the West Coast environmental law association, February, 1991).

Each one of the three states involved has attempted to object to other states of using high environmental standards to influence trade and in each case GATT has supported the state seeking to object to high standards:

"The Canadian pulp and paper industry has urged Canada to challenge U.S. laws requiring the use of recycled fibre in newsprint. (Shrybman, 1991, p. 13) The Canadian government has argued that a U.S. environmental Protection Agency rule banning the use of all forms of asbestos violates the U.S. Canada FTA and GATT(Eric Christensen, "Pesticide Regulations and International Trade", Environment, Vol. 32. No. 9, November, 1990, p 45)

The U.S. recently proposed in GATT negotiations that nations be prevented from adopting domestic pesticide standards more stringent than international standards. (Eric Christensen, "Pesticide Regulation and International Trade", Mark Ritchie, "GATT, Agriculture and the Environment: The US Double Zero Plan, " The Ecologist, Vol. 20, No. 6, November, 1990, p. 214.)

The U.S. based Non-Ferrous Metals Producers Committee is using the U.S.-Canada FTA to support its challenge to Canadian federal and provincial pollution control programs intended to reduce emissions from the Canadian smelting industry. (Shrybman "Selling the Environment Short: an environmental assessment of the first two years of free trade between Canada and the United States", Canadian Environmental Law Association, January, 1991, p. 13)

(cited in Rolfe, Chris Environmental considerations regarding a possible Mexico-Canada Free trade Agreement for the West Coast environmental law association, February, 1991).

“And Mexico ... When in 1990 the US. placed an embargo upon tuna products from Mexico, “Mexico complained that the tuna embargo was inconsistent with obligations owed to Mexico under GATT. The September 1991 report of a three-member panel of experts established pursuant to the third-party dispute settlement procedures of GATT determined that the American embargo on Mexican tuna, even though designed to conserve dolphins [s] was inconsistent with the GATT” (McDorman, T. 1991, p. 2)

“The GATT Panel stated that under the GATT “ a contracting party may not restrict imports of a product merely because it originates in a country with environmental policies different from its own’. (U.S. Mexico GATT Panel, 3 September 1991, at paras 2.1-2.2). It is this statement that has been seen as the biggest problem with the “GATT Panel report from an environmentalist point of view. (McDorman, T. 1992, p. 19). However, even the normally environmentally sensitive Nordic countries have indicated that a country is not free ‘to require that imported products [be] produced as cleanly abroad as at home.” (EFTA members press convening of working party, 82 Focus- GATT Newsletter 2-3 (July 1991) Any other conclusion reached by the GATT Panel would allow certain countries to dictate to others what standards must exist and this would clearly be an invasion of a country's sovereignty. Moreover, as the Panel concluded, any other conclusion would permit trade only between countries with identical regulations and this would amount to a dismantling of the GATT.” (McDorman, T., 1992, p. 19)

Direction to proceed is spelled out in McDorman’s analysis: need international agreement on priority for environmental objectives sufficiently strong that it formally and explicitly over-rides GATT where necessary.

Want to look closely at the US Mexico GATT panel report as outlined by McDorman:

He reports that the panel found that “the obligations owed by the US to Mexico under GATT prohibited use of trade measures to deal with such environmental issues [i.e. those having effect beyond the borders of the country adopting the trade measures]. This conclusion flows from the fact that GATT may regulate conditions around product, but not around means of production, and from the view that it is still possible to talk about the actions of a particular country affecting its environment. With these orientations, GATT can conclude that “Countries cannot look behind a good to determine if the production or manufacturing process was environmentally friendly. Or in other words countries cannot impose their environmental standards or regulations on other countries by boycotting their goods. “to a certain extent, this is what comparative advantage is all about: differences in their environment of production, including the environment of government regulations”.

If this is true, how do we deal responsibly with environmental concerns in an emerging North American community in which sovereign communities still wish to pursue their own vision of interpersonal and intergenerational equity and sustainability?

"Potentially, any nation could thereby justify unilaterally imposing its own social, economic or employment standards as a criterion for accepting imports. Any influential contracting party could effectively regulate the internal environment of others simply by erecting trade barriers based on unilateral environment policies." (The Venezuelan intervention in the U.S.- Mexico GATT Panel, note 3, at para. 4.27).

Rather than considering high standards an "imposition", perhaps we could now contemplate, high standards as "the expression of collective will" . Given the recognized urgency of the global situation, the goal as the expression of collective will, should be the attaining of the highest tenable standards so that at least within the North American context, through a strongly principled NAFTA, our energy could be placed in striving in the three countries to meet this established standards rather than in using the GATT to condone and even foster lower or relax standards.

So I would like to ask whether NAFTA can provide a lead in a [more] fruitful direction, which achieves a better reconciliation of the differing perspectives, situations and orientations of the different players. Differences in North America are not so great as in the world as a whole, and should be more easily bridged. All three countries share the same lofty rhetoric and indeed the same idealistic -- apparently potent -- legislation. All three fall down badly on implementation, on monitoring and on enforcement.

CITE STATEMENTS IN PREAMBLES INDICATING RHETORIC

NEED FOR INTERNATIONAL STANDARDS DRAWING FROM ...;

But all also can see the writing on the wall, and might be ready to turn around the decision structures and alter the priorities in the direction necessary to more towards sustainable development { sustainable environment} . All may be ready jointly to move against the threats of "jobs blackmail" and competitiveness blackmail" which have stalled any realistic moves thus far towards adequate pricing of resources or adequate weighting to preservation and future interests.

Often the "job blackmail" is couched in altruistic terms as "striking a balance" or "achieving consensus". In these cases those who are concerned about giving the environment primacy are perceived to be "extremists" or of being "unreasonable." or of "not caring about the welfare of other human beings". Can we discuss a balance between the need to preserve an area and the "privilege" to engage in ecologically unsound practices? Can we discuss a balance between the right of humanity to not have to live in fear of environmental degradation and the "privilege" of labour to engage in work that could contribute to potential environmental degradation? Can we talk about balance when we ask to save 3% of the remaining ancient forests on an Island?

The time for the condoning of rationalization has past. The environment will continue to be degraded and not sufficiently preserved if people continue to condone the rationalization of engaging in ecologically unsound practices. No longer should we condone the following forms of rationalization: a) "we recognize that the practices are ecologically unsound but if we do not do them jobs will be lost, workers will be displaced, communities will become ghost towns b) " we recognize that the practices are ecologically unsound but if I don't or we don't engage in these practices someone else will" or c) "we recognize that practices in a sovereign state other than our own are not ecologically sound but the goods are so much cheaper, and what right do we have to impose our standards" Environmental preservation and protection must no longer be just tokenism. [classic statements, do they need a source?}

The time for tolerating the couching of business as usual in new euphemisms "sustainable development" has passed. An outgrowth of this toleration is a new form of industrial environmental hypocrisy where industries engage in the device of feigned altruism: the setting up of environmental divisions within an ecologically unsound industry . We have a responsibility to ensure that we are no longer deluded by industries that set up an environmental department while continuing to destroy the environment through their principal activity. [No amount of recycling of aluminum cans will make up for the destruction occurring in the production of aluminum.] The total activity of the industry has to come under environmental scrutiny.

Working together we may be able to reach meaningful agreements on measures to avoid both "the race to the bottom" in jurisdictional competition and cost associated with the "first over the top" fear. What is needed is strong political will for the enshrining of high common standards and of strong enforcement measures to be enshrined in a code of commitments that will be an integral part of the NAFTA.

We need to be willing to address the need to limit growth and to actually limit growth

We need to be willing to address the need to decrease consumption and to actually decrease consumption

We need to be willing to no longer tolerate ecologically unsound products or practices

We need to be willing to define what these practices and set up regulations to prevent these products or practices. (without either one of the three countries having to reduce its standards)

We need to be willing to honour wilderness preservation of significant, representative and distributive ecosystems (at least the minimum that was recommended by the Brundlandt Commission)

We need to be willing to reduce military spending and the production of weapons of destruction and to transfer a significant percentage of those funds to research into the development and implementation of alternative safe energy, into alternative ecologically sound practices, and to redressing the current damage.

We need to be willing to recognize that pollution knows no boundaries and that international governance of environmental regulations must transcend sovereign borders

we need to "establish regulatory regimes including environmental standards, objectives, guidelines and codes of practices" (Shrybman, S. 1990, p.28 "proposed article for inclusion in the General Agreement on Tariffs and Trade: Environmental protection")

We need to agree that "nothing in the agreement shall be construed to prevent any party from taking any action which it may deem necessary to protect the environment, including the establishment of import or export restrictions and the use of subsidies to:

prevent or remedy adverse environmental effects and/or conserve natural resources" (Shrybman, S. 1990, 28 from "proposed article for inclusion in the General Agreement on Tariffs and Trade: Environmental protection")

we need to be willing to discredit all countries that flaunt rhetoric and retreat from action

we need to be willing to insist on, and be prepared to, fund arm's length research.

3. POTENTIAL ROLE FOR NAMI IN ASSISTING IN THE ESTABLISHING THE HIGHEST ATTAINABLE SYNTHESIS OF OUR COMMON GOALS IN THE COORDINATION OF POLICY IN A NORTH AMERICAN COMMUNITY

I would also like to suggest that perhaps NAMI could provide leadership in bringing together of independent thinkers drawn from societies such as the Kennedy Institute, the Royal Society of Canada, the FIND ? of Mexico and build on the initiative begun in 1972 when a group of independent thinkers drawn from the scientific and social science community met prior to the Stockholm convention on the environment. At that time this group of forty drew up significant and far reaching recommendations that if, they had been followed at that time, might have facilitated the difficult decisions we have to face today. There is little satisfaction to be drawn from lamenting the fact that we should have listened then. We must help to communicate the urgency of the global situation and the need to dare to implement a new perspective. NAMI could also build on the initiative taken by Dr Fred Knelman (who also involved in the group of 40 in Stockholm) to contact Nobel Laureates to get them involved in the urgent decisions that have to be made. We must recognize that to achieve the stated objectives of all three states, we must insist that there be high international standards in place, that individual states should be encouraged to surpass, and that these standards should be drawn from the highest tenable principles enunciated from the global community. Only then can we be assured that the environment will be given primacy and that international organizations like GATT or Free trade Boards? will not be able to condone the reduction of environmental standards to facilitate trade.

III "The exploitation of third World national and regional resources by foreign corporations, with a consequent outflow of profits from the exploited regions, has resulted in a vast and

growing economic disparity among nations and ;a monopoly of industrialized countries over production, energy, technology, information and political power Complementary to this is the flooding of developing countries with surplus goods and capital, with a resultant distortion of their economies, and the deformation of their environments into ;monocultures in the interest of further enriching the industrial states. the foreign investments, economic development and technological practices of such industrial states ;must be curbed and altered by the basic claim of a region's people to control of its resources. Use of these resources, however, should not be dictated ;by the accidents of geography, but must be allocated in such ways as to serve the needs of the world's people in this and future generations. The authority of any region's people over resources and environment includes the obligation to recognize that the environment is an indivisible whole, not subject to political barriers. The environment must be protected from avoidable pollution, destruction and exploitation from all sources". (Earth Talk, 1972, p. 170)

"Much conventional technology and many of its proliferating products have proved ecologically harmful. We cannot reject technology per se but must restructure and reorient it. Ecologically sound technologies will minimize stresses to the environment. A rapid development of the new approach should be complemented by a technology review and surveillance system to assure that any new technology is ecologically compatible and will be used for human survival and fulfillment. It is not enough to add anti-pollution devices to existing technologies, although this might well be the initial stage of phasing out present polluting technologies. (Earth Talk, An Independent Declaration on the Environment," 1972)

... few clauses from existing RIO declaration draft about prohibitions against use of environmental regulations as trade barriers, etc.

FIND

Let's recap briefly the steps already taken in the two major countries (US story is perhaps well enough known anyway.)

Mexico ..citation for Salinas

ref. to NAMI doc and related refs

Major steps

goals explicitly states "his goal is not to attract polluting industries but to substitute clean ones"

Canada SOE report

Green plan

environmental Assessment Review Act.

Need to look at different sources of conflict associated with scarcity of exhaustible resources and struggles over shares of renewable resource in which everyone is racing to be first to harvest stocks in which no one is investing enough to assure any kind of sustainability of renewability

CONCLUSION:

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SYSTEMIC CONSTRAINTS;

- discrepancy between rhetoric and action
- discrepancy between regulations and enforcement
- Short-term changes as means to end
- False dichotomy between jobs and environment economic pressures and environment
- required or discretionary environmental assessment review coupled with non-arm's length research to determine environmental impact
- misplaced onus of proof
- reluctance to cede sovereignty to global governance in urgent situation
- industrial hypocrisy

"The British Columbia Federation of Labour (BCFL) also felt that free trade with Mexico would threaten the quality of life enjoyed in British Columbia and jeopardize the province's economic stability. The only advantage will be corporations' access to cheap labour. According to the respondent, Mexico will sell its cheap labour in order to attract foreign capital. The BCFL raised a number of other issues it felt should be addressed as part of the discussion on trilateral free trade: Mexico's low wages, anti-democratic union practices, the lack of environmental regulations and restrictions, unhealthy and dangerous working conditions and unprotected consumers." (Ministry of Development, Trade and Tourism, 1991, p. 27.)

As Cuauhtemoc Cardenas put it to the B.C. Federation of labour last November, "an alternative to the proposed free trade agreement should include a social charter and be based on common standards for labour, social and environmental rights. A different pact would strengthen our internal struggle for democracy and improve the situation of human rights of Mexicans in Mexico and the United States." (Salazar, J. 1991, p. 39)

Environmental problems are probably the most pressing with regard to the health and well-being of the Mexican workers. The Rio Grande, on which hundreds of communities on both sides of the US Mexico border depend for drinking water, is deluged by industrial waste, uranium mining runoff, hazardous spills from transborder transport, agricultural chemicals and millions of gallons a day of untreated Mexican raw sewage. Lax environmental standards that allow this to happen are also what

attracts U.S. and now Canadian companies to the border zones to do business.(Northcotte, 1991, p. 31)

According to the US based Coalition for Justice in the Maquiladoras, the damaging characteristics of the maquiladoras, environmental contamination, unsafe working conditions and the exploitation of workers, have shattered the quality of life in the border communities. " (Northcotte, V. 1991, p. 31)

Although Mexico claims that it will not become an environmental haven, the general industrial perception is that, at least in the short term it will be one. The possibility of Mexico's becoming [or becoming more of] an environmental haven is reiterated in the section on Environmental and Pollution Control in the Ministry of Development and trade and tourism report on BC. consultations with the private sector re.: Mexico, Canada and the United States: the trilateral free trade proposal.

" Environmental regulations on businesses operating in Mexico are expected to be less stringent than they generally are for operations in British Columbia or the United States. At least initially, therefore, Mexico will be more attractive for locating new industries with pollution concerns than in British Columbia or U.S. jurisdictions. This likely will not be significant in the long term but initially it will result in some impact on the British Columbia industry. " (Ministry of Development, Trade and Tourism, June 1991, p. 24)

The new perspective must move away from "pollution concerns" being the concerns that industry has when they have to abide by stringent regulations to being the concerns that the community has about the preservation of the ecosystem. the new perspective must also move away from considering "impact" as being economic impact to considering "impact" as being ecological impact.

[Environmental provisions necessary to prevent either one of the three countries from becoming an environmental pollution haven
Environmental provisions to ensure that the highest tenable principles are in place to ensure that neither one of the three countries becomes an environmental pollution haven.]

As Cuauhtemoc Cardenas put it to the B.C. Federation of labour last November, "an alternative to the proposed free trade agreement should include a social charter and be based on common standards for labour, social and environmental rights. A different pact would strengthen our internal struggle for democracy and improve the situation of human rights of Mexicans in Mexico and the United States." (Salazar, J. 1991, p. 39)

All of our three countries appear to agree on what is needed to be done . Now we must ensure that what needs to be done , is done.

Report and suggestion for follow up paper

NAFTA: International environmental principles emanating from UNCED and economic constraints
or Environmental provisions and economic constraints.
Assessment of Environment Canada's analysis of the environmental implications of NAFTA

Concepts to examine that may be economic constraints:

NAFTA DOCUMENT

Discussion of document:

The preamble is very strong. To a certain extent, it would appear that environment has primacy over employment: the preamble reads, "Create new employment opportunities and improve working conditions and living standards in their respective territories; and this is qualified by the statement " undertake each of the preceding in a manner consistent with environmental protection and conservation:

The preamble also calls for "the development and enforcement of environmental laws and regulations;

(Note discussion with John Fried about legal implications)

PROBLEM 1.

A state cannot establish a higher environmental standard of production and exclude goods that do not meet that standard of production, and cannot require the other states to live up to higher standards

The following two sections appear to permit each state to establish as high standards as they deem necessary:

"Right to take Standards-related Measures" (Article 904,1)

1. Each Party may, in accordance with this Agreement, adopt, maintain or apply any standards-related measure, including any such measure relating to safety, the protection of human, animal or plant life or health, the environment or consumers, and any measure to ensure its enforcement or implementation.

"Right to Establish Level of Protection" (Article 904,2)

Notwithstanding any other provision of this Chapter, each Party may, in pursuing its legitimate objectives of safety or the protection of human, animal or plant life or health, the environment or consumers, establish the levels of protection that it considers appropriate in accordance with Article 907 (2)

Both the "non-discriminatory Treatment" and "Unnecessary Obstacles" appear to qualify a state's right to high standards

"non-discriminatory Treatment" (Article 904, 3)

Treatment no less favourable than that it accords to like goods, or in like circumstances to service providers, of any other country.

"Unnecessary Obstacles" (Article 904, 4)

No party may prepare, adopt maintain or apply any standards-related measure with a view to or with the effect of creating an unnecessary obstacle to trade between the Parties. An unnecessary obstacle to trade Shall not be deemed to be created where:

- a. the demonstrable purpose of the measure is to achieve a legitimate objective; and
- b) the measure does not operate to exclude goods of another Party that meet that legitimate objective.

Another constraint could be "disguised restrictions" (Article 712)

"No party may adopt, maintain or apply any sanitary or phytosanitary measure with a view to, or with the effect of, creating a disguised restriction on trade between the Parties.

PROBLEM 2 That there is a provision for respecting international standards, but UNCED failed to establish international environmental standards. International principles were in place

1. "Each Party shall use, as a basis for its standards-related measures, relevant international standards or international standards whose completion is imminent, except where such standards would be an ineffective or inappropriate means to fulfil its legitimate objectives, for example because of fundamental climatic, geographical, technological or infrastructural factors, scientific justification or the level of protection that the Party considers appropriate." (article 905, Use of international standards)

In the section on Compatibility and equivalence

"1. Recognizing the crucial role of standards-related measures in achieving legitimate objectives, the Parties shall, in accordance with this Chapter, work jointly to enhance the level of safety and protection of human, animal and plant life and health, the environment and consumers.

2. Without reducing the level of safety or of protection of human, animal or plant life or health, the environment or consumers, without prejudice to the right of any Party under this Chapter, and taking into account international standardization activities, the parties shall, to the greatest extent practicable, make compatible their respective standards-related measures so as to facilitate trade in a good or service between the parties.

Note that International standard is defined as "a standards-related measure, or other guide or recommendation, adopted by an international standardizing body and made available to the public, and "international standardizing body" is defined as

a standardizing body whose membership is open to the relevant bodies of at least all the parties to the GATT, including the International Organization for Standardization (ISO), the

international electrotechnical Commission (IEC), Codex Alimentarius Commission, WHO, FAO, ITU International Telecommunication Union (ITU); or any other body that the Parties designate;

ACTION: to advocate the inclusion of bodies that have embodied environmental provisions; UNEP, IUCN

PROBLEM 3: HARMONIZING OF STANDARDS TO LOWEST COMMON DENOMINATOR

Article 713: International Standards and Standardizing Organizations

1. Without reducing the level of protection of human, animal or plant life or health, each Party shall use, as a basis for its sanitary and phytosanitary measures, relevant international standards, guidelines or recommendations with the objective, among others, of making its sanitary and phytosanitary measures equivalent or, where appropriate, identical to those of the other Parties.

[does this mean never below international standards?]

PROBLEM 4: LIMITED REFERENCE TO INTERNATIONAL DOCUMENTS ON THE ENVIRONMENT (NOTE NO MENTION OF RIO- unless in Annex 104, check in Annex 104); Note only reference is to "specific trade obligations" in the environment treaties:

[ACTION; TO OPEN UP NAFTA TO ENSURE THAT THE DOCUMENT IS COMPATIBLE WITH UNCED DOCUMENTS]

Treaties mentioned:

convention on International Trade in endangered Species of Wild Fauna and Flora (1973)

the Montreal Protocol (1990)

Basel convention on the Control of trans-boundary Movement of Hazardous Wastes and their disposal (1989)

Annex 104-1 Bilateral and Other Environmental and conservation Agreements

1. The agreement between the Government of Canada and the Government of the U.S. concerning the trans-boundary Movement of Hazardous Waste, signed at Ottawa, October 18, 1986

2. The agreement between the U.S and Mexico on cooperation for the Protection and improvement of the Environment in the Border Area, 1983.

*** see Annex 104-1 for other agreements**

Such obligations shall prevail to the extent of the inconsistency, provided that where a Party has a choice among equally effective and reasonably available means of complying with

such obligations, the party chooses the alternative that is the least inconsistent with the other provisions of this Agreement.

ACTION: note that there is the provision to add other environmental agreements.

The parties may agree in writing to modify Annex 104.1 include any amendment to an agreement referred to in Paragraph 1 and any other environmental or conservation agreement.

PROBLEM 5: PRIMACY IS GIVEN TO NAFTA OVER OTHER INTERNATIONAL AGREEMENTS

NOTE: THAT IN ARTICLE 103, "Relation to Other Agreements, this agreement is given primacy

1. the Parties affirm their existing rights and obligations with respect to each other under the GATT and other agreements to which such Parties are party.
2. In the event of any inconsistency between this Agreement and such other agreement, this Agreement shall prevail to the extent of the inconsistency, except as otherwise provided in this Agreement.

Background:
NAFTA

Perspectives and Actions

DEPARTMENTS

1. External Affairs

Documents:

North American Free Trade Agreement Implementation Act: The NAFTA Partnership. March 1993

Content:

It is primarily a document about Canadian Business interests

"NAFTA will provide further new opportunities for Canadian goods and services. Canadian firms will be able to expand sales in sectors that were previously highly restricted, such as autos, financial services, trucking, energy and fisheries. "

Mexico Canada's largest trading partner (3 billion, 1991)

"Canadian business has already begun to take advantage of these new trade measures to increase their presence in Mexico. "

Participants:

The Export Development Corporation (EDC)

The Business Co-operation Program of the CIDA

CIDA/Inc (several environmental protection and control projects related to air and water pollution, hazardous waste disposal and

rehabilitation of wetlands in proximity to industrial and residential areas.)

Investment Canada is also developing a program to encourage Mexican investment in Canada

EAITC has organized a trade promotion program in Mexico directed at specific sectoral opportunities, to introduce as wide a cross section as possible of potential exporters to the marketplace.

In order to capitalize on existing opportunities in Mexico and give depth to heightened economic relations as envisaged under the NAFTA, the Canadian private sector is preparing to position itself effectively in this growing market.

The most likely sectors of concentration for Canadian entrepreneurs are mining, agro-industry, food, transportation, environment and tourism development.

Successful Canadian exporters

SR Telecom, Du Pont, Canada Export Award Winner in 1992,

Dare Foods, Cansec Systems, Royal Plastics, Garden Grove Produce, Rebound Rig international oil equipment (900,000);

Bovar-Western research (1.5. M) instrumentation control of their sulphur recovery units

Chronology:

Note: March 18. (1992). Canada provides Mexico with 1\$ million worth of environmental assistance. [what was the nature of the assistance]

September 17 (1992) Washington, D.C. — Environment ministers of the NAFTA countries agree to establish a Trilateral Environmental commission to explore co-operation on environmental issues.

November 3, 1993 the Canadian Environmental review of the NAFTA is released.

Contact:

Ross Glasgow (Specialist in NAFTA and Climate Change) 9920503

2. Environment Canada

2.1.

2.2. Legal interpretation

John Fried. (943-2803) Specialist in legal interpretation of NAFTA

Preamble is strong on the environment but the preamble carries little weight.

No mention of environment in the "objectives". John Fields said that the preamble sets the context but the environmental provisions would be stronger if in the objectives". The document would be a lot stronger on the environment if the environmental provisions had been placed in the "objectives section".

To do this the three countries would have to agree to open up the document again. Up until now the countries have refused to do this. [However, with Mulroney and Bush gone, perhaps an argument could be made to open the document up and place the environmental provisions in the "Objective

section" ; this could be better than having a separate parallel agreement on the environment"

Body of text:

An important section

Note: Article 906 Compatibility and Equivalence

1. Recognizing the crucial role of standards-related measures in achieving legitimate objectives, the Parties shall, in accordance with this Chapter, work jointly to enhance the level of safety and of protection of human, animal and plant life and health, the environment and consumers.

Key issues:

Extra-territorialism

National security (21-2)

• INTERPRETATION OF NAFTA BY ENVIRONMENT CANADA

"North American Free Trade Agreement: Canadian Environmental review, October 12, 1992.

Purpose;

to ensure that the NAFTA would be consistent with Canada's commitment to the protection of the environment and to sustainable development, as set out in the Green Plan, a four point plan was adopted to integrate environmental concerns into each element of the NAFTA decision-making process.

1. ITAC environmental representatives were appointed to the International Trade Advisory Committee, and to eight of the Sectoral Advisory Groups on International Trade (SAGIT). These important trade advisory bodies, which include 311 representatives from business, environment, labour and academic, report directly to the Honourable Michael Wilson, Minister of Industry, Science and technology and Minister for International Trade.

the environmental representatives on these committees ensure that environmental considerations are taken into account when the ITAC and SAGIT prepare recommendations for the government

(Note; involvement of Sierra Club, and Pollution Probe)

Mid-march 1993 Trilateral talks begin on agreements on labour and the environment

2. Canada's standards negotiators were responsible for ensuring, among other objectives, the continuing right of governments in Canada to establish, to maintain and to enforce environmental standards that reflect Canadian conditions and Canadian priorities. The integration of environmental concerns in the negotiating process is a preventive approach. It sets a precedent that will be continued in future trade agreements.

(Intro)

Canada's standards negotiators were responsible for ensuring, among other objectives, the continuing right of governments in Canada to establish, to maintain and to enforce environmental standards that reflect Canadian conditions and Canadian priorities. The integration of environmental concerns in the negotiating process is a preventive approach. It sets a precedent that will be continued in future trade agreements.
(Intro)

3. The Minister for International Trade

Bill C-115 an Act to implement the North American Free Trade Agreement;
Note that no environmental legislation, other than pesticide Act, is mentioned in the index

Note in the second whereas which indicates further resolve, the environment is not mentioned specifically

Note in the fourth whereas "it is necessary, in order to give effect to the Agreement, to make related or consequential amendments to certain Acts;" (environmental acts not included- does this mean that they are included or excluded)

4. NGO perspective (Elizabeth May, Sierra Club)

3. stances of environmental groups.

1. Pollution Probe "work with government on NAFTA"

2. Action Canada "reluctant to work with government"

3. Sierra Club "Use NAFTA to achieve environmental protection"

1993— 1995. Participated as a member of the Working group for establishing criteria for discharge emissions for British Columbia” . Prepared an Alternative report on the need for
PRINCIPLES

() THAT IN 1993 David White and I exposed what we referred to as “Timbergate” We filed a freedom of Information request about leaked information about serious accusations about TFLs

February 1993

• 1993 co-initiated a Freedom of Information request on overestimation of forest inventory in the Queen Charlottes and publicized the results

COMMENT

We entitled the campaign: "Timbergate." This campaign was linked to the failure of the BC government to enforce the Forest Act, as their failure to enforce international obligations.

Document

We were notified by the Inventory Branch that we could come and pick up the documents. David was teaching so I went in his place to pick up the documents . I

arrived and was astonished that I was ushered into a room with 12 men including representatives from MacMillan Bloedel.

I asked if given the discrepancy between the original inventory and the reassessment was the Ministry going to reassess all the other TFLs The Director of the Branch the chair Said, “God willing” [which seemed a bizarre response , given that he was responsible for making decisions]

TIMBERGATE

called upon the RCMP to investigate corporate crime in corporate crime related to the investigation. Bruce Torrie, who was continually suffering from back pain was lying on the floor reading the Criminal code.

~

- 1993. Wrote a paper on the Discrepancy between the Canadian government's Environmental Assessment of NAFTA and what was actually in NAFTA within a context of international principles and presented it at a forum on NAFTA organized by the Council of Canadians

COMMENT

I prepared a diagram, (Ideagraph) displaying different statements on climate change and acid rain and ozone depletion from the 8 countries

() **THAT** in 1993-1994, I carried out a content analysis of Science Council of Canada documents and publications in order to determine the development of awareness about environmental issues specifically the emergence of the awareness of climate change

In 1993, I co-authored a paper with Rod Dobell

EXHIBIT:

Global Atmospheric Risks and the Science Council of Canada: The Case of Climate Change

Rod Dobell and Joan Russow
March, 1993

Annex to Contribution Number D.1, Version 2
for the project on Social Learning in the Management of Global Environmental Risks.

Please send comments to R. Dobell and J. Russow, Department of Public Administration, University of Victoria, Victoria, Canada. Fax-604-721-8849

This work was partially supported by the John D and Catherine T. MacArthur Foundation and the Atmospheric Environment Service of the Government of

Canada This Annex examines the treatment of climate change in publications of the Science Council of Canada, identifying for expository purposes five phases:

Phase 1. (1968-1976). In this phase the Council moved from the early formulation in 1968 of goals and policies related to the environment, and early exploration of scientific data related to the global warming issue in 1972, to a Conference sponsored by the Council in 1975 on "Living with Climatic Change" and the publication of the proceedings from this conference in 1976.

Phase 2. (1977) The Science Council published its significant document, *Conservation Society: Resource Uncertainties and the Need for New Technologies*. In the same year, the Council also published documents related to environmental and health regulations, and the Government of Canada passed legislation requiring environmental regulations to be subjected to Socio-economic Impact Analysis (SEIA).

Phase 3. (1978-1983) In this third phase, Council documents are more strongly oriented toward economic issues, coupled with a few significant publications on regulation of activities affecting the environment.

Phase 4. (1984-87) Pre-Brundtland: During this period of Brundtland Commission hearings, there was in Council policy documents a continued emphasis on the economy; if there was concern for sustainability it was primarily for economic sustainability.

Phase 5. (1988-1992) Post-Brundtland: In this phase the Council embraced the expansive interpretation which the National Task Force on the Environment and the Economy gave to the concept of "sustainable development."

These phases reflect to some extent the different frames through which actors might view issues related to the environment and the economy. In the policy reports from the Council there appears to be some swing from a perspective initially giving environmental concerns primacy over economic issues to a stronger concern for the economy and competitiveness.

More generally, in the twenty-five years from 1967 to 1992, Canada moved from a policy culture much like the British tradition of elite advice to one much more like the American populist approach. That is, an emphasis on orderly administrative processes of policy formation and regulation founded on expert advice and an influential scientific elite gave way to a culture dominated by multi-sectoral interest-based consultation, concern for participatory mechanisms and the interaction of advocacy groups advancing scientific argument to further their particular interests. The creation in 1966 of the Science Council of Canada as a federally-funded agency to provide independent scientific and analytical advice governments, industry, and educational institutions, and its demise (along with a wider range of other independent advisory bodies) at the hands of the Conservative government in the Mazankowski budget of February, 1992 thus neatly brackets not only an extraordinary swing in political outlook but also a dramatic shift in policy culture. At the time, the termination of the array of independent bodies offering expert policy advice based on a maintained database and continuing analytical capacity was justified in part on the grounds that a wide range of

consultative bodies had been created, and a wide array of non-governmental think-tanks and advocacy groups had sprung up to offer advice to government, so that the analytical work of government-funded advisory groups was largely deemed redundant. In particular, for example, the work of the Science Council on atmospheric risks or environmental issues had been overtaken by the activities of federal, provincial and local roundtables on environmental and economy, established in the wake of the Brundtland Report, on the unanimous recommendation of a national Task Force on the Environmental and the Economy, representing industry, environmental groups and a range of other constituencies.

An interesting consequence may lie in the psychological weight attached to environmental risks as social issues. In the early history of the Council, many of its reports reflected serious concerns emerging from the academic scientific community about environmental degradation and the possible consequences of uncontrolled discharges from human activity. These concerns thus carried the weight of "objective" science and were seen as general problems to be addressed by all society. In the more recent setting of consultative processes and roundtables, by contrast, "the environment", rather than being recognized as the space within which we must all live, and the over-riding context within which social structures as well as economic activity must operate, often becomes slotted as just another interest pressed by just another set of interest groups, to be balanced against equally valid interests in some compromise outcome, usually on the basis of something other than scientific considerations.

Around the middle of its short life, the Science Council itself took note, as mentioned below, of this interesting cultural transition in process, commenting on the shift in emphasis from "reasoned outcomes" to "negotiated outcomes" inherent in the move from councils made up generally of independent scientists seeking a consensus in interpretation of uncertain scientific evidence to consultative bodies and conflict resolution processes seeking consensus, usually compromise amongst representatives of interest groups advocating responses to that uncertain scientific evidence. The creation of the Council at the height of "Sixties" enthusiasm for reason and the analytic way in government and its replacement by roundtables reflecting a new enthusiasm for what Canadians have come to call "the Rio Way (openness, transparency inclusiveness)" provides a perfect cameo image of the larger social swing.

In a separate working paper, we hope to explore some of the fascinating larger implications of this process for the effectiveness of representative government, for the nature of ministerial responsibility and the definition of the public interest, and for the utilization of analytical and advisory work in consultative and advocacy processes. (In particular it will be important to examine the procedural consequence of substituting direct interest-based negotiations seeking a consensus which governments might be bound to respect in place of earlier advisory processes from which traditionally those with significant private interests would feel obligated to exclude themselves. It is perhaps ironic that a positive conflict of interest — the existence of a private interest sufficient to influence, or perceived to be sufficient to influence, official action — is precisely what is sought in the representatives participating

in these new wave consultative processes.) Here we explore only one aspect of the Council's work, its advice and commentary on the possible risks associated with anthropogenic impacts on processes of global atmospheric change. It is interesting that even within the Council's own work, one can see the evolution over a couple of decades toward the consensus-seeking negotiation role emphasized with the broader political system.

1. PHASE 1 (1968-76)

1.1. 1968-1971 Preliminary formulation of atmospheric issues

In this early period, there were a number of recognitions that form a basis for the full formulation of the climate change issue by the Science Council in 1972. These moved from a concern about the impact of anthropogenic activities on the atmosphere (air pollution) or an interest in the possibility of climate amelioration or modification in 1968; through linking of associative issues like deforestation to climate change, and proposals for goals to control emissions; to calling for an environmental conscience and environmental assessment, and advocacy of a preventive approach to environmental risks.

Certain fundamental principles related to policy goals, strategy and implementation advocated at this time have important implications for the global warming issue.

From the inception of the Science Council there was not only a recognition of the potential policy conflict between public and private interest

One man's effluent is another man's intake. It has become clear that there is a public interest which is not always coincident with or optimized by the pursuit of private interest. The problems which stand in the way of realizing the optimum condition for life in contemporary society, as a society, will not necessarily be solved in an optimum way, or may not even be soluble at all by private or piecemeal approaches. A total "systems approach" may be essential. (1968, 30)

but also, an emphasis on the systems approach to "community planning and human environment" (41).

These two themes were continued throughout the reports from the 1968-76 period:

The 1968 policy report, *Towards a National Science Policy in Canada*, referred to various underlying aspects of the global warming issue: The need for implementation of policies for (a) "development of sound programs for the use, conservation and replenishing of resources" (14); (b) establishment of methods for the "control of existing and threatened health hazards already created by the misuse of science and technology—e.g., Pollution." (15); and (c) the need to move from unsuccessful "fragmented efforts" to a "co-ordinated approach" because of the "complex nature of the total ecology" (p.41).

Even though these observations related to the environment are noted, the thrust of the report suggested that the Council's primary role is to assist industry (24), and it referred primarily to social and economic rather than environmental costs (35).

Interest in the atmosphere emphasized the advancement of Canadian capability in the science and technology of the upper atmosphere and space; for furthering the development of Canadian industry in relation to the use of the upper atmosphere and space; and for the planning and implementation of an overall space program for Canada" (Science Council Report No. 1, *A Space Program for Canada*. 1968 (36)

At this time the concern about climate change appeared to be confined to recognition of the possibility of weather modification and control "with the objectives ...to maximize the advantages which Canada's climate offers and to minimize its deleterious effects" (ibid, 47).

In the 1970 Report, *Seeing the Forests and the Trees*, an important aspect of the global warming issue was referred to: the linking of deforestation and climate change. On page 10, the report indicated that "the cutting of large areas... can have major effects on local climate." The possibility of the impact of reforestation on local climate was also suggested.

In another Report, *This Land is their Land*, the need to develop "environmental science as well as an environmental conscience" was expressed (18). This report also advocated several key elements of policy and goal formation related to environmental issues generally: the policy of requiring resource developers to be partially responsible for the financial costs of environmental assessment (20); and the importance of undertaking preventive measures (36).

In another report the same year, *Canada, Science, and the Oceans*, the Council, without identifying the full complexity of the global warming issue, did recognize an essential aspect, the interlinking of pollution, oceans and climate:

Knowledge of the various processes occurring in the oceans (e.g., ocean currents, mixing mechanisms and energy-transfer processes) is required for a better understanding of phenomena such as marine biological productivity and climate, for the design of equipment and instruments to be used in the marine environment, and to cope with pollution problems.

In the 1971 Report, *Cities for Tomorrow: Some Applications of Science and Technology to Urban Development*, acknowledgement of the urgency of the environmental crisis, a key element in the global warming issue, was forcefully made, in language foreshadowing the message from the Toronto Conference in 1988.

But recently the alarm has sounded loud and clear. Spoilage of landscape, radiation fallout, pollution, were seen to lead to an eco-catastrophe potentially as ravishing as war itself. (p.6).

Not only was the urgency acknowledged but also the inadequacy of our "solutions" or "response assessments" was revealed, through the recognition that sometimes solutions could be more severe than the problems solved (6).

There was also mention of the alarming increase of gaseous wastes being discharged into the atmosphere (48).

Two significant concerns related to the global warming issue were also articulated: the goal to reconsider our "Growth-oriented approach of society:

...just what is economic growth other than a reduction in the scarcity of goods and services? So long as goods such as pure air, unpolluted water and amenities derived from nature or a pleasant environment were regarded as "free" goods belong outside the economic sphere, it was quite legitimate not to account for them. Today an altogether different situation has arisen—to make these goods less scarce is to add to the world's assets and to increase human satisfaction. It thus means contributing to economic growth taken in a broader sense than the mere expansion of production, which itself is but one means of better satisfying man's needs.

'Extending the goals of economic policy to embrace a new' quality of existence' concept is apt to change the allocation of resources significantly,

and the goal to include the intangibles of the environment in accounting:

A more comprehensive accounting system would add to these internal costs involved in the total production-to-waste process (e.g., such measurable costs as are involved in waste treatment and disposal, as well as some indication of intangibles involved in environmental decay, discomfort, etc.). Even more comprehensively, from a national welfare point of view, a pricing system should take account of increasing scarcity of resources. It is ironic in this connection that through the mechanism of depletion allowances the incentive is precisely the opposite, i.e., favouring rapid exploitation of non-renewable resources. (54)

All these insights recognitions, goals and strategies, remain still to be adequately reflected in contemporary practices.

1.2. 1972-75. Formulation of Climate Change issue:

In the council's report, *it is Not Too Late—Yet*, published in June 1972 at the same time as the UN conference in Stockholm; the global warming issue was well formulated:

" On a global scale, a growing body of fragmentary evidence suggests that the sum of a large number of local pollutants may be creating some world-wide air problems. The average concentration of carbon dioxide in the troposphere in the Northern Hemisphere has been increasing at the rate of 0.7 + or - 0.1 p.p.m. per year over the last decade. This is much less than would be expected from an evaluation of the total increase of man-made emissions over the same period, indicating that there are some compensatory mechanisms in the global carbon dioxide cycle, but it is nevertheless an indicator of change. An increase in atmospheric carbon dioxide should, acting alone, cause an increase in global temperature due to the so-called "greenhouse effect": accordingly, there has been speculation that world climate will become warmer. (p. 14)

Acting in the opposite direction is the possible effect of increasing quantities of particulate matter in the atmosphere, from industrial sources, jet aircraft, and so on. The screening effect of these particles should theoretically cause global air temperatures to fall. Considering that energy production and heat release, manipulation of surface and underground waters, change and

destruction of vegetation, and changes to the Arctic ice pack may also cause changes in global air temperature, the net climatic result is difficult to predict. There is at present no compelling information on the nature of the total impact of air pollution on world climate. " (p. 14-15)

"Climatic changes may also occur in local areas as a consequence of large-scale human activity, such as seeding clouds to increase rainfall, construction of major dams, deforestation or the construction of airports. (p. 15)

The Science Council considers that studies ...should be carried out at an earlier stage of planning, and recommends that projects having a possible significant impact on the environment should include as essential elements of feasibility and planning studies, assessment of climatic and ecological consequences as well as proposals for the alleviation of harmful effects, before the projects are considered for implementation." (p. 15)

The food security concern is also mentioned, reiterating the discussion by Reid Bryson in 1967. In the Report, there was reference to the effect of any temperature change:

Canada's productive land areas could be profoundly affected by any global air temperature change, either upward or downward, because most of our crops are sensitive even to small average air temperature variations." (p. 15)

This report also reflected on the "scope, complexity and inevitability of environmental problems" (10), then reiterated the urgency of the environmental crisis, the global impacts and the need for the global action:

"As an added element, environmental impacts now transcend national and continental limits, and we have gained direct appreciation of the greater quantity of human activity everywhere in the world. Beginning with the news of world-wide radioactive fallout, there has been increasing evidence of the global air circulations that disperse contaminants widely and imply the need for global action. ...It is now necessary for every nation to ponder not only the abuses it tolerates in its own territories, but also the problems it creates for others or receives from others. " (p. 13)

and concluded with strong recommendations for the development of and implementation of strategies to address concerns about potential climate change and its impacts.

After assessing the present status of the quality of the physical environment of Canada, the Science Council recommends:

1. a) continuing Canadian participation and initiative in programs for international monitoring and research, to improve understanding of the trends in changes in the chemistry and physics of the atmosphere, related to the increase of pollutants and their possible long-term environmental consequences; (b) the development of strategies to reverse harmful effects.
2. that projects having a possible significant impact on the environment should include, as essential elements of feasibility and planning studies, assessment of climatic and ecological consequences as well as proposals for the

alleviation of harmful effects, before the projects are considered for implementation

3. that the attention of federal and provincial governments focuses on the environmental effects of modern industrial agricultural practices, particularly those of 'monoculture'

(i.e., the wide-spread and repetitious cultivation of single crops)

4. that increasing attention be given to the application of forest technology that is mindful of environmental considerations, as well as of maintenance of the long-term production and other advantages of forest lands.

and with the admonition that "Our accidental experiment in planetary engineering still has a long way to go" (4).

In a 1972 background study *Air Quality— Local, Regional and Global Aspects*. Professor R.E. Munn recommended extending the definition of "Air Pollution" in Bill C-224, *An Act Relating to Ambient Air Quality and to the Control of Air Pollution* (1971), to accommodate new knowledge about climate change to cover "not only the conventional trace gases and particles monitored by control agencies, but also carbon dioxide, water vapour and heat" because of their possible climatic effects (p. 10). Munn also reiterated the need for a systems approach to environmental issues, where decision makers move away from "quick engineering solutions."

We must remember above all else that ecological systems must be examined in total. Quick engineering solutions suitable for application to small components of an ecosystem may treat the symptoms without curing the causes of environmental degradation. (32)

In its 1973 Report, *Science and International Affairs*, the Science Council advocated new national goals beyond those of the vested interests that "have for a long time been accustomed to being the unquestioned suppliers of 'National goals'." The Council called for the creation of a "symbiotic combination of scientific and political expertise" (18). (This symbiosis appeared to have been conceived of as part of the 1975 Conference on "Living with Climatic Change.")

This report also reiterated the "transnational character of many areas related to science and technology; protection of the environment...the earth's atmosphere (18).

In another 1973 Report, *Natural Resource Policy Issues in Canada*, the Council chastised administrative policies that failed to address the urgency of the global crisis:

folly of policies which could lead to a heavily armed global community existing under severe strains due to environmental deterioration, mis-allocation of resources, crowding, or irreconcilable extremes of poverty and affluence. (39)

In this report, the "conservator society" principle was mentioned for the first time in Science Council documents. The "conservator society," because of its emphasis on moving away from resource consumption, would have been

one that could address concerns related to climate change, though these do not appear to be explicitly linked in this document.

Within this global context, the Science Council recommends that Canadians as individuals, and their governments, institutions and industries, begin the transition from a consumer society preoccupied with resource exploitation to a conserver society engaged in more constructive endeavors. Ideally, Canada could provide the leadership necessary to work toward more equitable distribution of the benefits of natural resources to all mankind.

One of the recommendations emphasized compatibility between short and long-term goals in language made more familiar in the Brundtland Commission's later definition of "sustainable development":

It might appear that this recommendation for movement away from a growth-oriented society is in direct conflict with other recommendations the Science Council has made. This is not the case. It should be possible to work toward satisfaction of the short-term demands for employment and material benefits without jeopardizing long-term goals. Every effort should be made to keep the solutions to the short-term problems compatible with long-term goals. (39)

Professor F.K. Knelman in *Energy Conservation*. (Science Council of Canada Background study No. 33 (1975), enunciated what he perceived to be the goal for the initiation of the "conservation ethic":

Historically, conservation has been the group of measures adopted to prevent rapid resource depletion and despoliation. ...Today we have detailed and precise insights into the set of intricate and delicate interactions between the use of particular renewable resources... Further to this we have countless more recent examples of the gross impact of the rapid and ruthless exploitation of non-renewable resources such as minerals and fossil fuels on the air, the water and the soil. (11)

"Human intervention through the application of new technologies has increased our capacity to affect our environment. The ever-increasing scale and intensity of this intervention now seems capable of threatening the integrity of much larger ecosystems and even some of the great natural biogeochemical balances. (11)

"With both conservation and efficiency, care must be taken to consider situations holistically, i.e., as total systems, or we will simply discover that seemingly rational actions on a part of the system will lead to unanticipated and undesirable interactions with the whole system. (12)

The profligate practice of depleting non-renewable resources at the highest possible rate is no longer an acceptable international behaviour. Canada in particular has demonstrated and established its international commitment to global environmental and resource management at the UN Stockholm Conference on the Human Environment. The Man and Resources Conference of the Canadian Council of Resource and Energy Ministers (CCREM) in

October 1973 confirmed that a conservation ethic needs to be accepted as both a national and international goal. (13)

In summary, this survey of the reports from 1968 to 1975 outlines the basis for the framing of the issue of global warming, and recommendations for goals that could assist the global community to address the risk of climate change more generally. These reports were the precursor for an important Conference in 1975.

1.3. 1976. Scientific analysis of the issue of Climate Change

In the 1976 Science Council Report, *Living with Climatic Change*, the proceedings of the 1975 Conference on Climatic Change, organized by the Science Council with co-sponsorship from US and Mexican scientific bodies, were reported.

This conference was designed to address the "absence of communication between the meteorologists with the knowledge of climate change and the economic and social decision makers and planners." The first phase was to bring together the scientists; the second phase was to be a series of meetings with decision makers and planners.

In this report scientists analyzed the data related to the history of climate change, and to current theories. On the basis of these data, they made predictions about the nature and extent of climate change and variability that could occur by the year 2000. Although the main focus of the document was on climate change, and although the scientists acknowledged the potential cooling effect of volcanoes and of dust particles, they appeared to lean toward the view that there could be a general warming of 1 degree by the year 2000.

In the preface there was a strong call for the need to include climate and climatic variability in the planning process.

There is growing evidence that the world is entering a new climate regime. Both the rate of change of the climate and the amplitude of short period climatic variations will be much more pronounced. (Foreword)

Small changes in the basic underlying premises of our plans for meeting present and future needs may produce large effects. Climate and climatic variability must be taken into account in the planning of nearly all facets of human life. (9) (Emphasis in original)

The scientists, however, though acknowledging the need to consider climatic variability in planning considerations, were cautious about the claims they made. Comments about "climatic variability" were almost always expressed in conditional language with emphasis on the "uncertainty" associated with any forecasts of climate change.

In addition to natural climate variations, we are also faced with the possibility that we may be changing the climate by our own actions. In the aggregate, the burning of fossil fuels for heating and energy production releases enormous quantities of carbon dioxide (CO₂) and particles into the atmosphere. These can potentially alter the workings of critical physical

processes and therefore alter local, regional or global climate. Even man-made changes in trace constituents such as chloro fluorocarbons (better known under the Du Pont trade name "Freon") may be capable of producing significant changes. More perplexing is the recent discovery that nitrogen fertilizers might also perturb the natural atmosphere. (11)

They appeared, however, to be certain about the cause of potential climate variability, even though hesitant about the outcome, extent and nature of changes to be anticipated.

Causes of climatic change

Carbon Dioxide

Atmospheric carbon dioxide participates in the chain of interactions which form the natural carbon cycle. This cycle involves the storage and transfer of carbon, in various forms, in and between the atmosphere, ocean, biota, on the land surface, and in ocean sediment. The concern for climate arises from the perturbation of the natural carbon cycle due to burning of fossil fuels. It is generally agreed that there has been an increase in atmospheric carbon dioxide of about 10 percent since the late 19th century and that the increase is continuing and possibly accelerating.

As a result of increased CO₂ heat is retained in the atmosphere, particularly in polar latitudes. This increase is theoretically predicted to contribute to higher surface temperatures.

The effect of the manufacture of CO₂ on climate depends on the rate of production and on the processes, which remove CO₂ from the atmosphere. Such processes include storage in the biota and absorption in the ocean. There is the troublesome question of possible feedback effects. Warming due to CO₂ may reduce the oceanic ability to store CO₂, for instance.

A doubling of atmospheric CO₂ is considered likely by the early 21st century, although this could be averted by a more rapid than expected phase-out of fossil fuels as a prime energy source. The potential effects of CO₂ production on climate therefore merit close attention, (87).

Ozone

Predictions that some human activities will lead to depletion of the atmospheric ozone shield have received considerable attention recently. The bulk of the ozone lies in the stratosphere, where its absorption of solar ultraviolet radiation both screens the surface from biologically damaging radiation, and provides the major heat source for this region. Since the atmosphere is coupled to lower layers radioactively and dynamically, changes in ozone amount may cause significant changes of climate at the ground.

The total amount of ozone may change as a result of variations in the solar ultraviolet output and as a result of variations in the amounts of variety of a chemical species involved in photo-chemical reaction (88).

Nitrogen Oxide

Nitrogen oxides (NO_x) are important in the natural photochemical balance of ozone. One of the major sources of NO_x is the activity of micro-organisms in the soil and in the oceans. Of growing importance, however, are various

anthropogenic sources related to the increasing use of nitrogen fertilizers and the engine emissions of stratospheric aircraft. NO_x may also be deposited in the stratosphere by nuclear explosions.

In addition to NO_x, chlorine compounds reaching the stratosphere may be very effective in depleting the ozone layer. Of particular concern here are chlorofluorocarbons (CFC, or 'freons') and other chlorine compounds... (88)

Other possible causes of climatic change

Additional human effects on climate may follow from the release of waste heat, and from alterations to the energy and hydrological cycles due, for instance, to land use practices, to irrigation and to alterations of natural waterways. While such factors are at present assumed to be important only to local climate, the possibility exists that they may lead to or reinforce large scale climatic disturbances.

Water vapour-greenhouse feedback

The atmosphere is believed to maintain a somewhat uniform distribution of relative humidity over a large range of lower atmosphere temperatures even though the absolute amount of water vapour in the air varies strongly with temperature. The absolute amount of water vapour in the air varies strongly with temperature. The absolute amount of water vapour in the atmosphere determines, to a large extent, the opacity of the lower atmosphere to infrared radiation. Increased temperature at constant relative humidity leads to increase trapping of thermal radiation ('greenhouse effect') which gives rise to further increases in the temperature of the lower atmosphere. In this manner, external forcing which leads to an increase of temperature (for example, an increase in CO₂) may amplify the warming effect. (89)

Cryospheric feedback

The high reflectivity of snow and ice, as compared to water or land surfaces, is a dominant factor in the climate of polar regions. The extent of the snow and ice cover of the earth's surface depends strongly upon surface temperature. If a lowering of the planetary temperature would lead to a long-lasting and more extensive snow and ice cover, this would cause a decrease in the amount of solar energy absorbed by the earth-atmosphere system and thereby a further lowering of temperature. Again, any factor that tends to warm (cool) the climate may have the warming (cooling) effect amplified by this feedback. (89)

The predictions related to climate change were ambiguous. It is difficult to know whether they believed that the global warming trend indicated by increases of CO₂ would be counteracted by the cooling caused by natural activities such as volcanoes or by anthropogenic activities leading to particle formation, or whether a global warming trend would be initiated with potentially catastrophic implications. An overall but slight warming trend seemed to be the general expectation, but the emphasis was very much less than in the Council's own 1972 analysis. Climate variability appeared to have replaced global warming as the risk to be confronted.

Predictions of climatic change

The ability to predict the time sequence of future climatic events is still very limited (90).

There is an important class of predictive problems for which we are forced to rely exclusively on mathematical models. These involve the assessment of human impacts on climate. Because certain human activities are known (or suspected) to alter the environment in hitherto unprecedented ways, we cannot draw upon past experience alone to estimate their potential significance to climate. Despite their shortcomings, models will have to be relied upon to evaluate the impacts of society on the climate. (91)

(See Table 6 in Fig. 1)

An associated table set out "possible causal factors in future climatic change to the year 2000 A.D.," identifying

- Total solar output (effect not clear),
- Volcanic activity (leading to possible cooling)
- Increased Anthropogenic carbon dioxide (leading to a cumulative warming effect of about 1 degree)
- Increased particulates (unclear)
- CFC emissions (leading to warming of 1 degree)

It is interesting to note also an estimate of 10% depletion of stratospheric ozone, based on the assumption that controls on CFC and other emissions are put into effect by 1980 A.D.

2. PHASE 2. (1977) "CONSERVER SOCIETY" AND ENVIRONMENTAL REGULATIONS

2.1. Conserver Society: sustainable environment or sustainable resources?

In the 1977 Report, *Canada as a Conserver Society: Resource Uncertainties and the Need for New Technologies*, the Science Council delineated a complex proposal for a society that would recognize the limits on its resources and would be responsible for acting within those limitations. As a footnote on the hesitant processes of social learning, it is perhaps noteworthy that there is no specific reference to climate change in this significant Science Council document. In the 1976 publication *Living with Climatic Change*, as mentioned above, it was concluded and underscored that Climate and climatic variability must be taken into account in the planning of nearly all facets of human life. (9)

In the 1977 Report, however, there were numerous generic references that would have had implications for the climate change issue: a) the need to preserve ecosystems; b) the need to recognize that cause and effect could be separated by significant periods of time ; c) the need to consider intergenerational equity; and d) the need to move away from non-renewable sources of energy.

Considerations related to "the ecological theme" were implicit throughout the recommendations, and this ecological theme appeared to be encompassing enough to include provisions to address global warming.

Recommendations:

Throughout these recommendations we recognize as an underlying assumption that the ecological systems of the biosphere are resources to be conserved. Without due care, the long-term health of the biosphere could be irreversibly damaged. We must care for natural elements even though they may have no immediately apparent ecological role. We need an attitude of stewardship, which will act as a restraining influence on human activities, and will stem not simply from felt needs but from recognition that human beings are dependent on the well-being of the things and creatures around them. This kind of conservation may require some radical innovations in technology. For instance, population growth is recognized as a world problem, but some of the world's difficulties arise from an even more rapid growth in some kinds of technological systems, with consequent growing consumption of energy and raw materials, environmental damage, and production of wastes. We have to guard the natural environment against threats from ourselves. We have to be aware that cause and ultimate effect may be separated by decades and we have to learn to recognize as early as possible signs of damage. Our concept of nature must change from seeing it as a shopping basket of unrelated goods that we can consume at will, to a set of living ecosystems from which we may take only that part that does not threaten the continued viability of the whole.

Thus, although no specific recommendations on the ecological theme may appear explicitly, these considerations will be implicit throughout. (72)

Particularly relevant to the issue of climate change issue was the recognition that " cause and ultimate effect could be separated by decades" (72).

This report also emphasized a further significant feature that must be considered in any discussion of climate change — that is, "the carrying capacity or the regenerative capacity of the biosphere" " Much has been made of the implications of rising costs and, ultimately, finite limits to material resources, fossil fuels, and so on. There is another kind of limit, one with consequences at least as serious and perhaps more imminent. This is the carrying capacity, or the regenerative capacity, of the biosphere. A central thrust of the conserver approach is to promote techno-socio-economic processes that are in principle sustainable. From this follow a preference for obtaining our energy ultimately from "renewable" sources, and for methods of food production that do not 'mine' the soil. Not only do we look to the biosphere for these self-renewing productive processes, but we depend on it to assimilate, store, and digest the various waste effluents of industrial civilization. The consequences have been recently surfacing to make us more and more aware that for decades we have been releasing new chemical molecules into our environment at a rate that has far exceeded our knowledge of their potential effects. (3)

A crucial, still unresolved, aspect of social response to environmental concerns was explored—the linking of awareness of full environmental costs with the willingness to act:

Environmental problems will move from concern to action...When all costs of industrial processes are reflected in the prices of products, dislocation will be inevitable. Some commodities may be priced out of international markets. International cooperation and resource-environment treaties will become essential.

Most Canadians are aware of the problems caused by wasteful and thoughtless consumption. Many of them are willing to make personal choices that would help to redress this situation. They are waiting now for worthwhile opportunities to do so — and for the assurance that the appropriate technologies are at hand.... The need to come to terms with resource scarcity, environmental pollution and the associated social questions is, of course, not specifically a Canadian problem. (6)

Recognition of total costs

Much of the waste and excess that has characterized our 'consumer' culture has resulted from not taking the total costs of our actions into account. If the total costs — the true costs to others, to ourselves, and to future populations — could be seen for what they are, a conserver society would be an almost automatic result. (34)

To the extent that costs are externalized and become social rather than private, or are deferred into the future, prices are lower than they should be. With lower prices we tend to produce and consume more than if prices reflected all costs. (34)

We often do not know how to measure the costs we may impose on others or on the future by our careless housekeeping. They may be smaller than the costs we avoid, but they may also be much larger. For that reason, it is not always enough to depend on prices and the market system. (35)

Thus, people are willing to pay more for gasoline, and persist in driving large cars, in spite of the aggregate effect on the national balance of payments or on the cost of energy to future generations. (35)

When we ask just what we produce altogether, what are the total costs of doing so, and is it sustainable — whether we are paying as we go — we shall find some things we want to change. (35)

In this report the concern for moving away from specific energy sources reflected primarily their non-renewability, not their contribution to global warming, and it would appear that the term "sustainable" was used in some cases not in the sense of sustaining the environment but rather in sustaining the sources of energy.

Renewable energy

The aim of a conserver society will be to achieve reliance on sources of energy which are in principle sustainable over the long term. This will mean a preference for sources such as hydro, solar, wind, and vegetation that are in ongoing equilibrium with and are constantly renewed by the sun's energy.

This will contrast with present policies in the industrialized countries of maintaining high standards of living by drawing down the world's capital stocks of non-replaceable fossil fuels. (46)

Energy in its various forms has been given little consideration in economic theory. It has been used and wasted in vast amounts, without a thought for the consequences; depletion has been so rapid that it has caught us almost unaware. This once relatively hidden but important factor of production has erupted centre stage. It is now recognized to be the sine qua non of industrialization. (47)

But fossil fuels are a non-renewable resource. They are, in many respects, a capital stock. In the world of capital goods which can be replaced, methods have been devised to ensure that capital stocks are replaced as they are used up. In the case of fossil fuels, however, we have been drawing down a capital stock with little thought to ensuring that the service it provides can be maintained in perpetuity. The service provided by non-renewable fossil fuels is, of course the work that is accomplished as the energy transformation process takes place. The rates of depletion have been so great in recent years and new finds have become so infrequent that we can no longer avoid recognizing the finiteness of this capital resource. We are coming close to being able to calculate just how much longer it will last. (47)

"Sustainable" was also used in other cases to reflect concern for sustaining the environment. Although the report did call for eventually moving away from non-renewable sources, it did not call for phasing out development of fossil fuels. The report, in its quest for renewability, appeared to embrace the "breeder reactor", without seriously considering the military or ecological implications of continuing to promote nuclear energy:

Until these renewable sources become firmly established and provide a major share, present plans to open and develop new supplies of fossil fuels and electric power will have to continue (present uranium fission nuclear reactors are generally regarded as a 'temporary' or 'bridging' source; at this point in time, along with the U.S. the U.K. and Sweden, we should leave open for choice the extent to which we will become dependent on the longer-term 'breeder' reactors and/or thorium-cycling reactors, with the fuel handling and re-processing they will entail). (46)

2.2. Regulations and risk analysis

In the 1977 Report, *Regulatory Processes and Jurisdictional Issues in the Regulation of Hazardous Products in Canada* by Bruce Doern, an important element in the dynamics of social debate around atmospheric risks such as climate change was identified: the call from potential contributors to the problem for more research into the causal connections as a means to delay action and as a justification for inaction:

Industry

The question of hypothetically is one important feature of the political economy of the regulatory process surrounding hazardous products, but it is clearly not the only issue in the relationship of knowledge, science, technology and regulation. Who does the research and how independent it is perceived to be, the general advocacy of better processes of technology assessment, the need for basic research, the need for better or new applied technologies for monitoring and compliance, and when the call for more research becomes merely an excuse for not taking action, are all important issues on which some comments are essential. (29)

They [industry] cloak their arguments in the politics of research by arguing almost ritualistically that there is insufficient causal knowledge or that the technology is not available. (156)

This report also recognized that hesitancy on the part of scientists had been used by opponents to the regulations that might address issues such as global change as a reason for inaction or for more relaxed standards:

In many areas of the regulation of hazardous products and substances, lack of research is not the main problem. A very normal conflict emerges in this regard. Scientists, for example, are naturally and necessarily cautious about the statements they make about causal knowledge. They have a more cautious sense of evidence about standards of TLV's (threshold limit values) for example. They are likely to advocate, therefore, that the standards be viewed as guidelines and that more research needs to be done. Economic interests will exploit this argument and use it to justify looser standards or to postpone action until more conclusive cause-and-effect evidence is produced. Unions and others who must seek more precise administrative and legal criteria of evidence will opt for precise legislated standards. (29)

It is interesting to note that at the same time these publications — calling for serious transformation of society, and the implementation of regulations and standards to protect the environment and health — surfaced from the Science Council, a Socio-Economic Impact Analysis (SEIA) program was instituted by the Government of Canada. This program was later described in 1981 in the following way:

"In December, 1977, The Socio-Economic Impact Analysis (SEIA) program for major proposed health, safety, and fairness (HSF) regulations (economic regulations are excluded) was jointly announced by the President of the Treasury Board and the Minister of Consumer and Corporate Affairs, and came into effect on 1 August 1978" [cited in 1981 in *Scientific and Technological Controversy in Federal Policy Formation*, Science Council of Canada, G Bruce Doern] It was a more particular response to the growing criticism, primarily by business interests, of growing government regulations; a criticism strengthened by the declining state of the economy and increasing rate of inflation. (34)

3. Phase 3. (1978-1983)

3.1. Energy

In the 1979 Council Report, *Roads to Energy Self-reliance*, all previous concerns for the environment appeared to have been dropped. In the introduction, this report made no reference to *Canada as a Conserver Society* (1977) — other than a questionable interpretation in a footnote — or to Knelman's *Energy Conservation* (1975). It did, however, select Report 23, *Canada's Energy Opportunities* (1975), claiming that this report "set the framework for such discussions [energy matters]. It also referred to *An Energy Strategy for Canada*, (1976) published by the Federal Government, which "identified self-reliance as central to any future energy policies, of which important components would be the urgent need for conservation and the development of renewable energy sources" (p.9).

Throughout this period, indeed, not only was there no reference to climate change but there appeared to be less commitment to the environment in general.

The response in this report to uncertainty was quite distinct from that in the other documents that called for precautionary measures. The focus of "uncertainty" was no longer possible impacts on the environment but the "uncertainty" of supplies.

Uncertainty is the greatest enemy of forward planning, both by industry and governments. It appears to be widening the credibility gap and generating social and international alienation. The energy "crisis" is one manifestation. To a large degree uncertainty constitutes the rationale for a national strategy and determines the selection of its instruments.

The basic concept underlying this Report is the postulated increase in the range of Canada's energy options. The main thrust is not to make rigid decisions, but — because of uncertainty — to advance a diversified and broadened supply options base, and thus providing, with greater confidence, more choices for future decisions. An important by-product will be an increase in the system's stability. In addition, an increased differentiation in accordance with regional characteristics and needs will be expected, and further implementation of renewable forms of energy will follow during the next century. (17)

Although "the environment" was included in the list of national goals, along with conservation and alternative options, emphasis rested on the continuation and strengthening of the status quo in energy production (including accelerated exploration for fossil fuel resources and revived interest in coal):

Any energy 'future' must be designed to support national goals — security, prosperity, social equity, health, the environment — within Canada's physical, economic, social and institutional constraints. While Canadians may differ on the specifics of 'how to do it,' there is growing consensus on the direction that energy policy should take. The major elements entering into these discussions are:

1. Need for a major national energy conservation program

2. Increased substitution for conventional oil by alternative fuels
3. Accelerated exploration and continued production of national fossil fuel resources.
4. Improved and expanded utilization of electricity.
6. Renewed interest in and use of coal.
7. Expanded efforts in the renewable energy technologies, such as biomass and solar. (21)

It is also interesting to note the way in which the essence of the "Conservers Society" document was reported in this 1979 Report:

The Science Council, in the report on the economic and social implications of a conservers society, suggests ways to use our energy resources more efficiently (26)

Economic growth, level of industrial activity, regional development, equitable distribution of wealth, environmental impact and personal freedom of choice are inextricably involved. ...Notwithstanding the understandable desire to upgrade exports, it is probably in the national as well as the global 'interest' that an appropriate level of unit energy consumption, consistent with our socio-economic aims, and probably not very different from today's level will be required to preserve a socially acceptable quality of life.

Energy requirements are tied to economic and political aspirations. Canadians must keep all energy options open if these aspirations are to be fully satisfied. Economists, industrialists, financiers, politicians and other decision makers must understand that energy contributes to Canada's well-being, perhaps more so than in other countries (28)

3.2. Regulations and Environmental Assessment

In the 1981 Council report, *Scientific and Technological Controversy in Federal Policy Formation*, G. Bruce Doern) there appeared again to be no specific reference to climate change. There were, however, significant references to generic environmental assessment principles that have implications for climate change.

Environmental assessment processes

In response to the pressures of the Canadian environmental movement and to the passage of the US Environmental Protection Act, the federal government established, in December 1973, the Federal Environmental Assessment and Review Process (EARP). EARP was created by Cabinet directive and has no statutory basis. Its purpose was to ensure that environmental effects and impacts were assessed and taken into account at the earliest planning stages of federal programs and projects. EARP operates in two phases. The first is at the departmental or agency level; agencies make the initial determination whether proposals or projects are likely to have significant environmental consequences. If so, then the second phase begins, namely a formal review of major projects conducted by the Federal Environmental Assessment and Review Office (FEARO). A panel of experts appointed by FEARO and the Department of the Environment undertakes a public review, including

hearings, of a detailed impact assessment document prepared by the proponent agency in accordance with guidelines specified by the review panel. Since 1974, EARP has reviewed several major federal projects but critics of the process point to several weaknesses such as its lack of legal influence and its purely advisory status. Much like the Ministry of State for Science and Technology in respect of science, EARP functions as little more than the 'ecological conscience' of the federal government, this authority being based more on moral suasion than on legal force.

The 1982 policy report of the Council *Regulating the Regulators*, contained an important examination of risk. In the earlier publication (*Policies and Poisons...1977*) a distinction was made between "risk assessment" and "risk adjudication." Throughout the 1982 report there is an important distinction made between the need for a "reasoned outcome of the assessment of risk" and the "negotiated outcome of the acceptability of the risk." This distinction was particularly important in the determination of risk in the context of climate change, and the potentially strategic use of scientific uncertainty.

When we began this study, matters of immediate economic concern to Canadians were much less pressing than they are today. Nevertheless, despite the present state of the economy, we emphasize the urgency of contending with value-scientific questions. Often it is too late to respond to the impact of advances in science and technology...the development of a 'proactive system' is vital (Bates, Introduction).

Science and technology have revolutionized the standard, quality, and style of living of most people. But many of the attendant costs were either hidden, ignored or not foreseen when a scientific advance was realized or a new technology was introduced. Along with benefits...we have seen environmental deterioration, depletion of non-renewable resources and stresses on the moral and ethical fabric of our society. (10)

The interaction between law and science at present is insufficient to allow anything other than a crisis-to crisis response. In the 1980s, technological advance is happening too fast for social and legal processes to adapt. (10)

" Many of the critically important modern problems which our society must today resolve — what I have called 'socio-scientific disputes' — are different in degree, and sometimes in kind, from those that our existing dispute resolution mechanisms were designed to handle"(Milton Wessel, cited on p. 10)

The complexity of the interaction of the two aspects [facts and values] contributes to the difficulty in resolving value-scientific disputes. (11)

One must also distinguish between scientific and value-scientific controversy. Scientific controversy is dispute over the validity of scientific findings or the completeness of a data base. Value-scientific controversy is dispute over the social, ethical and political implications of scientific findings and their uses.

Dispute over the interpretation of scientific findings bridges the two. Overlaps of these two categories are sometimes inevitable. In nearly every value-scientific controversy the science involved is also disputed, often because of its hypothetical and trans-scientific nature [trans-scientific describes hypotheses that cannot be verified experimentally for ethical or practical reasons, e.g., human experimentation to test whether certain compounds are cancer-producing] (12)

4. Phase 4. (1984-87) Pre-Brundtland

Reports during this phase to some extent form two streams: those which gave the environment or regulations primacy and others which gave the economy primacy. The policy reports, however, appeared to address primarily the need to give primacy to economic concerns.

It is interesting to note that the Science Council which organized the "Living with Climatic Change " Conference in 1976 has not again returned to the issue, even as late as 1987. To the extent that the Council deals in its policy reports with issues of sustainability in this period coinciding with the work of the Brundtland Commission, these were questions of sustainable economic growth in a more competitive environment, not ecological sustainability. The following excerpt was representative of the Council's apparent orientation during this period.

Canadian Industrial Development: Some Policy Directions. Report 37 (1984)

Chapter 1: Obstacles and Opportunities

All advanced industrial countries confront new situations today as the world economic order changes rapidly. Competition has heightened. Governments have displayed limited capacities to deal with their individual financial and economic problems in isolation, and the international situation has become very fragile the Science Council believes that the key to Canada's ability to move with the times is to establish a climate in which technological advances, innovation and new industrial companies can flourish. Initiatives must be directed to specific areas to stimulate and support the innovative process, provide better incentives for risk takers, heighten the commitment to research and development, increase the supply of trained technical people, and improve access to domestic and foreign markets. All levels of government can participate in helping to fulfill these goals and each should avoid legislative, regulatory or other actions that curtail their fulfillment. (22)

Canada and the Challenge of Change in the 1980s

In the early 1980s the global and domestic economies faltered. the extended recession and rapidly changing economic conditions left no country unaffected. Canada proved more vulnerable than most. In its evaluation of international competitiveness, the European Management Forum calculated that Canada's rank slipped from sixth to eleventh among 22 industrial countries between 1981 and 1982.

Broad financial support from the government is also needed to improve productivity and international competitiveness in Canadian industry, because many activities (notably R&D, investment in new plants and machinery, and development of international marketing skills) are insufficiently funded by the private sector. Moreover, because innovative activity tends to be risky, governments must offset risk to encourage innovation.... Government measures designed to influence industrial development are generally termed industrial policy, and a consistent set of specific industrial policies constitutes an industrial strategy. An overall strategy maximizes the benefits of industrial policy. The industrial policies chosen will decide the industrial structure.... Failure to make choices or to target activities such as R&D or the development of particular sectors would leave Canada's industrial structure at the mercy of random events and the short-term political whims and often predatory initiatives of other countries. (11)

A Canadian industrial policy should not, however, concentrate solely on a few high-profile successes. A number of traditional industries already involve considerable human and physical investment. Adjustment away from these activities would entail very high costs. It is in the national interest to upgrade sectors such as steel, forest products or automotive parts with new production technologies, provided that they can maintain or renew their international competitiveness. [It is interesting to note that both the forest industry and the steel industry are represented on the Science Council at this time]

Phase 5 (1988-1992) Post-Brundtland. In this phase, the Science Council embraces the National Task Force interpretation of "sustainable development"

Sustainable development

In the 1988 statement by the Science Council of Canada, *Environmental Peacekeepers*, the concept of sustainable development as interpreted by the National Task Force on the Environment and the Economy was endorsed.

Summary

The deterioration of the planet's ecological base is accelerating. To a large extent, environmental deterioration in advanced countries is caused by unsustainable development, and in the Third World it is caused by crushing poverty that leads people to destroy the resource base. Science and technology offer a way out of both predicaments. In the advanced countries, new technologies promise to reduce demands on the resource base while increasing industrial competitiveness, and in the Third World, development is the key to relieving poverty and averting ecological disaster.

It is in Canada's long-term interest to respond to the global crisis by cleaning up her own backyard and addressing global issues through international organizations. Even in the short term, concern for the global environment could be rewarding. The early development and export of ecologically sound technologies could bring immediate profits to Canadian entrepreneurs.

The Canadian response to this crisis must include the integration of environmental and economic decision-making — what is referred to in Our Common Future as sustainable development. Canadian industries must adopt preventive technologies, which, unlike remedial technologies, offer opportunities to conserve our natural resources and reduce waste and pollution, as well as increasing productivity and competitiveness. The Science Council also recommends that science to measure and understand the state of the environmental resource base in Canada must be supported and organized. (p.7)

Recommendations:

1. The report of the National Task Force on Environment and Economy submitted to the Canadian Council of Resource and Environment Ministers be given top priority by Canadian governments and that steps be taken to implement its recommendations as soon as possible
2. The federal and provincial governments over a 10-year period take steps to put in place an environmental assessment capability in all departments, ministries, and corporations that through their policies and programs impinge directly or indirectly on the environment.
3. Between now and the beginning of the next century, Canada under the coordinated leadership of the federal and provincial governments, and with the commitment to sustainable development that emerged from the recent (June 1988) Toronto economic summit, double its efforts in support of the technological modernization of Canadian industry.
4. The Department of Industry, Science and Technology take a leadership role in promoting awareness of technologies for preventing or minimizing environmental degradation, and in encouraging and facilitating their development, diffusion, and application.
5. The Department of Industry, Science and Technology immediately develop and make operational an effective in-house environmental assessment capability for new and modified technologies.
6. Environment Canada and the Department of Industry, Science and Technology develop an Interdepartmental Working Group to ensure greater consistency in policies and actions in support of science and technology for sustainable development.
7. The Canadian Council of Resource and Environment Ministers appoint a task force, perhaps organized under the auspices of the Science Council, to identify the scientific and technological resources and infrastructure needed for the collection, overall coordination, and integration of reliable, credible, and publicly accessible data on the quality of ecosystems.
8. The Canadian Council of Resource and Environment Ministers support and organize the appropriate national science and technology efforts needed to deal with current and emerging ecological problems. (9)

• THE ECOLOGICAL CRISIS

The continuing and accelerating deterioration of the planet's ecological base poses a significant threat to the long-term viability of our world. Evidence concerning global warming, ozone depletion, species depletion and elimination, the spread of the deserts, forest destruction, soil degradation,

acidified lakes, rivers and streams, and groundwater pollution exists in abundance in the scientific literature.

Much of the evidence is subject to many qualifications and even scientific debate, but the overall trend and its gravity for our planet, to its multitude of species and to the generations to come, are beyond question. (11)

1. Consider, for example, the accumulation in the atmosphere of carbon dioxide, principally from the combustion of fossil fuels and the cutting and burning of forests, which is largely responsible for creating an invisible heat shield around the planet. The global average surface temperature is predicted to rise by between 1.5. degrees C and 4.5. degrees C within the next 50 years. [Worldwatch Institute, State of the World, 1988]

...It is not too difficult to foresee that dramatic consequences are possible in the next 50 years, in view of the fact that during the last ice age, when vast sheets of ice covered much of Europe and North America, the Earth's average temperature was only 5 degrees colder than the average today. (19)

Re: Our Common Future;

thesis that we cannot save the environment without development, and that we cannot continue to develop anywhere unless we save the environment. Thus, economic development must go on to avoid disasters in the poorest, most heavily populated countries, but must do so within ecologically sustainable limits. (11)

The role of science and technology in undoing the global ecological crisis — if it is to be undone at all — is of paramount importance. Because, to a large extent, science and technology narrowly applied for economic growth and development have created the crisis, they are frequently perceived as villains that destroy the planet's ecological base. But as this statement points out, science and technology can be heroes as well as villains: they can be applied to help prevent adverse environmental consequences of population growth and development, and to minimize demand on the planet's resource base. Science and technology policy is therefore central to the Canadian response to this crisis. (11)

THE CANADIAN RESPONSE

"The actions recommended in the Conference Statement [the Toronto Conference on Our Changing Atmosphere: Implications for Global Security]" if acted upon globally, could slow and eventually reverse deterioration of the global atmosphere. (11)

To be most effective in this leadership role Canada must set a good example at home. If Canadians are not prepared to tackle environmental problems that are solvable through our actions alone, such as the pollution of ground and surface water caused by our resource-based industries, who will pay attention to use when we broach problems that can only be solved through international collaborations? (12)

Even if that responsibility could be set aside, Canadians would be acting in a manner detrimental to their country's long-term good if they failed to arrest and reverse degradation of Canada's environment, including its resource base. Paradoxically, the very activities that have improved economic well-being in Canada have also had serious negative effects on our environment, particularly on our agroecosystems, forest ecosystems, and aquatic ecosystems. The Science Council observed in a recent statement for example, that '...soil degradation is an ongoing insidious problem that occurs in all parts of the country at a cost of over \$3.0 million per day or \$1.3. billion annually. Canada's resource-based industries, despite erosion of their competitive power, could go on playing a key role in the Canadian economy for many years if degradation of the Canadian environment is arrested and reversed. (12)

6. Summary Observations on Issue Framing as Seen in the Policy Reports of the Science Council of Canada

The most striking feature to emerge from this extended review of selected publications of the Science Council of Canada is the extent to which an initial concern for the environment and the integrity of the biosphere became submerged in the economic concerns of the late 70's and eighties.

From an initial emphasis in general on environmental issues at the time of its formation in the late 1960's, the Council published a fairly full account of potential impacts of anthropogenic activity on climate change, emphasizing the question of global warming in 1972, and moved on to organize the 1975 *Living with Climatic Change* Conference, publishing the proceedings in 1976. In 1977 in its major program on the Conserver Society, the Council documented the underlying structural features of economic organization which account for otherwise inexplicable environmental degradation, focusing on the misleading price systems, incomplete market mechanisms, inadequate structures of property rights and distorted accounting systems which drive economic decisions and industrial activity. Thereafter, the risks of global environmental change, and particularly atmospheric change, drop from view in the wave of publications responding to the new social enthusiasm for privatization, deregulation and downsizing government. Environmental concern resurfaces in Science Council documents in the aftermath of the Brundtland Commission, but then primarily in respect of Canada's opportunities to find a competitive niche in the production of environmental technologies and services (although the Council does embrace strongly the National Task Force's conclusion on institutions and decision-making directed toward environment-economy integration).

Thus, the Council brought the relevant science into public view early, but seemed to drop out of the public debate on global warming when its own competition for survival in the leaner and meaner world of government restraint and manufactured recession became more acute. In that world, innovation, technology and competition emerged as concerns that dominated long term risks of global climate change, and that domination was amply reflected in the Council's own work. References: Annex on Science Council

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() **THAT** in 1993, March I gave a presentation at the Conference on International Environmental Law at the Faculty of Law in Eugene Oregon, on a NAFTA panel, with representatives from the United States in Mexico, and I drafted a resolution calling for the abrogation of NAFTA

COMMENT

1993 Made a presentation, "Overarching principles: NAFTA in violation of international law" on a panel on NAFTA with representatives from USA and Mexico. Public Interest and International environmental law Conference, University of Eugene, Oregon. Alan Beasley was on the Panel, Cree representative.

I met with representatives from Mexico and US and discussed the need for a resolution to come out of our session. We announced the proposal to have a resolution and invited people at the meeting of about 300 to attend a session. We drafted a resolution

GROSSMANS TAKING CARE OF BUSINESS TO THE MARCH MEETING IN EUGENE

Went to the session given by Richard Grossman about revoking charters of corporations

RESOLUTION. and presented it to the plenary which endorsed it. Also, at the final plenary I proposed that we recommend that the next meeting of the conference be on the revoking of Charters of transnationals. This recommendation was greeted with great enthusiasm [I noticed however that this was not to be the case]

Went to a nuclear session where a native woman was discussing her successful campaign stopping a nuclear waste dump site. I became more and more concerned about the local successes unfortunately just resulting in the displacement of the problem and began to stress more and more the need to address the entrenchment of systemic constraints.

MARCH 1993. Prepared report on the occasion of the coming into force of the Framework Convention on Climate Change: a Report Card on the Canadian government's failure to comply with the Convention

1993 (March) Prepared a Report Card on the BC governments compliance with the Framework Convention on Climate Change on the occasion of the coming into force of the Convention 1993 Modified, extended and circulated Climate change report card

- 1993. Created a Composite diagram on "Climate Change: identification of issue, response, evaluation, monitoring, enforcement" linking information from 8 different countries. A follow-up to a project based in**

Harvard on Social Learning related to climate change. 1993 (March)

Prepared for the International Law and Obligations Institute (project) a Report Card on the BC governments compliance with the Framework Convention on Climate Change on the occasion of the coming into force of the Convention

In 1967, in the Proposal for an intense neutron generator

“Specialization in areas of basic national need or significance, with dedication to a standard of excellence in the chosen areas, is not only the best way to challenge our scientists and engineers, and keep them in Canada, but is also the way to ensure the greatest long-term returns to the economy.” (p. 3)

Bohm, David

"Fragmentation and wholeness are especially important to consider today. Fragmentation is widespread, not only throughout society, but also in individuals, in science, and in all human activities. It is creating a general confusion of the mind, leading to an endless series of problems that have no solution. This in turn interferes with our clarity of perception and prevents us from confronting issues properly. One can see that society as a whole has developed in a very fragmentary way, broken up as it is into nations, ideologies, religious groups, industrial groups, professional groups, and countless ethnic groups, each one of which treats itself as independent. The natural environment has also been broken up into various bits, each exploited independently." (p. 7)

Science has become a very important source and sustainer of fragmentation in modern times, though its aim is unity. Physics has become the pattern or the paradigm aimed for by all sciences. In physics around the time of Newton, they developed a mechanistic approach by which the world was effectively regarded as made up of atoms — separate fragments, each with its own existence. Each one moving mechanically, interacting according to predetermined laws of force. The parts were the ultimate reality. They were fixed into relationships. Any whole was only the convenient way of looking at the parts collectively because it had no independent reality. Now this fragmentation introduced a certain unity, for all the world was made of similar atoms with certain universal relations between them. So, from the beginning it was step towards unity. (9)

Other areas of physics such as relativity and quantum theory have also denied this fragmentary, mechanistic approach. In relativity, there is no need to discuss atoms at all. We have to change to a concept of a field which is a continuous state which spreads throughout all space in waves. (10)

Quantum theory goes much further than that. It would be very hard for me to explain its subtlety, particularly since it isn't fully understood yet. But there are several new features of quantum mechanics. One is that movement, energy and momentum are no longer continuous as classical physics says. There is movement in discrete steps, so that an electron is said to jump from one orbit to another without passing in between. All energy is transferred in discrete quanta that are not analyzable. This already implies the indivisibility of the universe because all parts of the universe are interconnected by quanta that cannot be divided. (11)

Quantum mechanics in that way alone brings about this unity. And secondly, it brings it about in other ways. It says everything is both wave-like and particle-like. It is more wave or particle according to the experimental environment, rather like an organism whose behaviour depends on the environment, rather than a fixed mechanical system. (11)

Thirdly, there is another quality of wholeness in quantum theory due to a peculiar connection of distant things called non-locality, which means things that are distant can be quite connected. They are not necessarily connected by things that are physically close to each other. (11)

What this means is that our present knowledge of nature does not support this fragmentary view, but the opposite view. Nature is an undivided whole.

if we didn't have any other option as long as other options are available put nuclear energy on hold Knelman
while you can never say never to nuclear energy considering the availability of alternatives which are more environmentally and socially acceptable, we should declare a moratorium on nuclear power plants. advantage is the advantage of conservation and efficiency program it buys the time necessary for exploration the development of renewable resources we could have the same economic output through half the consumption
breeder program prominent in the 1970
fission forever you start with regular fission then you recycle all the wastes plutonium special type of reactor that breeds
finally, in all the time you develop fusion unlimited source. Knelman

Constraints and problems:

Studies approved by Environment Canada indicate that in B.C., the most prolific forest region of Canada, a 150 MW electrical generating plant could be operated on a continuous sustainable basis by rotation of cropping of red alder on an area of 65 square miles. (49) Conserver 1977

We predominantly measure throughput or flow, since it is a component of GNP, the widely used indicator for estimating economic well-being. From a conserver point of view, however, we would be better off to pay more attention to materials as stock, both fixed and circulating — fixed in the form of buildings, roads, equipment, etc. and circulating in the form of new investment, depreciation, recycling, consumption, and disposal. Thinking in terms of these categories we shall be able to promote economic welfare more efficiently — using materials more effectively, extending the life of scarce materials, and reducing the burden of increasing costs associated with finding, extracting, and disposing of large volumes of materials and associated wastes. (51)

Conserver, 1977

Many factors are now coming together to raise the costs of minerals, and are more likely to increase in intensity than to go away in the foreseeable future. These include the depletion of rich and accessible deposits, the increasing

size and complexity of mining operations, the difficulties of capital financing, rising cost of energy, transportation over greater distances, stricter environmental regulations, and insistence on regard for social costs and benefits, such as safety and health of workers and continuity of social infrastructure. Labour and exploration costs have been rising in Canada (51) Conserver 1977

Not the least among all these factors is the political element. Pressures are mounting for a new world economic order, one that will redress some of the imbalance between the developed and the developing nations; the industrialized nations draw resources from the less-developed and, because of their economic power, tend to get the better terms of the trade. As the UN agencies urgently point out a shift in the terms of trade is one of the best ways to assist the development of these countries, and if such a shift does not come about voluntarily it will likely be forced by various concerted political actions. (52) 1977 Conserver

The ultimate will be a change from a system of high extraction, high flow, and high disposal, with recycling a minor component, to a system in which optimal use is made of a fixed and recycling stock, with new extraction necessary only for growth, and 'topping-up' as materials degrade from wear and tear and mixing. 53 1977 Conserver

Since our forests, properly managed, are a renewable resource, Canada has the potential of developing a liquid fuels industry which is sustainable. 58

the net impact of such an activity on the Canadian environment would have to be considered and technical questions regarding the behaviour of water-methanol-gasoline mixtures in the cold Canadian climate await answers. A complete technology assessment of this technique will have to take into account all possible environmental costs, as well as determine whether production of methanol is the most energy-efficient use of wood and wood wastes. (58)

Our view is that renewable energy is feasible, desirable and inevitable; the rate of introduction, however, is a policy decision. This decision must be taken very soon if Canada, as a nation, is to make an orderly transition to renewable energy. (58)

by 1990 we could have between 1000 and 3000 windmills in Canada each with 200 kW capacity. (59)

Greenhouses

application of solar energy in green houses (60)

transmission of information electronically

Dramatic savings of energy and forests will be possible as new methods are put into practice for electronically transmitting to homes and offices the information we now find in newspapers, books and periodicals. (61)

Decentralization of work places

The increased use of telecommunications should lead to a decentralization of work places and could foster structural changes in land use, places of economic activity and population distribution. (61)

We have raised in previous sections of this Report the problems of rising costs from energy and resource depletion, and from environmental deterioration and how these costs come back on our decisions in indirect ways. (63)

A second level of analysis would suggest ways in which transportation needs could be met by other systems having a lower demand for fossil fuels — electrified rail, for instance, or substitution of telecommunication for the physical movement of people or things. (64)

The story is well known of how General Motors took a leaf from the fashion industry and introduced the annual model change, changing the course of the auto industry. (65)

Advertising in a conserver society

More emphasis would be placed on information and less on persuasion. Greater attention would be given to life-cycle costing and less to initial purchase price. Product durability would be emphasized rather than fashion and trendiness. Throw-away products would be in disrepute, if they had not been priced off the market by energy taxes and disposal taxes. ...Human ingenuity and development would be directed to different problems than accelerating material consumption for its own sake. ... the scope for invention and enterprise in wresting a growing quality of life out of an in harmony with a limited environment would not diminish, though its challenge might be greater. (66)

While the mark of progress for the individual has been ever increasing possession and consumption of goods, the social infrastructure has also been expanding. ...Using tax dollars, governments at all levels have provided Canadians with a social infrastructure which may be too large, too costly and improperly suited to meeting the real needs of all citizens. (67)

The bureaucratic isolation or impersonality of large systems can in itself be a cause of excessive demand. The user is apt to get the impression that services or goods provided by the system are in some sense free, or paid for by someone else. Irresponsible attitudes develop, leading to unnecessary consumption, waste and cheating of the system. (67)

Finally, there may be considerable excess capacity and waste that arises because some organizations in our society have the power to pass on their costs to others. Government departments may indulge themselves in lavish office space or padded personnel establishments. Universities, schools, and hospitals may — perhaps more in the past than now — splurge on expensive equipment. Large business corporations with power over a large segment of the market may feel secure in their ability to pass on large advertising costs to

consumers in the price of their products. Some of the most luxuriously appointed hotels and restaurants in our large cities were built to serve the expense account and convention trade. Labour unions bargain for and get their wage demands, because the industries that employ them will simply pass the costs along to the consumer, knowing that their competitors deal with the same union and will have to follow suit. The election campaigns of the various political parties hold out the promise of a better life for all. The government that finally gets elected then has to satisfy the raised expectations and in so doing, often runs a deficit. Prices and Taxes continually rise to pay for this every-growing "sheltered economy." Thus, we may have dimensions we are not fully aware of, what might be termed a "cost-plus' economy. (68)

A more-is-better philosophy has too often seduced us into thinking that more is necessary. More is almost always costly — economically and socially. Witty energy constraints, capital shortages, inflationary pressures and environmental limits coming to predominate, we are forced to consider less costly and, in many cases, different ways of satisfying the demands and needs of Canadians. (69)

The specific roles of industry in the regulatory process of each case...it is important to summarize several of the issues that influence the industrial perspectives; These issues include the profit motive, the role of sunk capital cost, questions of inter-firm technology transfer, the roles of industrial associations, the number and relative size of firms in particular industries, the degree of foreign ownership, and the influence of the company town 57)

The private corporation (and many Crown corporations, too) exist first and foremost to earn a reasonable return on investment for their shareholders. Occupational health (another) costs, unless they can be passed on to consumers, are ultimately an expense which reduces profit, at least in the short run. ...the private firm has a built-in bias to err on the side of less costly changes. (57)

Almost half of the emissions arise from gasoline engines, especially those utilized by motor vehicles. About 25% are accounted for by emissions from industrial and commercial stationary fuel combustion sources from utilities, and from power generation. another significant amount arises from industrial and municipal solid waste disposal from petroleum refineries and nitric acid industrial processes. (130)

The industry consists of thousands of firms, including a significant proportion of public or state enterprises (especially power generation). The firms range in size from industrial giants like INCO and the oil companies to very small firms, and are distributed throughout the 10 provinces. (130)

Through a process of industrial task forces and federal-provincial committees, a national air quality objective for nitrogen dioxide was established in the early 1970's. There was virtually no union involvement and only limited involvement by consumer groups. 130

The behaviour of some firms has been inexcusable on any grounds, but there are clearly some difficulties for industry-wide responses. Governments usually have to regulate on a across-the-broad basis. They cannot usually have different regulations for different firms (although they have certainly been known to adopt different compliance schedules for different firms). 157

1977 risks

" The ways in which a risk is detected and appreciated are diverse. In some cases, there may be slow unfolding of medical and toxicological information on a world-wide basis, as for asbestos. (28)

"Perception of hazards is continuously being refined and extended. The question of whether low levels of lead in the blood of a pregnant woman. (28)

" The decision as to what level of risk is acceptable is necessarily a task for a group of people with a wider perspective than those involved with a regulatory agency and with the scientific and technological aspects of the hazards. Views on the acceptability of a particular risk, if they are to command respect, must reflect a broad and deep contact with public opinion, as well as thorough knowledge of relevant technical innovation. (29)

Sir Brian flowers, former Chairman of the U.K. Royal Commission on environmental Pollution, told a workshop of the Science Council, in February 1977, that although the technical basis for the Sixth Report on Nuclear Power in the Environment contained no scientific or technical matters of which he had not been previously aware, the hearing of this evidence by the Royal Commission which included members drawn from different sectors of society, had changed his own view of the acceptability of the hazards of rapid development of certain types of nuclear technology. The Science council emphasizes that judgment of the acceptability of risk, especially if made on behalf of those who may be exposed to it by those who are not, is a complex process. (29)

"Discussion of the scientific background must take place in an open forum This forum should include those particularly affected by a hazard, labour and management in the occupational context, and all affected parties in the environmental context. (29)

the Science council recommends:

that a National Advisory Council on Occupational and Environmental Health (NACOEH) be established by statute, with the following mandate:

1. to designate hazards and be responsible that assessments of risks are undertaken and published in respect of any hazard it may designate
2. to be responsible for publishing recommended standards of maximum permissible exposure levels for Canada. (31)

We have stressed that NACOEH will have to make judgments in areas in which there is no scientific certainty. This can best be done in our view if there is openness of information development and exchange and an openness of process, whereby different interpretations of scientific evidence

can be publicly discussed or new scientific evidence can be placed in the public domain. Where interim standards are promulgated without public enquiry, there should be provision for an appeal process. (36)

We recommend that a medical record system be designed and proposed by the Department of National Health and Welfare. As an essential first step, this must include standardizing nationally the collecting of pertinent medical and occupational information, as well as standardizing an appropriate code for computer inputs. (38)

Doern, Bruce. (Oct. 1977) "Regulatory Processes and jurisdictional Issues in the regulation of hazardous products in Canada.

Oxides of Nitrogen

The reports on the scientific and medical aspects of oxides of nitrogen indicate that there has been much less medical and scientific concern about its direct and secondary effects on humans... the hazard is similar to lead insofar as it is diffuse and pervasive in nature, and is related to the automobile as the primary source of the pollutants. If anything, it is an even more diffuse pollutant than lead, since oxides of nitrogen occur wherever internal combustion occurs. (129)

the degree of attention by researchers and the degree of knowledge about the effects of exposure to oxides of nitrogen seem to be greater on the environmental side than on the workplace side, despite the fact that the earliest known populations to be at risk ...On balance more is known about direct environmental hazards than about direct workplace hazards, or about the secondary environmental effects in which oxides of nitrogen are linked to the formation of ozone. (129, 130)

1980 post- conservative Brundland sustainability to sustainable development

[It is interesting to note that there were significant additions to the membership of the Science Council at this time (it begins to take on the tenor of the current round tables — that is, with a few significant exceptions, moving away from the dominance of scientific researchers in its membership, towards increased representation from the resource sector).]

APRIL NOTE I DISPLAYED THIS DIAGRAM and diagram on Human rights AT THE PEACE WALK IN APRIL

NOTE RESOLUTIONS AT THE 1993 BCEN

1993 BCEN attended the BCEN meeting in Victoria . Spent most of my time in the Forest Caucus compiling recommendations made by members. I proposed that we should come up with resolutions based of the recommendations coming from the members. It was agreed and a committee was set up. I spent the rest of the time working on the resolutions with his committee. On the final day of the Forest Caucus meeting I had the resolutions printed up and transferred to overheads in order to

present them to the plenary of the Forest Caucus. No time was given to the resolutions. When there was the plenary session of the BCEN I went up to the microphone and started to read the resolutions. I was told that there could be no resolutions endorsed by the BCEN because it was a network and received funding on that basis. Subsequently at every BCEN meeting I raised the issue that the BCEN would be far more effective if they could issue resolutions.

I ran for steering committee and was tied with David for the position and I decided to back out. I also ran to be one of the representatives at the conference in PEI. I almost made it and ended up going because Bruce Torrie could not make it and I had been the next on the list. I decided to set up an international affairs caucus at the BCEN.

***BIODIVERSITY RESOLUTION PUT ON THE FLOOR BY DAVID
B.C GOVERNMENT DRAFTS CLAYOQUOT PROPOSAL***

THAT in APRIL 1993, I Presented Graphic synthesis of ethical principles, related to the Environment. Conference on Ethics organized by the Goethe Institute, UBC.

Met a German biologist, German biologist, Dr. Schutt gave an excellent presentation on Forests and biodiversity. I contacted him afterwards and got a statement from him condemning clearcutting STATEMENT. I used this statement in all documents that I wrote on forests and well as in the court cases related to Clayoquot Sound as an indication of "changing times." Supposedly an injunction according to Justice is not confined to the strait jacket ... but is an equitable remedy moving with time and circumstances.

- 1993. wrote a position piece on "CORE (Commission on Resources and Environment)

Process as an "arena of competing interests" Need for Principled based decision-making Watershed Sentinel, Cortez: B.C.

- 1993 Participated in the policy review of the role of the Department of National Defence

DOCUMENT. Military person at the meeting.

- 1993 researched and drafted a paper "Interdependence of issues in principle-based education" commissioned by Global Education

() THAT on April 13, I circulated a comment on NAFTA, examining NAFTA within the context of international law

EXHIBIT

APRIL 13 1993

Report and suggestion for follow up paper

NAFTA: International environmental principles emanating from UNCED and economic constraints or Environmental provisions and economic constraints. Assessment of Environment Canada's analysis of the environmental implications of NAFTA

Concepts to examine that may be economic constraints:

PROBLEM 1.

A state cannot establish a higher environmental standard of production and exclude goods that do not meet that standard of production, and cannot require the other states to live up to higher standards

The following two sections appear to permit each state to establish as high standards as they deem necessary:

"Right to take Standards-related Measures" (Article 904,1)

1. Each Party may, in accordance with this Agreement, adopt, maintain or apply any standards-related measure, including any such measure relating to safety, the protection of human, animal or plant life or health, the environment or consumers, and any measure to ensure its enforcement or implementation.

"Right to Establish Level of Protection" (Article 904,2)

Notwithstanding any other provision of this Chapter, each Party may, in pursuing its legitimate objectives of safety or the protection of human, animal or plant life or health, the environment or consumers, establish the levels of protection that it considers appropriate in accordance with Article 907 (2)

Both the "non-discriminatory Treatment" and "Unnecessary Obstacles" appear to qualify a state's right to high standards

"non-discriminatory Treatment" (Article 904, 3)

Treatment no less favourable than that it accords to like goods, or in like circumstances to service providers, of any other country.

"Unnecessary Obstacles" (Article 904, 4)

No party may prepare, adopt maintain or apply any standards-related measure with a view to or with the effect of creating an unnecessary obstacle to trade between the Parties. An unnecessary obstacle to trade Shall not be deemed to be created where:

- a. the demonstrable purpose of the measure is to achieve a legitimate objective; and
- b) the measure does not operate to exclude goods of another Party that meet that legitimate objective.

Another constraint could be "disguised restrictions" (Article 712)
"No party may adopt, maintain or apply any sanitary or phytosanitary measure with a view to, or with the effect of, creating a disguised restriction on trade between the Parties.

PROBLEM 2 That there is a provision for respecting international standards. There are standards conveyed in commitments adopted in UN conference action plans and in obligations from legally binding conventions and treaties; but these commitments and obligations are ignored.

1. Each Party shall use, as a basis for its standards-related measures, relevant international standards or international standards whose completion is imminent, except where such standards would be an ineffective or inappropriate means to fulfill its legitimate objectives, for example because of fundamental climatic, geographical, technological or infrastructural factors, scientific justification or the level of protection that the Party considers appropriate. (Article 905, Use of international standards)

In the section on Compatibility and equivalence

"1. Recognizing the crucial role of standards-related measures in achieving legitimate objectives, the Parties shall, in accordance with this Chapter, work jointly to enhance the level of safety and protection of human, animal and plant life and health, the environment and consumers.

2. Without reducing the level of safety or of protection of human, animal or plant life or health, the environment or consumers, without prejudice to the right of any Party under this Chapter, and taking into account international standardization activities, the parties shall, to the greatest extent practicable, make compatible their respective standards-related measures so as to facilitate trade in a good or service between the parties.

Note that international standard is defined as "a standards-related measure, or other guide or recommendation, adopted by an international standardizing body and made available to the public, and "international standardizing body" is defined as:

a standardizing body whose membership is open to the relevant bodies of at least all the parties to the GATT, including the International Organization for Standardization (ISO), the international electrotechnical Commission (IEC), Codex Alimentarius Commission, WHO, FAO, ITU International Telecommunication Union (ITU); or any other body that the Parties designate;

ACTION: to advocate the inclusion of bodies that have embodied environmental provisions; UNEP, IUCN and to fulfill commitments adopted in conference action plans, and to discharge obligations in conventions, covenants and treaties.

PROBLEM 3: HARMONIZING OF STANDARDS TO LOWEST COMMON DENOMINATOR

Article 713: International Standards and Standardizing Organizations

1. Without reducing the level of protection of human, animal or plant life or health, each Party shall use, as a basis for its sanitary and phytosanitary measures, relevant international standards, guidelines or recommendations with the objective, among others, of making its sanitary and phytosanitary measures equivalent or, where appropriate, identical to those of the other Parties.

[does this mean never below international standards?]

ACTION: ESTABLISH AN EVEN PLAYING FIELD THROUGH ALL THREE STATES COMPLY WITH COMMITMENTS AND OBLIGATIONS

PROBLEM 4: LIMITED REFERENCE TO INTERNATIONAL DOCUMENTS ON THE ENVIRONMENT (NOTE NO MENTION OF RIO- unless in Annex 104, check in Annex 104); Note only reference is to "specific trade obligations" in the environment treaties:

[ACTION; TO OPEN UP NAFTA TO ENSURE THAT THE DOCUMENT IS COMPATIBLE WITH UNCED DOCUMENTS]

Treaties mentioned:

- convention on International Trade in endangered Species of Wild Fauna and Flora (1973)
- the Montreal Protocol (1990)
- Basel convention on the Control of trans-boundary Movement of Hazardous Wastes and their disposal (1989)
- Annex 104-1 Bilateral and Other Environmental and conservation Agreements
- 1. The agreement between the Government of Canada and the Government of the U.S. concerning the trans-boundary Movement of Hazardous Waste, signed at Ottawa, October 18, 1986
- 2. The agreement between the U.S and Mexico on cooperation for the Protection and improvement of the Environment in the Border Area, 1983.

*** See Annex 104-1 for other agreements**

Such obligations shall prevail to the extent of the inconsistency, provided that where a Party has a choice among equally effective and reasonably available means of complying with such obligations, the party chooses the alternative that is the least inconsistent with the other provisions of this Agreement.

ACTION: note that there is the provision to add other environmental agreements.

The parties may agree in writing to modify Annex 104.1 include any amendment to an agreement referred to in Paragraph 1 and any other environmental or conservation agreement.

PROBLEM 5: PRIMACY IS GIVEN TO NAFTA OVER OTHER INTERNATIONAL AGREEMENTS

NOTE: THAT IN ARTICLE 103, "Relation to Other Agreements, this agreement is given primacy

1. the Parties affirm their existing rights and obligations with respect to each other under the GATT and other agreements to which such Parties are party.
2. In the event of any inconsistency between this Agreement and such other agreement, this Agreement shall prevail to the extent of the inconsistency, except as otherwise provided in this Agreement.

Background:
NAFTA

Perspectives and Actions

1. External Affairs

Documents:

North American Free Trade Agreement Implementation Act: The NAFTA Partnership. March 1993

Chronology:

Note: March 18. (1992). Canada provides Mexico with 1\$ million worth of environmental assistance. [what was the nature of the assistance]

September 17 (1992) Washington, D.C. — Environment ministers of the NAFTA countries agree to establish a Trilateral Environmental commission to explore co-operation on environmental issues.

November 3, 1993 the Canadian Environmental review of the NAFTA is released.

"North American Free Trade Agreement: Canadian Environmental review, October, 1992.

purpose;

to ensure that the NAFTA would be consistent with Canada's commitment to the protection of the environment and to sustainable development, as set out in the Green Plan, a four-point plan was adopted to integrate environmental concerns into each element of the NAFTA decision-making process.

1. ITAC environmental representative were appointed to the International Trade Advisory Committee, and to eight of the Sectoral Advisory Groups on International Trade (SAGIT). These important trade advisory bodies, which include 311 representatives from business, environment, labour and academic, report directly to the Honourable Michael Wilson,

Minister of Industry, Science and technology and Minister for International Trade.

the environmental representatives on these committees ensure that environmental considerations are taken into account when the ITAC and SAGIT prepare recommendations for the government

(Note; involvement of Sierra Club, and Pollution Probe)

Mid-march 1993 Trilateral talks begin on agreements on labour and the environment

2. Canada's standards negotiators were responsible for ensuring, among other objectives, the continuing right of governments in Canada to establish, to maintain and to enforce environmental standards that reflect Canadian conditions and Canadian priorities. The integration of environmental concerns in the negotiating process is a preventive approach. It sets a precedent that will be continued in future trade agreements.

Contact:

Ross Glasgow (Specialist in NAFTA and Climate Change) 9920503

2. Environment Canada

2.1.

2.2. Legal interpretation

John Fried. (943-2803) Specialist in legal interpretation of NAFTA

Preamble is strong on the environment but the preamble carries little weight.

No mention of environment in the "objectives John Fields said that the preamble sets the context but the environmental provisions would be stronger if in the objectives." The document would be a lot stronger on the environment if the environmental provisions had been placed in the "objectives section."

To do this the three countries would have to agree to open up the document again.

Up until now the countries have refused to do this. [However, with Mulroney and Bush gone, perhaps an argument could be made to open the document up and place the environmental provisions in the "Objective section." this could be better than having a separate parallel agreement on the environment.]

Body of text:

An important section

Note: Article 906 Compatibility and Equivalence

1. Recognizing the crucial role of standards-related measures in achieving legitimate objectives, the Parties shall, in accordance with this Chapter, work jointly to enhance the level of safety and of protection of human, animal and plant life and health, the environment and consumer.

Key issues:

extraterritorialism

National security (21-2)

Discussion of document:

The preamble is very strong. To a certain extent, it would appear that environment has primacy over employment: the preamble reads, "Create new employment opportunities and improve working conditions and living standards in their respective territories; and this is qualified by the statement " undertake each of the preceding in a manner consistent with environmental protection and conservation:

The preamble also calls for "the development and enforcement of environmental laws and regulations;

2. Environment Canada

3. NGO perspective (Elizabeth May, Sierra Club)

3. stances of environmental groups.

1. Pollution Probe "work with government on NAFTA"

2. Action Canada "reluctant to work with government"

3. Sierra Club "Use NAFTA to achieve environmental protection"

4. National Business Council

• Discussion with Tim Page, First Vice President

claimed that his position is that "environment is good for business"

gave me a copy of publication which he thinks best reflects the view of the National Chamber of Commerce:

— Canadian Chamber of Commerce. (1990). *Focus 2000: Achieving Environmental Excellence: A Handbook for Canadian Business*

• Discussion with Tim Reid, President

suggested that it would be important to have an environmental component at the next NAMI meeting.

Implementation of Agenda 21

1. External Affairs

Arthur Campeau suggested that I contact Rob McCrae 995-2160, or Shirley Luchuk (996-2110) about the implementation of Agenda 21

Shirley Luchuk dropped off two documents

• a publication on the "economic implications of implementation of Agenda 21) recent publication by External Affairs.

• Unclassified report dated February 26 "Decisions adopted by the organizational session of the Commission on Sustainable Development)

Division of Agenda 21

A. Critical elements of sustainability (Chapters 2-5)

B. financial resources and mechanisms (chapters 33)

C. Education, science, transfer of environmentally sound technologies [safe] technologies, cooperation and capacity building (chapters 16, 34-39)

D. Decision making structures (Chapters 8, 38-40)

E. Healthier, Human settlements and fresh water (chapters 6,7 18, and 21)

G. Land, desertification, forests and biodiversity (Chapters 10-15)

H. Atmosphere, oceans and all kinds of seas (chapters 9, 17)

I. Toxic chemicals and hazardous wastes (chapters 19, 20, and 22) [atomic?]

Note: also suggested need to link with other UN conferences

Contact: suggested by Campeau; Rob McCrae (995-2160)

2. Ministry of the Environment

- initiation of group to work on UNCED, "Projet de Societe"

coordinator: Barry Sadler

founding groups: National Round Table, IDRC, IISD, CCIC, and ?

2. IDRC

Theo-Carole Foster 236-2305 is the principal contact for the Research related to the implementation of Agenda 21.

She was not able to see me; She left me a set of publications indicating the nature of research that they have been doing.

I talked to the public relations officer about the position that the IDRC is taking that environmental problems are primarily outside of Canada. I was referring primarily to the section on biodiversity.

It would appear that IDRC has divided UNCED documents into 5 themes

1. Technology and the environment

2. Biodiversity

3. information and communication for environment and development

4. food systems under stress

5. Integrating environmental social and economic policies.

4. National Round Table

the National

Talked to Biologist from Spain

Atmosphere Environment Service

Director J. Russel.

MAY 1993

JUNE 1993

PEI MEETING OF THE CEN ANTI-CHOICE RALLY ABOUT 300 STANDING ONE BY ONE WITH SIGNS WITH BLUE AND WHITE WITH ABORTION KILLS

- June 1993 Attended the CEN National meeting in PEI as one of the representatives from the BCEN. Attended sessions of the International Affairs Caucus and presented the Statement of Obligations for consideration. I revised the statement and received endorsement for the statement in the plenary.

At this meeting there was a significant statement circulated by the Nuclear Awareness Project calling for the phasing out of civil nuclear energy. I attended several of the sessions on alternative energy.

Richard Grossman spoke at the plenary. He presented his proposal that I had supported at the conference in Eugene calling for the revoking of charters of corporations. Pat Moss who had not been an opponent of the Round Table and is in fact a member of the BC Round Table on the Environment introduced him. I raised the issue of the Round Table rather than being a forum for implementing a proposal such as his had become a glorification of Conflict of

interest by legitimizing corporate involvement in establishing policy and regulations.

[In 1993 In 1998, one of the members of the CEN who had attended the 1993 sessions on Genetically Engineered Foods and Crops had been at that CEN meeting, but had failed to raise a red flag notifying the environmentalist of the impending approval of GE products in Canada] I only found out in 1998 When I raised this issue with him later. He was furious and all but hung of the phone on me]

There was also a presentation by a representative from the Ministry of Environment who when discussing Environmental regulation seemed more concerned about the cost of the environmental regulations than about the cost to the environment of not having environmental regulations.

A representative from the Union spoke at the plenary and questioned the fact that the CEN was not a resolution making body. An issue that I had raised at the BCEN meeting in 1992. He pointed out that that is how the union wields power by being able to make statements on behalf of the Union. A meeting was held after about the question of endorsement and procedures. For example, the policy exists within the CEN and within the Caucuses that when a statement is issued a proviso much be attached that states that this does not necessarily represent the position of all the members of the caucus. A perfect example of how ineffective the environmental movement has become. As usual it is a question of money. Governments fund networks not organizations that make resolutions [particularly resolutions against governments and industries] the environmental movement has sold its soul for government remittance. Has become a remittance organization.

I decided to raise the issue again of speaking with one voice. I proposed that the “hot spots” should be incorporated into a general statement endorsed by the CEN.

**This RESOLUTION ENDORSED BY THE CEN
NUCLEAR STATEMENT**

Scientist Call to Action.

1993 Distributed a letter to the Concerned Scientists about how the nuclear industry was using the Scientists Call to Action to support the nuclear industry by the industry claiming that the Concerned Scientists Call did not include a call to phase out civil nuclear power

- 1993 Distributed a letter to the Concerned Scientists about how the nuclear industry was using the Scientists Call to Action to support the uranium mining in Saskatchewan**

Joan Russow

PARIS JUNE 1993

- 1993 Participated in an International Panel on “International Obligations: translating rhetoric into Action” from UNCED” at the**

“Stopping the Destruction of the Earth Conference through Translating Rhetoric into action” Paris, France. Presented a paper at the International Conference “Stop the Destruction of the Earth” calling for the translation of international rhetoric into action

- **June 1993 carried out a survey of institutional follow-up to UNCED interviewed representative from the IUCN, Business Council for Sustainable Development, GATT, UNCED info in Geneva,**

- **JUNE 1993. Attended the World Heritage Committee meeting at UNESCO and made an intervention as an "observer" from Canada on Canada's failure to discharge international obligations under the Convention for the Protection of Cultural and Natural Heritage. Attended the World Conservation Committee policy meeting of the United Nations Convention on the Preservation of Cultural and Natural Heritage (1972) UNESCO, and addressed the meeting on the need to reconcile the global obligation incurred in the preamble by states to preserve areas of universal value: that in the view of the magnitude and gravity of the new dangers threatening them, it is incumbent on the international community as a whole to participate in the protection of the cultural and natural heritage of outstanding universal value (Preamble, United Nations Conference on the Protection of Cultural and Natural Heritage”, 1972) and Article 4 in the body of Convention which gives states the sole power to designate heritage of worth.**

COMMENT:

I decided on the Monday before the “Stopping the Destruction of the Earth Conference” that I would go to UNESCO and attempt to discuss with a representative from UNESCO the discrepancy between the preamble of the Convention and the operative clauses of the Convention. I went to the information desk and got the numbers for different representatives and attempted to contact them. Everyone was busy. While I was talking to the receptionist about my concern that in Canada there was a failure to comply with the convention and that sites that should have been designated were not because of the control from the forest companies, a man came up and talked to me. He introduced himself as an Egyptian living in Argentina working for the UN secretariat. In response to my discussion with the receptionist he said it is so refreshing to hear a Canadian being honest about Canada. Canadians are always being high and mighty suggesting that Canada has never done anything wrong. I explained to him that I wanted to discuss the Convention on Cultural and Natural Heritage in particular the discrepancy between the preamble and the body of the text. He said I am going to the meeting of the World Heritage Committee meeting now are you not going to be going. Oh, yes I said and walked away with him. this was the first meeting of the Committee and it looked quite formal with the president and recorder and others of the executive on the platform and desks with country names on it. In the beginning there were general remarks and the Egyptian motioned across the room for me to speak. I rose and introduced myself as an observer from

Canada. He motioned for me to go ahead. I stated that I was concerned about the discrepancy between the preamble and the body of the convention and how in Canada there was a failure on the part of government to nominate significant sites because of the influence of the forest industries, and that the UN should be given the power of forced designation because many significant sites of universal value would be lost. I must have spoken for about 10 minutes I believe that I specifically referred to Clayoquot Sound. I sat down. Suddenly this woman at one of the desks leapt to her feet and pointed to me and said that woman is not the observer from Canada. Everyone laughed. I did not know that I had hit upon the key term "observer." The procedure was that there were 15 countries each year elected to the Committee and other signatories of the convention could send observers. Obviously, I was not an official observer from Canada. but because this was the first day of the meeting no one had had a chance to meet the official observers yet. After the meeting the women came over to me with a list of sites that Canada was going to be seeking heritage designation for. I saw no old growth forests and no significant areas in B.C. I raised this issue with her. That night I went to a reception put on by UNESCO and I met the president of the Committee, who seemed quite amused about what had happened and said that it had never happened before and that it was an extremely important meeting.

Brief case with CANADA + maple leaf on it.

PATHWAYS

DANGEROUS PRECEDENT DISCUSSION WITH MEXICAN DELIGATE

After a very interesting debate, the World Heritage Committee " a momentous decision to permit "cultural pathways" as world heritage site. the Pathway was the pilgrimage to St James de Compostella. What next?. The cultural pathway of the \...

After my conference on ... Stopping. I went again to the World Heritage meeting. I went early to ask the president if would be alright to audit the session with the understanding that I would not speak. I arrived very early and found the president with two secretaries preparing for the meeting. Suddenly there was a flurry of activity and he exclaimed that his cuff button had popped off. Given that this was a formal meeting he was concerned about his demeanor. Neither one of the women had a needle and thread on the spot and the meeting been to start in 5 minutes. Normally I do not carry a needle and thread but this time I just happened to have a spool of white thread and a needle. I offered to sew his button on and we went into an adjacent room. When the real observer from Canada entered the meeting room, she came over to me and said that she had been on the phone night and day to Harcourt and Mulroney about nominating the Tatshenshini as a world heritage site. At the meeting I spoke briefly with the representative from the IUCM Jim He said that the Clayoquot Sound had been destroyed too much to be designated as a World Heritage site. He had to rush off. I spent some time with the Government representative from Australia. He was going to present a recommendation coming from the Australian government for the preservation of a large network of old growth forests. I found out one way of persuading governments to put sites on a world heritage list was to work on a resolution

for the IUCN Annual General meeting so I decided to go and visit the IUCN in Gland Switzerland to follow-up on this.

• June 1993 carried out a survey of institutional follow-up to UNCED interviewed representative from the IUCN, Business Council for Sustainable Development, IUCN GATT, UNCED Info in Geneva,

COMMENT:

I went to the IUCN in Gland to speak to the representative more about I had talked with Jeff McNealy at the IUCN in 1993 he had indicated that the percentages had no basis in reality. I made an appointment to see Wendy Goldstein who had come to my session at ECO Ed. She encouraged me to become a member of the IUCN Commission on Education and Communication. So, I applied and left my application with her.

() THAT in June 1993. I submitted a policy report on the role of industry in the follow-up to UNCED

to UNCED. Policy report requested by the Hon Hugh Faulkner, former Secretary of State for Canada, and the then Executive Director, International Business Council for Sustainable Development. Geneva (45 pages).

1993 Submitted a Policy statements, "Policy Directions: Complying with the Role Envisioned for Business and Industry in Environmental Training." Policy report commissioned by Hugh Faulkner, Executive Director, International Business Council for Sustainable Development. Geneva (45 pages)

EXHIBIT

REPORT TO BUSINESS COUNCIL FOR SUSTAINABLE DEVELOPMENT

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INTRODUCTION;

Although there were systemic constraints which prevented UNCED from fully addressing the urgency of the global situation, there were many significant acknowledgements and principles which emerged from UNCED. (See Annex 1 for suggested "Systemic Constraints Preventing Change,"). The UNCED Documents, such as the non-legally binding Agenda 21 and Rio Declaration were agreed to by consensus by the member states of the United Nations. Although Agenda 21 and the Rio Declaration are not legally binding, they hopefully will carry significant weight as "soft" law or as documents of moral suasion. Within these documents are a set of significant principles (see Annex).

In this report, I will examine principles from the UNCED documents, describe what some institutions are doing to implement these principles and make suggestions about where, I think, the Business Council could make a significant contribution.

1. COMPLYING WITH THE ROLE ENVISIONED FOR BUSINESS AND INDUSTRY IN ENVIRONMENTAL TRAINING

1.1. LIMITED YET SIGNIFICANT ROLE FOR INDUSTRY IN TRAINING IN ECOLOGICALLY SOUND EMPLOYMENT

In chapter 36 of Agenda 21, a very important distinction is made between promoting "education," promoting "public awareness," and promoting "training." It appears to be clear in Agenda 21 that non-governmental organizations, community-based groups, women's groups and aboriginal groups are called upon to assist educational authorities in reorienting education. The role of industry is ascertained to be limited to specific areas of business and industrial and training programs.

" Educational authorities, with appropriate assistance of non-governmental organizations, including women's and indigenous peoples' organizations should promote all kinds of adult education programmes for continuing education in environment and development, basing activities around elementary/secondary schools and local problems. The authorities and industry should encourage business, industrial and agricultural schools to include such topics in their curricula. The corporate sector could include sustainable development in their education and training programmes." Agenda 21, Chapter 36.5 I

In the section of Agenda 21 that addresses the "promoting of public awareness " industry is included not as the dispenser of "education" but as the recipient of needed education.

"Countries and regional organizations should be encouraged, as appropriate, to provide public environmental and development information services for raising the awareness of all groups, the private sector and particularly decision makers." (Agenda 21, section 36.10 c)

In the section of Agenda 21, that addresses the "promoting of training, an important role for industry is envisioned.

"To strengthen national capacities, in training, to enable governments, employers and workers to meet their environmental and development objectives and to facilitate the transfer and assimilation of new environmentally sound, socially acceptable and appropriate technology and know -how" (Agenda 21, 36.13 c)

The Business Council could make a significant contribution not by attempting to determine the philosophical underpinnings of Education, but in facilitating

the transfer and assimilation of new environmentally sound, socially acceptable and appropriate technology and know-how within industry.

1.2. The Business council could promote "Principle-based education among its members"

Here is an outline of a course I will be giving for teachers in the Faculty of Education on Principle-based education

ED B 408 Contemporary Issues in Education: Principle-based education

In 'principle-based education,' principles related to preventing the destruction of the environment, the escalation of war, the violation of human rights, the disregard for social justice and the perpetuation of inequity have been extracted from internationally endorsed documents. These internationally endorsed principles become the foundation for an educational program.

Often in "education about issues," in the name of objectivity, a "both-sides" approach is advocated. Issues are presented as reflecting different values, and because of the difference, opposing views are considered to be legitimately introduced. In this "both-sides" approach often students are encouraged to explore positions which may be in contradistinction to principles that have been endorsed by the global community. The justification for this "both sides" approach is often the need to counteract indoctrination through "value-based" education.

A distinction, however, could be made between indoctrination and principle-based¹ education. In indoctrination the values that are presented are usually those that comprise the belief system of the educator, whereas in principle-based education the principles around which the lessons are developed are drawn not from an educator's particular belief system but from international law.

In principle-based education, the foundation of the course is based on principles derived from international agreements, such as the following:

"Universal Declaration of Human Rights," International Covenant of Social, Cultural Rights; Stockholm Conference on the Human Environment; UN Conservation of Natural Heritage, 1972; Convention on International trade in Endangered Species of Wild Fauna and flora" (Washington), 1973; UN Charter of Economic Rights and duties of states 1974; OECD recommendations on the analysis of environmental consequences of significant projects 1974;"(the World Charter of Nature, 1982; Paris Convention for the prevention of Marine Pollution from Land-Based Sources Global Biodiversity Strategy 1986; Montreal protocol on substances that deplete the ozone layer 1987; Convention on the Rights of the Child 1989; Convention for the Control of trans-boundary movements of hazardous wastes Basel Convention 1989; the Caracas Declaration 1992; Biodiversity Convention, Climate Change Convention and Agenda 21, 1992)

1 "Principle-based education" was introduced in 1985 in Russow, J. "A Method of teaching Human Rights;" In this publication, the concept of "principle-based issue education" and the method of "Issue-principal analysis" were introduced. In this publication, "the violation of Human Rights" was extended to include the destruction of the environment, the escalation of war, the disregard for social justice and the perpetuation of inequity.

In this course, the nature, the implication, the educational processes, and the implementation of principle-based education will be explored in the following way:

- through description of the philosophical underpinnings of principle-based issues education
- through documentation of fundamental principles that emerged from UNCED and from other international conventions, declarations, conferences and agreements (Russow, J. "200 + principles from UNCED documents: Implications for Global Action." 1992)
- through explanation of an approach to principle-based education. In this approach, the instructor begins with principles, and then, with the students, examines issues that emerge from these principles. The following is an outline of a range of possible processes that never to be followed sequentially.
 - Location of principle within "International principle interactive diagram"
 - Statement of principle
 - exploration of principle
 - emergence of issues within principle
 - actual cases related to principle
 - application of principle to actual cases
 - adjustment of principle in response to cases
 - hypothetical case analysis
 - application of principle to hypothetical cases
 - adjustment of principle in response to hypothetical cases
 - clarification of principle
 - determination of action to support principle
 - engagement in action
 - justification of action

After examining the issues emerging from the principles, the class expand, refine or extend the initial principle.

- through preparation of interactive international principal diagram. Through this international principal diagram students will be able assess which principles relate to issues have been globally endorsed, ratified, and enforced, which principles are globally endorsed and ratified but not enforced.

Also, through this diagram students will be able to begin to examine the problem of discrepancy between what is said and what is done. (Or between rhetoric and action) (See Russow, J and White, D. (1992) Ideographic mode of Analysis and Synthesis of Issues: paper commissioned by the Greater Victoria School Board)

- through a series of class discussions and lesson plans based on 'issue-principal analysis,' related to a wide range of local and global concerns. Thinking about the complexity and interdependence of issues will be encouraged, as well as the need to attempt to find tentative resolutions based on the full examination of the principles and issues.

- through experimentation with the following prepared materials

- a document containing a selection of fundamental principles that emerged from UNCED and from other international conferences and agreements, and a series of class discussions and lesson plans based on 'issue-principle analysis,' centered around these principles

- an "international principles diagram" which will expand on the diagram "what is or is not protected?" a diagram that was an integral part of "a Method of Teaching Human Rights"(Russow, 1985). Through this international principal diagram students will be able assess which principles related to issues have been globally endorsed, ratified, and enforced, which principles are globally endorsed and ratified but not enforced. Also, through this diagram students will be able to begin to examine the problem of discrepancy between what is said and what is done. (Or between rhetoric and action)

- a series of "'Cradle to grave, ' or 'life-cycle' Approach Dissemination Diagrams" on various industries. This 'life-cycle/cradle to grave' approach was fully endorsed by the global community in the Agenda 21 document at UNCED. Through these diagrams, students will be able to understand the complexity of the interconnections involved in the introduction of an industrial activity into an ecosystem, and thus the implications of engaging in a particular industrial activity. It is only when students can see the "cradle to grave" or "full life cycle" approach that they will be able to assess whether the introduction will or will not violate internationally endorsed and ratified principles. (See Uranium Cycle diagram)

- a series of interconnected computer graphic programs, which connect a series of complex charts of various issues. Through this program the students will be able to examine the complex interaction of global issues, and then through a graphic selection program access complex diagrams of individual issues. Through this series of interlocking diagrams, students will be able to appreciate the interdependence of issues, and the confluence of aspects within each issue.

1.2. The business Council could also be involved with developing course material for education of managers. Here was a course proposal that I co-developed with a professor in Public Administration for a course for MBA course on the management and the environment. (See Annex 2 for outline of proposal)

2. ESTABLISHING ENVIRONMENTAL PROVISIONS WITHIN THE CHARTERS OF INCORPORATION OF TRANSNATIONALS ALONG WITH THE POWER TO REVOKE CHARTERS IF THE CONDITIONS OF THE CHARTER WERE NOT BEING MET

"to promote a 'culture of safety' in all countries ..." (Agenda 21, 7.60, Disasters)

Richard Grossman (1993), an environmental lawyer from the United States has traced the history of the granting of charters to corporations in the US. He indicates that

there was an early tradition in the United States for " citizens [making] certain that legislators issued charters, one at a time and for a limited number of years. They kept a tight hold on corporations by spelling our rules each business had to follow by holding business owners liable for harms or injuries and by revoking charters. (6)

The Business Council could initiate the introduction, in business charters, of environmental provisions which comply with principles from international documents, monitor the compliance with these principles and call for the revoking of charters if the provisions were not being complied with. The 1994 Conference on Public Interest and Environmental Law will be focusing on this issue.

3. ESTABLISHMENT OF CRITERIA FOR AND PREPARATION OF LIFE CYCLE ANALYSIS OF SUBSTANCES AND ACTIVITIES

One of the principles enunciated in Agenda 21 was that there should be life cycle analysis. If this principle is to be acted upon, serious consideration should be given to a full analysis of the environmental impacts of each stage of the processing and production of substances.

Governments, in collaboration with industry and appropriate international organizations, should develop procedures for monitoring the application of the cradle to grave approach, including environmental audits (20.20 e Hazardous wastes)

"[promote efficient use of materials and resources, taking into account all aspects related to life cycles of products.] 9.15 e

"risk reduction involves broad-based approaches to reducing the risks of toxic chemicals, taking into account the entire life cycle of the chemicals. "(19.45, Toxic chemicals)

" Governments and international organizations, together with the private sector, should develop criteria and methodologies for the assessment of environmental impacts and resource requirements throughout the full life cycle of products and processes." (Agenda 21, 4.20)

In the past few years many industries have adopted environmental policies. In some cases, these policies may include the full operation— life-cycle — of the industry and in other cases these policies are marginal to the full life cycle of the industry. A significant role for the Business Council could be to set up an independent arm's length body to carry out a full life cycle analysis of products, activities, substances etc. This life cycle could involve a full assessment of the environmental impact of each stage and of "all aspects" of production.

4. ENCOURAGING PRINCIPLE-BASED DECISION-MAKING RATHER THAN ROUNDTABLE INTEREST-BASED DECISION MAKING

One of the outcomes of the Brundtland report in Canada was that Canada institutionalized the multi-sectoral interest-based roundtable to make decisions about "sustainable development" or "sustainability— economic, social and environmental". It appears that this approach has only become prevalent in Canada and that Canada has been advocating the adoption this approach in the international sphere of decision making.

Although a multi-sectoral approach appears to be all-inclusive, its inclusivity depends on the nature of the sectors, on the selection process to determine the nature of the sectors, on who determines the nature of the sectors, on who is selected to represent the sectors, on the method of selecting the individuals representing the sectors, and on whether the sectors are interest-based or conceptually based

... Underlining an interest based multi-sectoral approach is the presumption that the best way to make decisions is through negotiated outcomes rather than reasoned outcomes (distinction made in Science Council publication, 1984, "Regulating the regulators") with each member functioning on the basis of self-interest. This model of decision making — in an arena of competing interests — often leads to the compromising of principles and possibly to the lowest common denominator. This model of decision making could also be described as the "manufacturing of consensus model" where each sector for practical and participatory purposes eliminates the extreme positions — the positions which could be more principled and could lead to a better overall decision.

This approach is based on the premise that "balanced" decisions will emerge through consensus within an arena of competing interests. One outcome of this approach is that this arena of competing interests could be seen to be in violation of "conflict of interest" legislation. For years those who have been seen to have a conflict of interest have been excluded from the decisions making process [from panels, juries, boards. The multi-sectoral interest-based approach appears to almost glorify conflict of interest.

In a conceptually based or principle-based decision-making approach the members are not participating because they have a particular vested interest but because they wish to arrive at an overall decision based on the highest tenable principles.

5. ADVOCATING THE NEED FOR PRECAUTIONARY, NOT ONLY MITIGATIVE ENVIRONMENTAL IMPACT ASSESSMENT REVIEW

A precautionary review is one that attempts to prevent environmental degradation and cultural inappropriateness of a project by examining the potential environmental and cultural impacts of a project to determine whether the project should be allowed to proceed; the outcome of a precautionary review could be a decision to prevent the project from proceeding. A mitigative review, however, is one that attempts to lessen the environmental degradation and cultural inappropriateness of a project which has already been permitted to proceed; the outcome of a mitigative review would not be a decision to prevent the project from proceeding.

Throughout Agenda 21 there is reference to environmental impact assessment; in some cases, it is not clear whether preventive or mitigative environmental impact assessment is envisioned.

“Ensure that relevant decisions are preceded by environmental impact assessments and also take into account the costs of any ecological consequences” (7.42 Settlement)

" Develop improve and apply environmental impact assessments to foster sustainable industrial development” (9.15 b. Atmosphere)

" Introduce appropriate environmental impact assessment procedures for proposed projects likely to have significant impacts upon biological diversity... and encourage the assessment of the impacts of relevant policies and programmed on biological diversity” (15.5 k Biological Diversity)

" Development of public education programmed directed at decision makers and the general public to encourage awareness and understanding of the relative benefits and risks of modern biotechnology, according to ethical and cultural considerations.” (16.16 b, Biotechnology)

In the following sections, it is clear that a precautionary environmental impact assessment is envisioned:

" a precautionary and anticipatory rather than a reactive approach is necessary to prevent the degradation of the marine environment. This requires inter alia, the adoption of precautionary measures, environmental impact assessments, clean production techniques, recycling, waste audits and minimization, construction and/or improvements of sewage

treatment facilities, quality management criteria for the proper handling of hazardous substances, and a comprehensive approach to damaging impacts from air, land and water” (17.22. Marine)

States, in accordance with the provisions of the United Nations convention on the Law of the Sea on protection and preservation of the marine environment, commit themselves, in accordance with their policies, priorities and resources, to prevent, reduce and control degradations of the marine environmental so as to maintain and improve its life-support and productive capacities.” (17.23 Marine)

To this end, it is necessary to

" Apply preventive, precautionary and anticipatory approaches so as to avoid degradation of the main environment, as well as to reduce the risk of long-term or irreversible adverse effects upon it;" (17.23 a Marine)

" Ensure prior assessment of activities that may have significant adverse impacts upon the marine environment; (17.23 b Marine)

“ In order to promote and strengthen international cooperation in the management, including control and monitoring, of trans-boundary movements of hazardous wastes, a precautionary approach should be applied.” (20.33 Hazardous wastes)

"States, in cooperation with relevant international organizations, where appropriate, should ...b) encourage the London Dumping convention to expedite work to complete studies on replacing the current voluntary moratorium on disposal of low-level radioactive wastes at sea by a ban, taking into account the precautionary approach, with a view to taking a well informed and time decision on the issue” (22.5 Radioactive wastes)

" Governments should take the lead in establishing and strengthening, as appropriate, national procedures for environmental impact assessment, taking into account the cradle-to-grave approach to the management of hazardous wastes, in order to identify options for minimizing the generation of hazardous wastes, through safer handling, storage, disposal and destruction” (20.20 e Hazardous wastes)

' Governments, according to their capacities and available resources and with the cooperation of the United Nations and other relevant organizations, as appropriate, should promote and support the integration and operation, at the regional and local levels as appropriate, of institutional and interdisciplinary groups that collaborate, according to their capabilities, in activities oriented towards strengthening risk assessment, risk

management and risk reduction with respect to hazardous wastes” (20.25 a Hazardous wastes)

See Annex 3 for an example government's failure to make the distinction between preventive and mitigative environmental assessment reviews.

7. Advocating the polluter pay principle even when it might require retroactive compensation

In both the hazardous waste section and the solid waste section of Agenda 21 the polluter pay principle was advanced

“ Governments should include in national planning and legislation an integrated approach to environmental protection, driven by prevention and source reduction criteria, taking into account the 'polluter pays' principle, and adopt programmes for hazardous waste reduction, including targets and adequate environmental control” (20.20 b Hazardous Wastes)

“ Governments should ...(b) apply the 'polluter pays' principle, where appropriate, by setting waste management charges at rates that reflect the costs of providing the service and ensure that those who generate the wastes pay the full cost of disposal in an environmentally safe way ”(21.42 b Solid wastes)

The business Council could advocate that when it can be shown that through non-compliance with statutes, and acts industry has caused environmental harm, any request for compensation by industry should take into consideration past environmental costs. For example, section 60 of the Forest Act of B.C. provides for the suspension of tree farm licenses if the license holder, through non-compliance with the Act, has caused harm to the natural environment. Throughout B.C. environmentalists have been documenting and submitting evidence of non-compliance to the Forest Act. The Fisheries Department has documented evidence of violation by the forest industry of section 33 of the Fisheries Act. Yet, this section of the Act has never been enforced. The cost of the environmental harm that has arisen from non-compliance with the act should be taken into consideration when the forest industry requests compensations for areas withdrawn from their tree farm licence.

8. Questioning the exclusion of atomic wastes from "hazardous" wastes or dangerous material categorizations

In Agenda 21, atomic wastes are not included in the section of Hazardous wastes. For years atomic wastes have been excluded from international documents addressing the production, transportation and disposal of hazardous wastes. This special status has very serious implications for example, in the recent ruling of the Court, re: the calling for an environmental assessment review of Nuclear armed and nuclear powered vessels, the judge was able to state that an order in council bypassing an environmental review of these visits under the Environmental Assessment Review Process, was justified because it did not violate any existing statute such as the Canadian Environment Protection Act (which does not include hazardous wastes under

hazardous wastes section). (See Annex 4, for a comment on the role of the IAEA as both a promoter and regulator of Atomic Energy)

Note also that atomic

Perhaps the Business Council of Sustainable Development could suggest that atomic wastes be included in hazardous wastes [along with the suggestion that nuclear energy should be phased out... I'm sure that would be a popular suggestion in France — I have heard that at least 6 of the civil reactors in France have cracks in them -- again hear say, contact John Carlier, vice president of the "Collectif Environ, a Dimension, Inter." Paris for details if you are interested, in "names and places"]

9. Advocating the true assessment of Environmental costs

In Agenda 21 there was several statements indicating the need to assess the true environmental costs.

“Adopt policies that minimize if not altogether avoid environmental damage, whenever possible” (7.42 a Settlement) social costs of environmental

[Continue research and other work aimed at developing methodologies and criteria for incorporating the social costs of the environmental and other impacts caused by industrial production, as well as the treatment and disposal of wastes generated, into the prices of the final products;] (9.15 d)

“...a lack of awareness of the environmental costs incurred by sectoral and macroeconomic policies and hence their threat to sustainability” (14.7 a. agriculture)

(It is necessary to (17.5 Marine) " promote the development and application of methods, such as national resources and environmental accounting, that reflect changes in value resulting from uses of coastal and marine areas, including pollution, marine erosion, loss of resources and habitat destruction

Governments, in collaboration with industry and appropriate international organizations, should develop procedures for monitoring the application of the cradle to grave approach, including environmental audits (20.20 e Hazardous wastes)

It also appears that the need to assess the true environmental costs is also a preoccupation of the Auditor General of Canada [misplaced citation]

The Business Council could seriously consider advocating that its members be obliged to take into consideration and make available to the public the full environmental costs of the production activities and substances

10. ADDRESSING THE PROBLEM OF OVERCONSUMPTION; DILEMMA CAN BUSINESS/INDUSTRY STILL FUNCTION IN "ECO-EFFICIENCY" (HARRIS, TERM COINED BY BCSD) AND DISCOURAGE "OVERCONSUMPTION"

Problem of the relationship between production and consumption is currently being addressed within the OECD. The Environment representative of OECD

also requested information related to over-consumption, and to alternative ways of reducing consumption.

In Agenda 21 there was several references criticizing current mode of consumption, unsustainable consumption or over-consumption [even though the US desperately tried, and in some cases succeeded in eliminating reference to "consumption"]. In one exchange in Rio the US Reilly indicated that over-consumption in the US contributes to needed development in the South. I have both the hard copy version of pre-Rio Agenda 21 with the bracketed sections — most of them at the instigation of the US- and the computer version of the Rio version. It is interesting to compare what was still included in brackets in New York and what was eliminated in Rio. The following statements are ones that were altered or eliminated in Rio:

[one of the most serious problems now facing the planet is that associated with historical patterns of unsustainable consumption and production, leading to environmental degradation, aggravation of poverty and imbalances in the development of countries.] (4.3 Changing consumption patterns)

["Health and development are intimately interconnected. both insufficient development leading to poverty and inappropriate development resulting in over-consumption, coupled with an expanding world population, can result in severe environmental health problems in both developing and developed nations."] 6.1 Health

["While poverty largely results in certain kinds of environmental stress one of the most serious problems now facing the planet is that associated with historical patterns of unsustainable consumption and production, leading to environmental degradation, aggravation of poverty and imbalances in the development of countries"] (4.3.

[Special attention should be paid to the demand for natural resources generated by unsustainable consumption and to the efficient use of those resources consistent with the goal of minimizing depletion and reduction pollution. Although consumption patterns are very high in certain parts of the world, the basic consumer needs of a large section of humanity are not being met. This inequitable distribution of income and wealth results in excessive demands and unsustainable lifestyles among the richer segments, which place immense stress on the environment. The poorer segments, meanwhile, are unable to meet food, health care, shelter and educational needs. Change consumption patterns will require a multi-pronged strategy focusing on demand, meeting the basic needs of the poor, and reduction wastage and the use of finite resources in the production process.} 4.5 note: section put in brackets by U.S. " States should pay special attention to

efficient use of natural resources consistent with the goal of minimizing depletion and reducing pollution. This would help countries to meet their people's food health care shelter and educational needs. The poor suffer from environmental degradation that can deepen the problem of development in particular as they struggle with agricultural problems and problems of health, hygiene which are endemic to the poor. At time environmental degradation caused by the consumptive patterns of others can intensify the environmental problem the poor face. Poverty is closely linked to environmental stress." (U.S Suggestion for alternative to 4.5)

The following are statements that were retained in the final Rio version:

- **Increase in global population**

"The growth of world population and production combined with unsustainable consumption patterns places increasingly severe stress on the life-supporting capacities of our planet. . (5.2, Demographic dynamics)

- **Extent of air, water and land pollution**

" In many locations around the world the general environment (air, water, and land), workplaces and even individual dwellings are so badly polluted that the health of hundreds of millions of people is adversely affected. This is, inter alia, due to past and present developments in consumption and production patterns and lifestyles, in energy production and use, in industry, in transportation etc. with little or no regard for environmental protection." (6.40, Protection of health)

- **Nature of inequity between "developed" and "undeveloped" states**

" In industrialized countries, the consumption patterns of cities are severely stressing the global ecosystem, while settlements in the developing world need more raw material, energy, and economic development simply to overcome basic economic and social problems." (7.1. Settlement)

- **Extent of environmental damage from waste accumulation**

" The environment is threatened in all its biotic and abiotic components: animals, plants, microbes and ecosystems comprising biological diversity; water, soil and air, which form the physical components of habitats and ecosystem; and all the interactions between the components of biodiversity and their sustaining habitats and ecosystem. With the continued increase in the use of chemicals, energy and non-renewable resources by expanding global population, associated environmental problems will also increase. Despite increasing efforts to prevent waste accumulation and to promote recycling, the amount of environmental damage caused by over-consumption,

the quantities of waste generated and the degree of unsustainable land use appear likely to continue growing.” (16.22 Biotechnology)

•**Unprecedented Increase in environmentally persistent wastes**

" Unsustainable patterns of production and consumption are increasing the quantities and variety of environmentally persistent wastes at unprecedented rates. The trend could significantly increase the quantities of wastes produced by the end of the century and increase quantities four to fivefold by the year 2025". (21.7 Solid wastes)

•**Consumptive patterns**

"Achieving the goals of environmental quality and sustainable development will require efficiency in production and changes in consumption patterns in order to emphasize optimization of resource use and minimization of waste. In many instances, this will require reorientation of existing production and consumption patterns that have developed in industrial societies and are in turn emulated in much of the world." (4.15 Changing consumption patterns)

"Measures to be undertaken at the international level for the protection and enhancement of the environment must take fully into account the current imbalances in the global patterns of consumption and production" (4.4 Changing consumption patterns)

" Developing countries should seek to achieve sustainable consumption patterns in their development process, guaranteeing the provision of basic needs for the poor, while avoiding those unsustainable patterns, particularly in industrialized countries, generally recognized as unduly hazardous to the environment, inefficient and wasteful in their development processes. This requires enhanced technological and other assistance from industrialized countries. ... "(4.8 c Changing consumption patterns)

" To promote patterns of consumption and production that reduce environmental stress and will meet the basic needs of humanity" (4.7.a Changing Consumption Patterns)

" To develop a better understanding of the role of consumption and how to bring about more sustainable consumption patterns." (4.7.b Changing Consumption Patterns)

It would appear that the consumption and development link has to be also examined in relation to "north" development, such as cash crops in "south"

The Business Council could give valuable assistance to OECD in their deliberations about "over-consumption"

11. CALLING FOR THE BURDEN OF PROOF FROM THOSE THE OPPONENTS OF AN INTERVENTION HAVING TO DEMONSTRATE HARM TO THE PROPONENTS OF THE INTERVENTION HAVING TO DEMONSTRATE SAFETY

A version of the shifting of the burden of proof was delineated in the World Charter of Nature. UN Resolution 37/7 (1982) endorsed by all UN states except the US.

Section 11 b Activities which are likely to pose a significant risk to nature shall be preceded by an exhaustive examination; their proponents shall demonstrate that expected benefits outweigh potential damage to nature and where potential adverse effects are not fully understood, the activities should not proceed.

12. PROMOTING ENVIRONMENTAL PROVISIONS IN TRADE AGREEMENTS AND DISMISSING AS INAPPROPRIATE THE EXCLUSION OF ATOMIC WASTES

•Increased generation of nuclear wastes

" Annually about 200,000 m³ of low-level and intermediate-level waste and 10,000 m³ of high-level waste (as well as spent nuclear fuel destined for final disposal) is generated worldwide from nuclear power production. These volumes are increasing as more nuclear power units are taken into operation, nuclear facilities are decommissioned and the use of radionuclides increases. The high-level waste contains about 99 percent of the radionuclides and thus represents the largest radiological risk. (22.1. Radioactive wastes)

1. (GATT Working group on Export of Domestically prohibited goods and other Hazardous substances report by the Chairman of the working Group July 2 1991)

GATT

(GATT Working group on Export of Domestically prohibited goods and other Hazardous substances report by the Chairman of the working Group (restricted) July 2 1991)

[Note that the only country which did not agree to this document] was the U.S. The U.S. submitted a "communication" proposing the following changes"; the U.S. changes will be noted in Italics.]

Report by Chairman of the working group on Export of Domestically prohibited goods and other hazardous substances [note linking with " non-transference of goods that are harmful to the environment or to human health] principle in Rio Declaration

At present, although the attached text has been generally agreed by delegations, the country [US] making the reservation remains unable to accept it without amendments.

Decision on Products Banned or Severely Restricted in the Domestic Market

Preamble

Desiring to further the objectives and principles of the GATT
Having regard to the provisions of the GATT as they apply to the products covered by this Decision;

Desiring further to encourage the development of international rules on trade in products that are banned or severely restricted in the domestic market of a contracting party, as well as hazardous wastes, on the grounds that they are dangerous to human, animal or plant life or health, or the environment;

Desiring further to ensure that such rules do not create unnecessary obstacles to international trade nor duplicate the work of other international organizations;

Recognizing the need for complementary action in GATT regarding trade in products covered by this Decision, while taking into account the important contribution that is being made by international organizations which have competence in the areas concerned.

Noting the importance of notification, information exchange systems, prior informed consent procedures and certification systems developed by other international organizations in exchanging information and in assisting contracting parties in deciding whether to permit importation of the products concerned.

Recognizing that every contracting party must assume full responsibility for decisions regarding its own imports, but that the co-operation of exporting contracting parties may be necessary in cases where the importing contracting party's control procedures are not yet fully developed;

Bearing in mind that no contracting party should be prevented from taking measures to ensure the quality of its export products, subject to the requirement that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between contracting parties where the same conditions prevail, or a disguised restriction on international trade;

Mindful of the need for governments to pay the fullest attention possible to the protection of the environment;

Hereby decide as follows:

Article 1

Coverage

1.1. for the purpose of this Decision

(I) A banned product means any product that has been:

- (a) prohibited from sale or use, including those cases in which prohibition results from expiration of the approved period of use; or
- (b) refused approval for sale or use; or
- (c) withdrawn from sale or use

(ii) A severely restricted product means:
a product for which virtually all sales and /or uses have been banned but for which certain specific sales and/or uses remain authorized.

With regard to pharmaceuticals, this includes only those

(a) which are approved and subsequently subjected to restrictions that excluded their use in a substantial proportion of potential target population of patients having regard to its safety, and /or

(b) which contain a substance whose dangerous properties require extraordinarily narrow content limitations.

1.2. This Decision applies to products, substances and wastes (hereinafter referred to as " the products concerned") which are determined by a contracting party:

(i) to present serious and direct danger to human, animal or plant life or health or the environment in its territory, and which for that reason are banned or severely restricted in the domestic market of that contracting party by governmental regulatory action, except:

(a) fissionable and radioactive materials; and

(b) arms, ammunition and implements of war supplied directly or indirectly to a military establishment

Atomic wastes

11 CRITICISING LIMITED VIEW OF APPLICATION OR RELEVANCE OF AGENDA 21 AND OTHER UNCED DOCUMENTS

" It was clear that GATT Contracting Parties welcomed warmly the Rio Declaration and the progress that has been made by the UNCED in fostering further multilateral cooperation, and were determined that GATT should play its full part in ensuring that policies in the fields of trade, the environment and sustainable development are compatible and mutually reinforcing. (Agenda-21 follow-up Activities in GATT at its meeting on 14-25 June 1993)

Although GATT claims to "welcome" the Rio Declaration there are two principles in the Declaration which could have significant impact of trade which may not be that welcoming to the business community:

Precautionary Principle

" Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation." (Rio Declaration, 1992).

Not-transferring-environmentally-harmful-activities or substances principle

States should effectively cooperate to discourage or prevent the relocation and transfer to other states of any activities and substances that cause severe environmental degradation or are found to be harmful to human health” (Principle 14, Rio Declaration)

The Business Council for Sustainable Development could assist GATT in understanding the implications of the two-above principle.

Also, in this document (Agenda-21 follow-up Activities in GATT at its meeting on 14-25 June 1993), it is indicated that the follow-up will consist primarily in addressing those matters raised in chapter 2 of Agenda 21 (trade liberalization— 2, intro, A; trade and environment supportive — 2, B; propositions and principles in 2.21, 2.22 (a), (b), (h) and (k). ... In November 1993, the Council of Representatives will hold a meeting devoted to this ... UNCED follow-up.

I have enclosed a list of almost 200 principles, not from Chapter 2, which are related to trade and environment. Perhaps the Business Council for Sustainable Development could bring to the attention of GATT before its November meeting, that there are many significant principles beyond chapter 2 of Agenda 21.

11. ASSESSING WHETHER PRACTICES THAT HAVE BEEN CRITICIZED BY ECOLOGISTS AND LAUDED BY RESOURCE INDUSTRIES ARE IN FACT ENVIRONMENTALLY AND ECONOMICALLY SUSTAINABLE

5.1. Undertaking to analyze whether the current practices of logging are in fact environmentally and economically sustainable, and if they are not to seriously look into alternatives. (Business Council of Sustainable Development)

() THAT in 1993, I criticized the OECD COMMUNIQUE;

Contradictions "sustainable economies" "sustainable growth and employment" sustainable development” (not used "sustainable environment").

Council of the OECD met on 2 and 3 June 1993 at Ministerial level... and the following communique was released:

"Ministers are committed to a concerted strategy for growth and employment. It consists of the following planks, described in detail in this communique

... monetary and fiscal policies will exploit the opportunities that may exist...without jeopardizing the objectives of price stability and medium-term budget consolidation;

. structural reform policies, including labour market policies, will aim for vigorous, competitive and efficient development of

OECD economies, exploiting opportunities offered by technological progress and open international competition; ... intensive efforts will be made to continue to liberalize trade, to abide and further strengthen multilateral disciplines and as the first priority to achieve a substantial, comprehensive and balanced outcome of the Uruguay Round by the end of the year. which would be a very powerful contributor to bolstering confidence, growth and employment both in OECD Members and elsewhere.

Promoting sustainable growth and employment: the major challenge for the 1990s

YET

In the same communique the environmental policy is described as the following:

19. Genuinely sustainable development over the long term requires worldwide co-operation. OECD member countries intend, even in this period of economic downturn, to continue to play a leading role in the field of sustainable development, including in their commitment to follow up to the outcome of the United Nations Conference on Environment and Development (UNCED). They commit their governments to take effective action aimed at:

- achieving, at the national, regional and international levels, more effective integration and compatibility of environmental and all other relevant policies.

In this regard they welcome the overall progress made by the OECD in this field, including the programme of environmental performance reviews. Ministers ask the OECD to pursue its follow-up to UNCED, and in this regard, to consider the **feasibility of analyzing the relation between consumption and production patterns and sustainable development**; [this phrase was highlighted by the Environmental representative (personal communication, June 28). the representative also indicated that OECD would be focusing on "over-consumption", and requested information]

-- More effective use of the variety of available economic instruments, in combination with regulatory and voluntary measures taking into account of national circumstances, to address global, regional and national environmental problems -- with the goals of cost-effective, viable results, including reduction of greenhouse gas emissions, through national and international agreed actions;

- promoting environmental protection through various forms of international co-operation, including relevant international legal instruments; and
- promoting national and international efforts in the development and diffusion of technologies aimed at protecting and restoring the environment.

Annex 1; systemic Constraints preventing change

The following "systemic constraints," may have prevented the global community at UNCED from addressing the urgency:

- the continued willingness to enshrine the sovereign right to exploit natural resources.
- the unwillingness to move beyond sovereign barriers to international environmental governance
- the failure to recognize that the situation is so urgent that international environmental governance, standards and regulations have to be necessary
- the refusal of states to accept the rule of international law
- the reluctance to establish stringent international environmental standards and technological regulations
- the unwillingness of states to allow for a stringent monitoring program
- the reluctance to recognize that the urgency of the current global situation requires the summoning up of the international political will to move from "should" to "shall"
- the obsession with consensus which may lead to the lowest common denominator rather than striving through collaboration for the highest tenable principles
- the decision-making process being conceived as an arena of competing interests
- the designation of failure made by those states, institutions and individuals who do not even live up to the moderate principles established by consensus
- the reluctance to redefine what constitutes development in an ecologically sound way
- the unwillingness to redefine development in terms of ecologically sound practices; such as
 - (i) the degree to which a state has been able to integrate with the ecosystem through ecological sound practices causing its human activity to have little deleterious impact on the environment
 - ii) The degree to which there is an equitable distribution of resources
 - iii) the extent to which a state refrains from contributing to global ecological or military harm
 - iv) The degree of condemnation, and avoidance of over-consumption
 - v) the ability to minimize the human impact on the environment through stabilization of population
 - vi) the degree of compliance with the enshrining of positive rights (right to ecologically sound work, to food, to shelter as well as with negative rights)
 - (vii) the ability to live within the carrying capacity of the ecosystem; in which case the US could possibly be the least developed
- the stereotyping of countries into categories of "developed, underdeveloped, and developing" rather than designating behaviours and attitudes as being "developed, underdeveloped and developing";
- the simplistic distinction between North (environment) and South (development)

- the presumption that technological transfer should always pass from "North" to "South"
- the revelation of a problem and the presentation of a solution which could have more disastrous or equally disastrous consequences as the problem (nuclear)
- the continued justification and rationalization about the use of ecologically unsound practices in the guise of technological fixes
- the condoning of technological fixes suggested as solutions:
- the continued condoning of research and development into rectifying the harm done through ecologically unsound practices rather than discontinuing ecologically unsound practices (the Green Revolution syndrome)
- the presence and use of international short term economic provisions which justify the abandoning by sovereign states of high ecological standards. (Present in GATT regulations, and evident in Chapter 2 of Agenda 21 "Social and Economic Dimensions".,.)
- the reluctance of GATT to consider the applicability of any chapters other than Chapter 2
- the persistence of the situation whereby the power to prevent environmental harm or to preserve environmental heritage resides in those whose interest it is to benefit economically from the environment. and that in whose interest it is to benefit economically from the environment tend to ignore ecologically sound practices
- the persistence of the co-option, often through government funding, of groups, whose role should be to act as the conscience of the official decision makers
- the persistence of the situation where those who should be speaking out are constrained because of professional commitments, and where those who are willing to speak out are not heard because the press fails to report their statements
- the sanctioned use of "words of delusion" that either delude the public into thinking that what is unsafe, is safe, or delude the public into thinking that there is the political will to eliminate unsafe practices.
- the sanctioned use of loophole vague terms like "as appropriate" or of loophole provisions like without *prejudice to international trade principles*. For example, in the following section on consumption They should therefore review the purchasing policies of their agencies and departments so that they may improve, where possible, the environmental content of government procurement policies, *without prejudice to international trade principles*. (4.23, Consumption)
- the sanctioned use of the "notwithstanding clause" device. This device allows for the indulging in strong statements about deep concern and the need for significant change and then including a notwithstanding clause that negates the strong statement.
" Implement, as a matter of urgency, *in accordance with country-specific conditions and legal systems*, measures to ensure that women and men have the same right to decide freely and responsibly on the number and spacing of their children and have access to the information, education and means, as appropriate, to enable them to exercise this right *in keeping with their freedom, dignity and personally*

held values, taking into account ethical and cultural considerations.

(3.8 j Combating Poverty)

- the sanctioned use of oxymorons like "the environmentally sound management of hazardous wastes" (20.22 Hazardous wastes) or "the promoting the safe and environmentally sound management of radioactive wastes" (Chapter 22 Radioactive wastes)
- the sanctioned use of term like "harmonizing" which usually leads not the highest tenable principles but to the lowest common denominator
- the reluctance to deal with essential issues such as the link between "Nuclear civil reactors and Nuclear Arms Industry" or the Link between Poverty and lack of universal "secondary" as well as "primary" health care system (3.6. e Combating Poverty)
- the reluctance to address the environmental degradation caused by military operations
("Systemic Constraints preventing change," Russow J. & White, D. in progress)

1. 3. Some fundamental principles that would probably be agreed to by Environmentalists as being principles that should form the basis of Environmental education:

- The ecosystem has inherent rights in itself beyond human purpose (Charter of Nature, 1982)
- the realization that the traditional consumptive patterns of development have contributed to poverty, to the inequitable distribution of resources, to over-consumption, to the violation of human rights and to the potentially irreversible degradation of the ecosystem
- the realization that the threats to the biosphere which sustains all life on this planet have increased in rate, magnitude and scale that inaction is negligent. The international community has enough information about the pending state of ecological irreversibility that it must act immediately.
- The ecosystem of which we are a part shall be protected and preserved; ecologically unsound patterns of development shall be condemned and the inequity of development must be addressed and rectified. The mandate to limit growth must prevail
- The precautionary principles shall be extended to require those who wish to intervene in the ecological commons to have to justify their intervention and demonstrate the safety of their intervention. The full environmental costs shall be considered in any proposed development project that may cause ecological harm

- Development activities that benefit the few while compromising the biological inheritance, and quality of life of the many must be condemned as being inherently and ethically wrong
- Most of the third world debt was accumulated as a result of development that was inequitable and detrimental to the ecosystem; remedial and restorative measures shall be undertaken to address the inequity and ecological harm. The third world debt shall be forgiven and redirected for the purpose of addressing inequity and of restoring the ecosystem. While all are responsible for improving environmental quality, those who disproportionately consume the majority of the Earth's resources and pollute the natural environment shall bear the bulk of the costs of ecological restoration and protection.
- States shall not have the sovereign right to exploit resources within their territories. All actions within states must comply with high international ecological standards
- International ecological standards shall be in place so that no short-term individual pursuit of self-interest, or short sighted national or international regulations (GATT) could jeopardize the environment. The purpose of these standards is to address the individual and multinational pursuit of self-interest and to prevent the consumption and exploitative use of the environment and not to penalize local communities that wish to function in an interdependent way with the ecosystem. The economic development necessary to eliminate poverty shall not be a mandate to abuse the environment for either short-term gain or economic growth.
- The international community shall condemn and shall disallow the exporting of products deemed to be unsafe in a state where there are advanced testing procedures to other states with less advanced testing procedures. No products or activities shall be transferred to other states if the transfer could cause harm to health or to the ecosystem.
- The continued build-up of the military complex must cease, and the use of military forces as a means of resolving conflict must be rejected. A radical reduction of the military budgets of the world must occur, and the funds released for ecological and humanitarian purposes.
- The decision-making process shall be clearly defined, transparent, accessible and equitable. Criteria in decision making shall be revealed, and the public and affected communities should be involved at the time of formulation of the terms of reference and throughout the process.

Solutions should strive for the highest tenable principles not the lowest common denominator. (Issue under discussion should be reflected upon for a prolonged period of time in order to achieve an optimum solution, rather than simply a compromise)

- Behaviour and attitudes rather than countries should be categorized as "developed, " "developing" or "underdeveloped". The contribution of those people who have been 'truly developed' in that they have succeeded in living in interdependence with the ecosystem shall be recognized and their advice sought

(Principles submitted to Canadian Environmental Educators for consideration. These principles were derived from Russow, "Composite Charter" July, 1992, from statements and contributions by NGO to the Earth Charter, at the Global forum, 1992)

Annex 2 Draft proposal for MBA course in Environment (pre-UNCED)

INTRODUCTION

Increasing awareness of the urgency of the global environmental situation has generated a frantic search for solutions. There have been pressures on governments, institutions, individuals and industries to constrain economic growth and to change unsustainable patterns of consumption and resource use. These pressures are multi-directional, both externally and internally derived. The response to these pressures has manifested itself in a) compliance response (an abundance of newly framed environmental laws and regulations at the international, national and local government levels), b) a self-regulatory response ("fox guarding the coop") (a proliferation of proclamations, declarations, charters, codes devised by industries to convey the impression that not external but only internal regulations are required); c) : technological fix response a plethora of new products and processes (reflecting a fundamental belief in the power of technology to solve all) that will rectify the harm created by ecologically unsound products or processes thus permitting the continuation of those unsound products and processes. d) "Mea culpa syndrome" response. (Public confessions by industry about how they failed to consider the environment in the past; confessions accompanied by resolutions to be ecologically prudent) ... (environmental accountability)

As the multi-directional pressures mount there will be a concerted effort to calculate the full environmental costs of not giving primacy to the environment in the decision-making process. The possibility of income-generating ecologically sound activity being more economically viable than some

traditional but ecologically unsound resource extraction activities must also be considered.

In the face of multi-directional pressures to act in an ecologically sound way and of multiple responses proposed as solutions, what might the role of the manager be? In the past the managers' role has often been reactive rather than proactive with the managers' actions demonstrating the clarity of hindsight rather than the wisdom of foresight. In the following outline, a series of 12 or so seminars on the nature of the multi-directional pressures, on the various approaches to address these pressures, and on the "systemic constraints" are proposed.

Bibliography:

Keller, K. "Calculating the costs of sustainability-- will Accountants find a way out of the woods," Tomorrow. Vol. 2, No. 1, 1992, pp. 60-62. Gray, R. The Greening of Accountancy. London; Chartered Association of Certified Accountants. (date?). "Environmental Stewardship at Shell," Canadian Business Review. Vol. 18, No. 3, Autumn, 1991, p.p. 7-13.

1. PRESSURE FROM THE INDEPENDENT SCIENTIFIC COMMUNITY

In this seminar we will examine the pressure from the independent* international scientific community through its predictions of actual and potential environmental consequences. We will also address the problem that many regulatory decisions are based on non-arm's length research funded and carried out by industry or funded by industry and carried out by Universities. *independent in that it does not have a vested interest in a particular industry

Bibliography:

Publication from Royal Society of Canada, Global Conference, held in Kingston, June 7-9, 1991; Global conferences.

2. PRESSURE FROM A MORE INFORMED ELECTORATE AND INFORMED ENVIRONMENTAL MOVEMENT

In this seminar we will examine the pressure from a more environmentally informed electorate, and the need to recognize that the traditional role of governance is changing; the electorate no longer expects the elected officials to govern without public consultation.

The informed electorate expects to be able to influence and have input into the decision-making process. We will also explore the need to move from token consultation where the informed electorate is involved essentially after the decisions have been made to participatory mechanisms where the informed electorate is an integral component of the decision-making process.

Bibliography: Pachelbel-Ferguson, Managing Leviathan"

**3. a. PRESSURE FROM GOVERNMENT AGENCIES;
REGULATIONS, MONITORING ENFORCEMENT**

In this seminar we will examine the nature of the pressures reflected in international, national and provincial environmental legislation in place, and the need to eliminate the discrepancy between the rhetoric of laws and regulations on the one hand and the actions of monitoring and enforcement on the other hand. We will also discuss the need to revise and reform the basis and criteria for "environmental assessment reviews" and the need to change the onus of proof from those objecting to the proposal having to demonstrate harm to those proposing the proposal having to demonstrate safety, and the implications of shifting the onus of proof.
and the infrastructures in place to enforce and monitor these laws and regulations.

Bibliography:

The Atomic Energy Control Act, R.S. C A-19, S 1
The Emergency Preparedness Act, 1988, C 11.
The Canadian Environmental Protection Act, 1988, C 22.
The Environmental Contaminants Act, 1974-75-76, C 72.
The Fisheries Act, 1977, C 35
The Department of the Environment Act, R.S., C 14 (2nd Supp.),
s2
The Government Organization Act 1979, C 13
The Hazardous Products Act, R.S., C H-3, S 1
The Environmental Assessment Review Act, 1992
B.C. Government Consultation Process

**3. b PRESSURE FROM NON-GOVERNMENTAL
ENVIRONMENTAL ORGANIZATIONS TO FORCE
COMPLIANCE WITH REGULATIONS**

In this seminar we will examine the nature of the pressure from non-governmental environmental organizations and the need to recognize that often it is members of the environmental groups that have a less specialized but more integrated experience in environmental issues.
We will also address the need for managers to be informed about the extent of potentially harmful consequences that could result from each technology, process and product so as to be able assess the extent of the provisions that are purported to address these consequences. Bibliography: Enforcement, RBA

**4. PRESSURE FROM GOVERNMENT-SPONSORED AND
SUPPORTED PUBLIC HEARINGS, ROUND TABLES**

In this seminar we will examine the nature of the pressures reflected in government-sponsored public access to the decision-making process, and the need to involve the public

at significant stages of the decision-making process such as at the time of the formulation of the terms of reference. We will also address the problem of informed public intervention versus obstruction and the problem of selection of the participants in government structured consultative bodies.???intervention {these consultative bodied are often weighted on the side of industry because the environmentalists are often perceived to be only one stakeholder, whereas the "exploitative" uses are perceived to have many stakeholders. (Consumptive versus non-consumptive uses). We will also assess the different decision-making approaches used within these consultative bodies, such as conflict resolution, resolution dispute mechanism, "principle-based decision making, " "highest tenable principle, " and the impact of the confrontational system evidenced by high profile environmental law suits.

Bibliography:

a content analysis of documents reflecting a) the composition of the boards, round tables etc., b) the mechanism for selecting the participants, c) the nature and time of the involvement in the process, and d) the willingness by government and industry to act upon the recommendations.

5. PRESSURE FROM ASSOCIATIVE SEGMENTS IN SAME INDUSTRY AND ASSOCIATIVE INDUSTRIES

In this seminar we will examine the nature of the pressures from associative segments within the same industry and among linked industry, and the need for full integration of environmental concerns in all corporate policy and decision. We will also address the implications of an ecologically sound industry using as a resource, products that themselves were not produced in an ecologically sound manner

6. PRESSURE FROM INSTITUTIONAL INVESTORS WHO WISH TO INVEST IN ECOLOGICALLY SOUND INDUSTRY

In this seminar we will examine the nature of the pressures for environmental change coming from investors who wish to invest in an ethical and ecologically sound way and the type of ethical and ecologically sound investment systems that are in place. We will also evaluate the criteria that is used to determine ethical and ecologically sound investment. [will evaluate the criteria that are used by investments companies to determine what constitute ethical investments.]

7. PRESSURE FROM SMALL SHARE HOLDERS WITHIN INDUSTRY

In this seminar we will examine the nature and range of pressures from shareholders in the company, and the need to

make the shareholders aware of the environmental implications of current and proposed technologies, and processes involved in production. We will also address the need for shareholders to condemn the indulging in an end of pipe correction and to support the build-in-solution in decision making from beginning.

8. PRESSURE FROM CONSUMERS THROUGH CONSUMER BOYCOTTS

In this seminar, we will examine the nature of the pressure from International, national and local boycotts of ecologically unsound products practices and processes. We will also explore the implications of advocating boycotts that could have a detrimental effect on an industry that is itself ecologically sound.

9. PRESSURE FROM THE MEDIA

In this seminar we will examine the nature of the pressure from editorial comment, letters to the editor, position pieces and special features, and the need to analysis the ability of the newspapers to retain detachment in the light of the newspapers connection with industry. We will address the issue of the control of the media and the implications for objective reporting on the environmental issues that could jeopardize media interests; and the nature of the media influence in shaping public perceptions.

10 PRESSURE FROM PERSONAL CONTACTS WITH INDIVIDUALS AND WITH COMMUNITY GROUPS TO WHICH INDIVIDUALS FROM INDUSTRY BELONG

In this seminar we will examine the nature of the pressures from a range of categories of individuals, institutions, service clubs etc. to which individual members of industry belong.

We will also address the power of special interest groups and lobby groups who influence industry from behind the scenes.

Bibliography:

11. PRESSURE FROM THE INTERNATIONAL COMMUNITY THROUGH INTERNATIONAL LAW AND TRADE REGULATION

In this seminar we will examine the nature of the pressure from international environmental standards and from international trade regulations and the need to ensure that established environmental regulations that may be perceived to interfere with the free flow of trade will not be sacrificed. We will also address the problem of international trade regulations interfering with high state environmental standards and the problem of low state environmental standards not being required to be raised to higher international standards.

Bibliography: Shribman, S. "Selling the Environment Short: an environmental assessment of the first two years of free trade

between Canada and the United States", Canadian Environmental Law Association, January, 1991, p. 13)
EFTA members press convening of working party, 82 Focus-GATT Newsletter 2-3 (July 1991). In McDormand, T. "The 1991 U.S.- Mexico GATT Panel Report on Tuna and Dolphin: Implications for Trade and Environment conflicts, January 1992,

12. PRESSURE FROM WITHIN CORPORATIONS

In this seminar we will examine the nature of pressure from within industry from upper, middle and lower management. We will also examine the accommodation of dissent in relation to the establish environmentally policy, and the role of the environmental whistle blower.

Bibliography: Public Administration documents

13. RESPONSE 1.

Improved information and analysis. Resource accounting: full environmental accounting; "polluter pay principle"; economic instruments and property rights. Cost benefit analysis revised to include valuation of natural capital.

14. RESPONSE 2.

Accountability to multiple "stakeholders"

CONCLUSION:

Traditionally industry has had to contend with only bidirectional pressure and accountability to maximize profit for shareholders, and fulfill government technical regulations, now industry is having to confront multi-directional environmental pressures and accountability. Industry's response was initially to attempt to find loopholes in government laws and regulations, or to contest what appeared to be too high environmental standards; then industry entered into a response phase of reluctant compliance with government laws and regulations. Industry, because of a range of new pressures from consumers, soon recognized the need to appear "environmentally friendly"; this response involved a flurry of new environmentally friendly new logos, slogans and products. Soon industry, having to respond to a wider range of environmental concerns and realizing that eventually industry would be losing community support, recognized a new need: the need to appear "environmentally enlightened"; this response involved a flurry of environmental departments or sections within the industry, of declarations and charters embodying industry's commitment to the environment, and of a facade of environmental concern. As a result of all these measures an "environmental industry"

appeared. This industry was and is in place to provide environmentally-friendly technological fixes for the ecologically unsound practices that drive industry. In all the above responses the pressures were essentially external; even when pressures to change come from within industry by shareholders, employees, and different levels of management, the pressures in a sense could still be deemed to be external in that industry has not internalized the values that would be needed to have a truly ecologically sound industry. The internalizing of environmental values, including those of equity and social justice, would require industry to recognize the primacy of the environment. There would have to be a shift in language and a change in perception. The onus of justification would have to change from those objecting to industry's intervention having to justify why they object, to industry recognizing that industry's interventions cause to withdrawing from the environmental heritage of the commons and that industry must justify this withdrawal. It will only be when industry has internalized the multiple pressures, and is willing to accept the primacy of environmental safety and environmental preservation, and is willing to ground their actions in principle.

The transition from the bidirectional pressure to multi-directional pressure may be bringing about the dissolution of the traditional roles and responsibilities of managers. Managers whose line of responsibility was well defined within the traditional industrial unidirectional model, might find a new sense of responsibility to mult-idirectional complex, fluid, indefinable, indeterminate body of pressures from consumptive interest groups and non-consumptive commons concerns.

Annex 1 An example of failing to make the distinction between preventive and mitigative environmental assessment reviews.

[The Canadian government has refused to undertake an environmental assessment review of the Kemano Completion project, even though the Canadian government has made an international commitment "to ensure that decisions [about projects] are preceded by environmental impact assessments" and "to take into account the costs of any ecological consequences (Agenda 21,7.42). Canadian Law has also committed the Canadian government "to carry out an environmental assessment review to determine if the potentially adverse environmental effect that may be caused by a proposal are significant (S.12, EARP).

The Canadian government has also refused to assess the environmental and cultural impacts of the Kemano Completion project on native communities, even though the Canadian government has made an

international commitment to indigenous people " to recognize that the lands of indigenous people and their communities should be protected from activities that are environmentally unsound or that the indigenous people concerned consider to be socially and culturally inappropriate" {Agenda 21, 16.3 a (ii)}.

On January 19, 1993, Premier Harcourt issued a press release " Premier Announces Review of Kemano Completion Project". Premier Harcourt's statement was misleading because he did not make a distinction between a "precautionary" and a "mitigative" review. A precautionary review is one that attempts to prevent environmental degradation and cultural inappropriateness of a project by examining the potential environmental and cultural impacts of a project to determine whether the project should be allowed to proceed; the outcome of a precautionary review could be a decision to prevent the project from proceeding. A mitigative review, however, is one that attempts to lessen the environmental degradation and cultural inappropriateness of a project which has already been permitted to proceed; the outcome of a mitigative review would not be a decision to prevent the project from proceeding.

The terms of reference of the proposed B.C. government's public review of Kemano Completion are *not* to determine whether the project should proceed but to assess the options for mitigating impacts associated with the Project".

There is a significant distinction between undertaking to carry out an environmental assessment review of the Kemano Completion project to determine if the project should proceed, and undertaking a "public review" of the impact of the Kemano II project after the decision has been made to allow the project to proceed.

The Cheslatta Carrier nation, displaced by the Kemano I project, is advocating a review that, if carried out, would probably fully justify immediate mitigation of the impacts of the Kemano I project, and justify the prevention of the Kemano Completion project. In their proposed review, the terms of reference should include but not be limited to the following:

- a thorough investigation into all environmental, economic, social and cultural impacts of Kemano 1, and prescribe immediate mitigation;
- a thorough review of the terms, conditions and circumstances surrounding the granting of Alcan's 1950 Nechako Water licence including a thorough review of the 1949 water licence 'hearings' held at Wistaria and Victoria
- a thorough review of the 1987 Nechako settlement Agreement, including into terms and conditions and 'mitigative' measures, and the circumstances that led to this settlement
- a full disclosure of all federal and provincial documents and involvement relating to the Kemano projects;
- the commissioning of an independent cost/benefit analysis of the Kemano projects;
- the commissioning of an independent environmental impact assessment of Kemano 2;

- a throughout investigation into possible violations of the Federal Fisheries Act and the provincial Water Act;
- a through investigation into power sale contracts between Alcan and B.C. Hydro;
- an investigation into whether Alcan is a 'public utility';
- a through investigation into the impact of the reduced water flows on the Nechako River on the concentration of municipal agricultural and industrial effluent;
- a thorough investigation into the past and present management of the Nechako Watershed;
- a thorough investigation of Environcon Ltd and Triton Environmental Consultants Ltd. (April 1993, Cheslatta Nation)

If the proposed Cheslatta review were carried out it could result in the restoration of the environmental degradation of Kemano I, and in the redress for the cultural impacts of Kemano 1. Their review could also result in the prevention of the Kemano Completion project. As pointed out by the Cheslatta band the cost of compensation for any loss that Alcan may have incurred for its preparatory work for Kemano Completion will be far less than the cost of past (Kemano I) and future (Kemano II) environmental degradation and cultural displacement. Any public review that does not fully investigate the impact of Kemano and does not have within the terms of reference the possibility of preventing the Kemano Completion project from proceeding is making a mockery of the precautionary principle and of the public process.

Annex 3

THE "NOT-TOO-HIDDEN AGENDA" OF THE INTERNATIONAL ATOMIC ENERGY AGENCY (IAEA) AT UNCED: NUKESPEAK, AND SEDUCTIVE DEVICES, DOCTRINES, DOGMAS, STRATEGIES AND FALLACIES

By Fred Knelman and Joan Russow

Dr Fred Knelman is the Vice President of the Whistler Foundation for a Sustainable Environment, and Joan Russow, was the delegate for the Whistler Foundation at the New York Preparatory Committee for UNCED and at the Earth Summit at Rio. The Whistler Foundation and the Nuclear Age Peace Foundation had circulated a Declaration that was signed by 37 Nobel Laureates; this declaration called for the phasing out of Nuclear energy. They requested permission to read this declaration at one of the plenary sessions at Rio Centro; permission was denied.

The International Atomic Energy Agency (IAEA) was initially set up in the 1960's to regulate Nuclear energy; they have, however, become one of the strongest proponents of nuclear energy. A fundamental regulatory principle of the "separation of function" is that "the agency entrusted for regulating a technology cannot be the same agency that promotes the use of that technology"(Knelman, 1975). IAEA, through its UNCED document entitled "Nuclear Techniques and Sustainable Development." acted as a major proponent, not only of the current use, but of the increased use of nuclear energy.

Agenda 21-- the 600-page far-reaching action-plan document from UNCED, was adopted unanimously by the global community represented at the Earth Summit in Rio. In Agenda 21 the following concern about radiation was expressed:

The deterioration of environmental quality, notably air, water and soil pollution owing to toxic chemicals, hazardous wastes, radiation and other sources, is a matter of growing concern. (Chapter 16. subsection 12),

The extent of the consequences of the nuclear industry were also identified in Agenda 21:

Annually about 200,000 m³ of low-level and intermediate- level waste and 10,000 m³ of high-level waste (as well as spent nuclear fuel destined for final disposal) is generated worldwide from nuclear power production.

These volumes are increasing as more nuclear power units are taken into operation, nuclear facilities are decommissioned and the use of radionuclides increases. (Chapter 22, subsection 1)

Yet at one of the plenary sessions, Mr. Hans Blix, Director-General of the IAEA, was given permission to present a document advocating nuclear energy as being a safe alternative energy for the future. The International Non-Governmental Organizations, (NGOs), however, recognized that the fundamental regulatory principle had been violated, and gave IAEA, the dubious honour of being presented with the International NGO Community's "Most Preposterous Proposal Award" "for presenting nuclear power as the environmental solution in energy and successfully keeping its problems out of the documents".

We would like to highlight some of the SEDUCTIVE DEVICES, STRATEGIES, DOCTRINES, DOGMAS and FALLACIES that have made the IAEA worthy of this honour. The examples will be drawn from IAEA document which was prepared for UNCED. Also references will be made to other UNCED Documents such as Agenda 21 and the Rio Declaration-- the Earth Charter-- 1992, and the Canada's National Report for UNCED, 1992

The seductive devices, strategies and fallacies used by the IAEA all draw upon the fundamental language of 'nukespeak'. Knelman (1986, 1992) has expanded on the euphemistic nature of Nukespeak: (Term first used in Hilgartner S, R. Bell, and R. O'Connor 1982)

"The rule is sanitizing by euphemism: political euphemism is of course older than nuclear power. How many of us recognize the "elimination of unreliable elements"? There are forbidden words in the language of civil nuclear power. For example, the words "accident", "pollution" or "disease" are never used. Accidents are either "transients", "events", "significant events", "anomalies", "occurrences" or "abnormal occurrences". In the extreme, they

become "normal abnormalities", i.e., truth becomes lies. Explosions are "events of rapid disengagement" or "prompt criticality". Waste dumps are "residue areas". Thermal pollution becomes "thermal effects" and pollution becomes "impacts". Disease becomes "health effects". This is a euphemism for cancer and genetic malformations. And missing plutonium, which is the link to clandestine acquisition of nuclear explosives is "material unaccounted for" or simply MUF! (Knelman, 1986.) Other names relating to nuclear accidents are criticality, nuclear excursions, abnormal evolution, normal aberration, plant transients, unnecessary ignition sources. "Nuke speak" is perpetuated through "nuclear acceptance campaigns" by the PR departments of the nuclear establishment, designed to find "palatable synonyms" for "scare words" through the use of "truth squads" in order to remove "undue public concern", create "pro-energy climate" where "technically qualified persons" would agree that nuclear power poses "no significant threat" and could be entrusted "for the timely detection of potential abnormalities, or there is "no evidence" of such threat (as though lack of evidence is proof of assertion) and the promises that turned into lies i.e. that nuclear power would be "too cheap to meter" providing society with "boundless energy" and save us from "freezing in the dark"., this is the language of Orwell's 1984, where peace is war and truth is a lie. "(Knelman, 1992).

Seductive devices, doctrines, dogmas, strategies and fallacies

- **The "blatant misrepresentation or expedient omission" device**

This device involves the convenient exclusion of any part that could be detrimental to one's position.

The IAEA through expedient omission (possibly for advantageous "clarification") has left out a significant section in Agenda 21 which does not include nuclear energy in the list of "safe" technologies for the future. To "clarify" Agenda 21, the IAEA in its UNCED document stated the following:

“The UNCED Agenda 21 notes the need for a transition to environmentally sound energy systems, which will entail major changes in the patterns of energy production and consumption” (IAEA Document, p.5, 1992)

In the Atmosphere chapter of Agenda 21, the following [safe] and sound technologies are advocated:

“...cooperate to increase the availability of capacity, capabilities and relevant technologies ...for utilizing and producing environmentally [safe and} sound renewable energy resources, such as solar, wind, geothermal, hydropower and biomass,...

Each resource should be utilized in a manner that ... minimizes environmental stress and health impacts, ..." (Section 9. Subsection 9 g Agenda 21, 1992)

Thus, we see that in the Energy section of Agenda 21, Nuclear energy is not mentioned as being one of the [safe] or sound technology.

- **The "co-opted terms" strategy**

This strategy involves the stipulating of a new definition for a term that would jeopardize one's own argument.

In the Rio Declaration the following precautionary principle was advocated:

Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation." (Rio Declaration, 1992).

In the following statement, the IAEA redefines the important precautionary principle that was agreed to in the Rio Declaration, 1992.

"The basic principles for radiation protection and safety in all applications and activities in nuclear science and technology are precautionary" (IAEA Document , p. 2, authors emphasis)

The Rio principle, however, if enacted and truly adhered to, would bring about a moratorium on new nuclear power plants while phasing out currently existing ones.

- **The "comparison of convenience" device**

This device involves the narrowing down of alternatives so that whatever aspect is compared will appear favourable to the proposed alternative.

In the following statement from the IAEA document, the IAEA narrows the alternatives used for comparison to those which would appear to be favourable within the terms of reference of their comparison. Thus, for example, they compare the relatively low volume of nuclear wastes to the much larger volume of wastes from fossil fuels. However, it is the volume of wastes multiplied by their toxicity that is significant. Merely comparing volumes is a "comparison of convenience". The same false comparison is used to compare fuel requirements for the same energy output.

" A nuclear plant would require 27 tonnes of slightly enriched uranium each year, which corresponds to a few truckloads. The corresponding quantity of natural uranium is 160 tonnes.

a coal fired plant would need 2.6 million tonnes of coal each year... which corresponds to the load carried by 5 trains, each transporting 1400 tones every day
an oil-fired plant would require 2 million tonnes of fuel oil per year, which is about 10 supertanker loads." (IAEA document, 1992, p.12)

The nuclear establishment never fails to compare coal and nuclear as competing energy sources, always claiming the inherent superiority of nuclear. Usually this is accomplished by failing to include the entire fuel cycle over its full life of impacts, social and environmental. They conveniently exclude "safety" factors, "production of wastes," "Disposability of wastes," "degree of potential for bioaccumulation," lifetimes of wastes, toxicity and proliferation problems associated with nuclear.

Yet no bombs are built of coal, no terrorist is interested in hijacking coal or in the clandestine acquisition of coal weapons, coal plants do not have to be decommissioned and mothballed after some 30 to 50 years of operation, their hazardous wastes do not have to be guarded for 100,000 years, coal dust is easier to contain than radon and coal plants do not require liability subsidies by acts of parliament" (Knelman, 1992)

• **The "lull and lure of the technological fix" syndrome (the "misleading assurance" device or the fallacy of "technological omnipotence")**

This syndrome, device or fallacy involves the revealing of the seriousness of the problem and the offering of a "solution" which is usually worse than the problem

The proponents of a potentially dangerous act indicate that they recognize the danger and focus on one area for which they can offer a technological fix

In the following statement from the Radioactive Wastes section of Agenda 21, into which it appears that the IAEA had input, the following situation is recognized:

Annually about 200,000 m³ of low-level and intermediate-level waste and 10,000 m³ of high-level waste (as well as spent nuclear fuel destined for final disposal) is generated world-wide from nuclear power production. These volumes are increasing as more nuclear power units are taken into operation, nuclear facilities are decommissioned and the use of radionuclides increases. The high-level waste contains about 99 percent of the radionuclides and thus represents the largest radiological risk." (Agenda 21, Radio Active wastes, 21.1.).

In the IAEA document the authors affirm the certainty of the technological fix.

“There is nevertheless a consensus among experts that safe geological disposal of high-level wastes, including spent nuclear fuel, is technically feasible.” (IAEA Document, p.17)

“The view of experts in the field is that safe technological solutions exist for managing the waste.” (IAEA Document, 1992, p. 15)

Knelman (1992) points out that

“The assumption behind the notion of permanent disposal of High-level wastes deep in a stable geological formation is false because this assumption relies on the mistaken belief that anything we do technologically can be permanent. This assumption of permanence is particularly false when we are dealing with the lithosphere over some 100,000 years and when we must first disturb the geological structure by digging a very deep hole. AECL(Atomic Energy of Canada Limited) has dug a deep hole near Lac du Bonnet in Manitoba which is totally inappropriate for such so-called "permanent" disposal. For one thing you must, in all events, avoid water. Yet, The AECL hole must be soaked. Walt Patterson, a nuclear critic described this AECL research as follows: A drunk has lost his keys and is discovered by a police officer crawling around a street light. When questioned, the drunk admitted that he had lost his keys in front of a dark building, a block away. When asked why the drunk was then searching around the street light, the drunk said " you see, officer, the light is better here" and as Dr Martin Resnik off, an expert on geological waste disposal has put it " the earth does not stand still. In other words, experts in the relevant fields do not agree.” (Knelman, 1992, in progress)

• **The "rhetoric of notwithstanding clause" doctrine.**

This doctrine allows for the indulging in strong statements about deep concern and the need for significant change and then including a notwithstanding clause that negates the strong statement.

In the Rio declaration (1992) there is a strong statement about third world dumping:

“States should effectively cooperate to discourage or prevent the relocation and transfer to other States of any activities and substances that cause severe environmental degradation or are found to be harmful to human health.” (Principle 14 Rio Declaration, 1992)

There are, however, disturbing "notwithstanding clauses" that appear such as in the following statements:

“Develop regulatory and non-regulatory measures and procedures aimed at preventing the export of chemicals that are banned, severely restricted, withdrawn or not approved for health or environmental reasons, *except when such export has received prior written consent from the importing country or is otherwise in accordance with the PIC procedure*; (Section 19. subsection 53 f ”, Agenda 21, 1992)

In the following statement in the IAEA document, the IAEA energetically adopts the spirit of the " rhetoric of notwithstanding clauses"

“The IAEA in 1990 promulgated a Code of Practice on the International Trans-boundary Movement of Radioactive Waste as a basis for harmonization of national legislation and policies. The code lays down the conditions and principles for international waste transfers, such as that movement must be made in a manner consistent with the international safety standards, that there must be prior notification and consent of the sending, receiving and transit States, and that each State involved should have a regulatory authority...”(IAEA Document, 1992, p. 20

- **The "flamboyant absurdity" doctrine or dogma**

This doctrine or dogma carries the concerns of one's opponents to the point where the regulations governing the opponents' concerns should become the standard by which other potentially lesser concerns will be addressed.

The IAEA appears to advocate that, what is considered to be the most dangerous industry, just because it is dangerous, has developed stringent standards, and that they who contribute to possibly the greatest uncontrollable hazard are the ones who should assist the community in dealing with other hazards.

“The basic principles for radiation protection and safety in all applications and activities in nuclear science and technology are precautionary and are so well founded in science and so widely accepted that they are now also being regarded as a source of guidance in controlling pollutants and impacts arising from other human activities. Their wider application would undoubtedly contribute towards sustainable development. ” (p.2)

- **The "justification through dire consequences of alternatives" device**

This device involves the revealing of the dire consequences of the current practices and offering one own practice as the salvation for the problem

In the following statement the IAEA cites the dire consequences of the other alternatives to justify their proposed alternative:

“The problem of acid rain, which is linked to emissions from the burning of fossil fuels, has been recognized for decades..... the primary concern about the continued and increasing use of fossil fuels is the problem of CO₂ emission and the potential impact on world climate..... World conference on the Changing Atmosphere... need to reduce CO₂ emission (IAEA document, p. 5)
climate change in connection with fossil fuels” (p. 9)

•**The "benevolent outcome exploitation" strategy**

This strategy involves the selection of the outcome which the opposition to the proposed alternative would advocate and the subsequent attempt to demonstrate that the proposed alternative, which the opposition would condemn, would be the best way of achieving that outcome.

In the following statements from the IAEA document, the IAEA focuses on the desired outcomes of reducing acid rain and limiting greenhouse gas to justify the selection of their proposed alternative:

“Several governments have already made commitments to reduce carbon emission, while recognizing that this will be hard to achieve except through drastic policy decisions in the energy sector.” (IAEA Document, 1992, p.6)

“Nuclear power plants in normal operations cause very little environmental detriment and are beneficial when they replace plants which would emit CO₂, SO₂, and NO₂ (p. 12). In this respect they would help to reduce acid rain and limit greenhouse gas emissions” (IAEA Document 1992 , p. 12)

To accomplish the above, IAEA and other nuclear proponents are recommending the construction of some 4000 to 5000 new commercial nuclear power plants. The combination of the multi-trillion cost and the time required for construction renders this proposal no less than bewildering. By the 6-to-10-year period required for construction, other sources of climate-altering gases would wipe out all gains. Secondly at 1/7th to 1/10th the above cost, a much greater reduction in CO₂ and other climate-altering gases can be achieved through simple available conservation and efficiency measures.

• **The "flaunting and condoning of the vicious circle principle" strategy**

This strategy is best explained by the economic principle that "bad money drives out good,". that is the opportunity costs of nuclear power are unacceptable and prohibitive Thus the money spent to subsidize nuclear

power is at the expense of the funds required to solve the energy problem with safe alternatives, and consequently, because the research into alternatives will not be effectively carried out, the safe alternatives will not be able to adequately replace the non-renewable forms of energy.

“In the 1992 report to UNCED, following was stated:
Nuclear energy has safety risks associated with the entire uranium cycle, from mining through processing to the ultimate disposal of high-level radioactive wastes. In addition, there are safety risks associated with the reactors used to generate electricity from uranium. And the use of fossil fuel to drive conventional thermal generation produces carbon dioxide and waste heat.” (Canada's National report UNCED p. 46- 47)
From a domestic consumption point of view, the least environmentally damaging energy option is energy efficiency.
(Canada's National report UNCED p. 47)

Despite the above statement, the document concludes::

“New, cleaner technologies such as solar energy may help, but the hard fact is that to a large extent we will have to rely on either thermal, hydro, or nuclear energy in the future. In addition, energy projects for both export and domestic supply provide jobs and economic wealth to the country, and are especially important in some regions of Canada” (p. 47. Canada's National report UNCED June, 1992, authors' emphasis)

The Canadian government has invoked the "vicious circle principle" by cutting subsidies to conservation efficiency and renewals. Canada is thus playing an important role in facilitating this not too hidden agenda by using many strategies, devices, doctrines, etc.

CONCLUSION:

The " nukespeak" and the seductive devices, strategies, syndromes used by the Nuclear Industry involve the language of delusion and distortion. Hopefully, through the continued revealing and categorizing of these words of delusion we could, in some small way, counteract the impact of the not too-hidden-agenda of the IAEA, and the rest of the nuclear establishment and their government supporters.

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Annex 4 ARRESTS IN B.C. FORESTS: WHO ARE THE REAL CRIMINALS

Since 1948, Canada has made significant international commitments to human rights, equity, social justice, ecological preservation, and ecologically sound practices, (Universal Declaration of Human Rights , 1948; International Covenant of Social, Cultural Rights; Environmental Conference in Stockholm, 1972; UN Conservation of Natural Heritage, 1972; the World Charter of Nature, 1982; Global Biodiversity Strategy, 1992; the Caracas Declaration 1992; Biodiversity Convention, Climate Change Convention and Agenda 21, 1992) The action to condemn and in some cases imprison individuals who call for Canada's compliance to these international, national and provincial commitments has been in direct violation of principles of equity, social justice and human rights.

For years, through its forest practices, Canada as well as the forest Industry has been in violation of international law., and even in violation of its own federal and provincial law. Through non-compliance with its international commitments, and with national and provincial Acts , the government has permitted devastation of its forests; this devastation is now recognized widely and condemned by the international community

The practice of clear-cutting, followed by [broadcast burn] artificial reforestation has undoubtedly many technical and organizational advantages. In the course of time, however, soil scientists and ecologists found out that the practice of clear-cutting automatically leads to considerable drawbacks:
-wounding of the soil surface through logging operations. risk of erosion

-high irradiation and higher climatic extremes alter the microclimate, the flora and the microflora and deteriorate the growing conditions for a number of valuable tree species. Soil compression and a reduction of species richness occur
-An accelerated decomposition of organic matter occurs, combined with a wash out of nutrients, and the eutrophication of ground water, rivers and lakes (Dr Schutt, Biological Department, University of Munich, Environmental Ethics Conference, 1992, Vancouver)

Section 60 of the Forest Act calls for suspension of tree farm licensees if industry, through non-compliance to the Forest Act, has caused harm to the natural environment. Throughout B.C. environmentalists have been documenting evidence of non-compliance to the Forest Act. The Fisheries Department has documented evidence of violation by the forest industry of section 33 of the Fisheries Act. The Forest Act has not been enforced because most of the sections in the act are discretionary. One of the only recourses for environmentalists has been to call upon the Ombudsman to investigate whether government has fairly complied with its own legislation. In September of 1991, a complaint was filed with the Ombudsman's office to investigate whether governments have fairly complied with the Forest Act. This complaint has only now begun to be seriously investigated. The Ombudsman's office has not, however, been given the mandate to investigate whether or not the government of Canada is fairly complying with its international commitments.

The protesters, like the government and industry have not complied with the law. Governments and industry in Canada continue to violate international agreements, ignore the enforcement of federal and provincial Acts, and allow irreparable harm to the environment. Over 200 Vancouver Island protesters from environmental groups and from the Native community have been arrested, condemned as criminals and in some cases imprisoned because they call for compliance to commitments, attempt to prevent irreparable harm, and demand that environmental law be enforced in a less discretionary manner.

In the latest case, the protesters in Clayoquot Sound have been condemned as criminals because of their non-compliance with an injunction to prevent them from preventing irreparable harm. On the other hand, McMillan Bloedel has been fined in Clayoquot Sound for causing irreparable harm. Traditionally, the equitable remedy of injunctions is deemed necessary to prevent irreparable harm. In 1985, the court concurred with this conception in McMillan Bloedel vs. Mullin where it was decided that

“Indians, ...will be deprived of valuable ecological rights, and in further light of the fact that irreparable harm will not result to the Logging Company if timber harvest is delayed pending an expedited adjudication of issue” [1985, BCD Civ 1892-08]

Now, the courts have appeared to misconstrue the concept of irreparable harm: those who cause irreparable harm (industry) through non-compliance with international, national and provincial commitments are granted

injunctions to facilitate their continuing to cause irreparable harm , while those, (environmentalist and native leaders) are condemned as criminals for not complying with the injunctions granted to facilitate irreparable harm. The most that has happened to industry when it has been found in fault is a fine not criminal condemnation; thus, the causing of irreparable damage is deemed to be compensable through fines, whereas attempting to prevent irreparable damage by ignoring an injunction is deemed to be rectified through criminal proceedings.

If governments do not comply with their commitments, if the courts misconstrue equitable law, and if the ombudsman has a limited scope of jurisdiction, where can the public turn for justice?

Joan Russow

for

VINE

Vancouver Island Network of Environmentalists

Tuesday, December 23, 1992

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Copies of this letter was sent on Tuesday December 23, 1992, to the Vancouver Sun, the Globe and Mail, Web international network, and to UNEP (United Nations Environmental Programme)

Since 1972, Canada has made significant international commitments to human rights, equity, social justice. ecological preservation, and ecologically sound practices, (Universal Declaration of Human Rights , 1948; International Covenant of Social, Cultural Rights; Environmental Conference in Stockholm, 1972; UN Conservation of Natural Heritage, 1972; the World Charter of Nature, 1982; Global Biodiversity Strategy, 1992; the Caracas Declaration 1992; Biodiversity Convention, Climate Change Convention and Agenda 21, 1992). The action to condemn and in some cases imprison individuals who call for Canada's compliance to these international, national and provincial commitments has been in direct violation of principles of equity, social justice and human rights.

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The protesters, like the government and industry have not complied with the law. Governments and industry in Canada continue to violate international agreements, ignore the enforcement of federal and provincial Acts, and allow irreparable harm to befall the environment. Over 200 Vancouver Island protesters from environmental groups and from the Native community have been arrested, condemned as criminals and in some cases imprisoned because they call for compliance to commitments, attempt to prevent irreparable harm, and demand that environmental law be enforced in a less discretionary manner.

In the latest case, the protesters in Clayoquot Sound have been condemned as criminals because of their non-compliance with an injunction to prevent them from preventing irreparable harm. On the other hand, McMillan Bloedel has been fined in Clayoquot Sound for causing irreparable harm. Traditionally, the equitable remedy of injunctions is deemed necessary to prevent irreparable harm. In 1985, the court concurred with this conception in McMillan Bloedel vs. Mullin where it was decided that

“Indians, ...will be deprived of valuable ecological rights, and in further light of the fact that irreparable harm will not result to the Logging Company if timber harvest is delayed pending an expedited adjudication of issue” [1985, BCD Civ 1892-08]

Now, the courts have appeared to misconstrue the concept of irreparable harm: those who cause irreparable harm (industry) through non-compliance with international, national and provincial commitments are granted injunctions to facilitate their continuing to cause irreparable harm, while those (environmentalist and native leaders) are condemned as criminals for not complying with the injunctions granted to facilitate irreparable harm. The most that has happened to industry when it has been found in fault is a fine not criminal condemnation; thus, the causing of irreparable damage is deemed to be compensable through fines, whereas attempting to prevent irreparable damage by ignoring an injunction is deemed to be rectified through criminal proceedings.

If governments do not comply with their commitments, and if the courts misconstrue equitable law, where can the public turn for justice?

Often intact ecosystems that have been deserving of preservation have been irreversibly destroyed because it was deemed necessary, if these ecosystems were to be withdrawn from an existing tree farm licence, for governments to pay compensation. In the past, compensation has been assessed purely from an economic basis without taking into consideration the true environmental costs. In order to assess the environmental costs of the destruction of significant ecosystems one may need to examine if damage to the natural environment within a significant ecosystem has occurred. Section 60 of the Forest Act does permit the suspension of licenses if environmental damage to the natural environment has occurred. The potential environmental costs of destroying significant ecosystems as a result of the Ministry of Forests not suspending tree farm licenses when there was evidence of destruction to the natural environment is necessary to include in the assessment of compensation. Although, often the companies that have contributed in the past to the destruction of significant ecosystems may not be the current holders of the specific tree farm licence in the area containing the significant ecosystem, most of the companies are still functioning in British Columbia. This investigation of the environmental costs would involve the whole province so that there would need to be a global assessment of environmental costs incurred by the companies, not a valley-to-valley assessment.

Canada violates or ignores international environmental documents to which it has been a signatory while deluding the world community into thinking that it is genuinely concerned about the environment.

At the press conference given by Federal Minister of the Environment, Jean Charest at the UNCED conference in Rio, a representative of the United Nations introduced Charest as being from a country which was truly concerned about the environment. During the question period I indicated that " UNCED should be a time to dispel myths not perpetuate them and that Canada is not an ecologically sound country and that we should be honest with the rest of the world

Evidence that could dispel the myth that Canada is truly concerned about the environment has been occurring for years throughout B.C. in the forest industry, and is occurring currently in the dispute in Clayoquot Sound.

Rather than the courts in Canada insisting on adherence to international environmental documents such as the World Charter of Nature (UN Resolution 37/7, 1982) or to the current Convention on Biological Diversity (1992), Canadian courts condemn those who strive to call for the adherence to international law (environmentalists) , and condone those who ignore International Law. (industry).

For Example, Canada is a signatory of the World Charter of Nature, 1982 (UN resolution 37/7) which states the following:

11. Activities which might have an impact on nature shall be controlled, and the best available technologies that minimize significant risks to nature or other adverse effects shall be used; in particular;

a) all activities which are likely to cause irreversible damage to nature shall be avoided;

c) Activities which are likely to pose a significant risk to nature shall be preceded by an exhaustive examination; their proponents shall demonstrate that expected benefits outweigh potential damage to nature and where potential adverse effects are not fully understood, the activities should not proceed;

Have governments in Canada since 1982 "avoided" industrial activities such as ecologically unsound "logging practices that have caused irreversible damage to nature.? Have governments in Canada called upon forest companies to not proceed with ecologically unsound practices whose adverse effects are not fully understood?

In 1992, Canada is now a signatory of the Convention on Biological Diversity which notes the following:

that it is vital to anticipate, prevent and attack the causes of significant reduction or loss of biological diversity at source.

Also, where there is a threat of significant reduction or loss of biological diversity, lack of full scientific certainty should not be used as a reason for postponing measures to avoid or minimize such a threat

Is Canada reducing the loss of biological diversity at the source, when it is prepared to log old growth forests before it has carried out adequate non--length research into the true biodiversity of the old growth forests? Is there not strong enough evidence in place that clear-cut logging has destroyed biodiversity, yet we appear to wait for "scientific certainty" before we are prepared to avoid or minimize such a threat? By that time there may be very little biodiversity left.

At the Press Conference where Mulroney signed the Convention on Biological Diversity in Rio de Janeiro, I asked him " if the signing of this document would mean that the government of Canada would condemn ecologically unsound practices such as clear-cut logging that destroy biodiversity". He replied that "he did not want to deal with issues "

If Mulroney is willing to sign a document professing to adhere to the preservation of biodiversity, and if he is not willing to deal with the practices that contribute to the loss of biodiversity, then the Canadian public will have to bring this discrepancy between rhetoric and action to the attention of the international community.

The environmentalists who have continually been striving to preserve the little remaining old growth forests, and to call for the need to identify and do research into biodiversity are the ones who have been adhering to the principles enunciated in the United Nations' World Charter of Nature. They will also be the ones who are calling for the preservation of the old growth areas so that Canada will be able to adhere to the binding principles enunciated in the United Nations Convention on Biological Diversity. Yet it is those who act to prevent "irreversibility" that are prosecuted as criminals, and those who cause "irreversibility" that are protected by Canadian courts

LEGISLATURE WAS STORMED BY THE PROTESTORS WROTE TO PRESIDENT OF WORLD HERITAGE COMMITTEE
1993 RESOLUTION ABOUT WORLD HERITAGE RESOLUTION RELATED TO PROTECTION OF A NETWORK OF OLD GROWTH FORESTS AND PATHWAYS GOING TO PRESENT IT TO PREMIER HARCOURT.

()1993 Revised THE OLD GROWTH PROCLAMATION for the Walbran and rewrote it for Clayoquot and added references to UNCED
It WAS READ BY THE PROTESTORS WHEN THEY WERE BEING ARRESTED

() THAT on June 30 1993

I received an invitation to contribute to the Peace and Global Educators

Hi Joan:

Next year I am editing the Peace and Global Educators Journal--PAGE. We are looking for contributors and I naturally thought of you and all of your work. See what you think. See attached and feel free to call me for more clarification.

Sincerely,

Judy Brydon

SUMMER OF 1993

See attached programme

Went up to her house - wrote a piece

She did not publish mine but wrote something similar

()THAT in1993 I wrote RESOLUTION ABOUT WORLD HERITAGE RESOLUTION RELATED TO PROTECTION OF A NETWORK OF OLD GROWTH FORESTS AND PATHWAYS GOING TO PRESENT IT TO PREMIER HARCOURT.

()THAT in 1993, I printed up copies of the World Charter of Nature WHICH WAS READ BY THE PROTESTORS WHEN THEY WERE ARRESTED

EXHIBIT

OLD GROWTH PROCLAMATION

() THAT LEGISLATURE WAS STORMED BY THE PROTESTOR

COMMENT

The environmental groups that organized the rally failed to take a strong stand against the logging of Clayoquot Sound. the crowd was frustrated at the weakness of their statements and stormed the legislature

() THAT in 1992, I co-authored a paper with Rod Dobell, R. and J. Russow. (1992)

EXHIBIT:

“NAFTA: Policy Considerations: moving towards continent-wide standards drawing from the highest tenable principles related to human rights, ecology and equity;.” Presentation to NAMI. (North American Institute)

April 1992

• Worked on a paper on • by assisting a professor prepare papers for the following conferences: NAFTA (a paper indicating the need to have high common environmental standards in the three countries before entering into an agreement); NAMI North American Institute (a paper examining the questionable involvement of industry in education); and (a proposal and design for an environmental course for graduate students in Business Administration) 1992 and international agreements.

Found

World Charter of Nature and realized that the problem was not existing document but the implementation and compliance with the documents.

. 1993 carried out research in Ottawa related to NAFTA, received information about Environmental assessment review of NAFTA from November 1992.

I noted serious discrepancies between what the Canadian government said was in NAFTA and what was actually in NAFTA

I made a diagram showing the discrepancy between the NAFTA agreement and what was actually in the NAFTA agreement

I believe that this was the time that I met Arthur Campeau on train and he told me about the endorsement at the cabinet level of the two UNCED Conventions

COMMENT:

I met with representatives from Mexico and US and discussed the need for a resolution to come out of our session. We announced the proposal to have a resolution and invited people at the meeting of about 30 to attend a session. We drafted a resolution

RESOLUTION. and presented it to the plenary which endorsed it.

EXHIBIT

**GIVEN THAT TWO OF THE HEADS OF STATES THAT
NEGOTIATED THE NAFTA ARE NO LONGER IN POWER
AND GIVEN THAT THE NAFTA HAD NOT BEEN AVAILABLE FOR FULL PUBLIC
SCRUTINY PRIOR TO ADOPTION
GIVEN THAT THERE ARE ARTICLES IN THE NAFTA WHICH HAVE BEEN
MISREPRESENTED BY CANADA TO ITS CITIZENS**

**BE IT RESOLVED THAT THE CURRENT NAFTA BE ABOGATED AND IF
THERE IS ANOTHER AGREEMENT IT MUST TAKE INTO CONSIDERATION THE
FOLLOWING:**

In all three countries, citizens are concerned about THE Following:

- (i) Disillusion of a public process**
- (ii) Exploitation of the labour force**
- (iv) Inequitable distribution of resources**
- (v) Disenfranchising of the many**
- (vi) Violation of human rights**
- vii) Denigration of social justice**
- (viii) Unquestionable imperative to grow)**
- (ix) Over-consumptive pattern of behavior**
- (x) Undermining of national and state and provincial laws through
international tribunals**
- (xi) Relaxing of environmental standards with test once**
- (xii) Irreversible loss of ecological heritage**
- xiii) Destruction of ejidoes**
- (xvi) Misplaced spending priorities**

**IF THERE IS A NEW AGREEMENT IT SHOULD NOT BE FULLY
NEGOCIATED UNTIL THERE IS AN ELECTION IN MEXICO AND UNTIL THE
CLOSURES OF THE AGREEMENT ARE MADE AVAILABLE FOR PUBLIC
SCRUTINY FOR PUBLIC IT HAS THE FULL SUPPORT OF CONCERNED
CITIZENS IN ALL THREE COUNTRIES**

**() THAT 1993 at the Environmental Conference in Eugene, I Went to the
session given by Richard Grossman**

**() THAT in 1993, March I attended a session organized by Richard
Grossman on Taking Care of Business- calling for the revoking of Charters of
Corporations that violated human rights, destroyed the environment,
contributed to war and conflict, and denied social justices.**

**Also at the final plenary I proposed that we recommend that the next meeting
of the conference be on the Revoking of Charters of transnationals. This
recommendation was greeted with great enthusiasm [I noticed however that
this was not to be the case]**

Dobell, R. and J. Russow. (1992) "NAFTA: Policy Considerations: moving towards continent-wide standards drawing from the highest tenable principles related to human rights, ecology and equity"; Presentation to NAMI. (North American Institute)

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RESOLUTION. and presented it to the plenary which endorsed it. Also at the final plenary I proposed that we recommend that the next meeting of the conference be on the Revoking of Charters of transnationals. This recommendation was greeted with great enthusiasm [I noticed however that this was not to be the case]

() THAT in 1993

Went to the session given by Richard Grossman and to a nuclear session where a native woman was discussing her successful campaign stopping a nuclear waste dump site. I became more and more concerned about the local successes unfortunately just resulting in the displacement of the problem and began to stress more and more the need to address the entrenchment of systemic constraints.

EXHIBIT

Also at the final plenary, I proposed that we recommend that the next meeting of the conference be on the Revoking of Charters of transnationals. This recommendation was greeted with great enthusiasm [I noticed however that this was not to be the case]

() **THAT** in 1993, for the Human Rights Conference, I prepared a diagram indicating which rights had been protected through International human rights

instruments and where there were still gaps that required protection. This Diagram was passed on to a Canadian government delegate who undertook to take the diagram to Vienna for the Conference.

() THAT in 1993, I examined the evolution of the precautionary principle through various international instruments: A contract with the BCEN

EXHIBIT

1993- 1997 DISTRIBUTED

2. THE EVOLUTION OF THE PRECAUTIONARY PRINCIPLE FROM ITS INITIAL ENUNCIATION IN 1972, THROUGH ITS REINFORCEMENT IN 1982 TO ITS REALIGNMENT IN 1992.

"It also seems clear that the road from declaring global principles to effective world-wide action will be a very long and hard one." (15, Man's environment and the Atlantic Alliance" 1972)

Since 1972, the essence of the precautionary principle was agreed to by the global community

Determination to shape actions with prudent care for the environment principle

A point has been reached in history when we must shape our actions throughout the world with a more prudent care for their environmental consequences. Through ignorance or indifference, we can do massive and irreversible harm to the earthly environment...Declaration of the United Nations Conference on the Human Environment (Declaration of the United Nations Conference on the Human Environment (1972)

This principle was further reinforced in 1982, in the World Charter of Nature:

Avoidance of activities if adverse effects not fully understood principle
Activities which are likely to pose a significant risk to nature shall be preceded by an exhaustive examination; their proponents shall demonstrate that expected benefits outweigh potential damage to nature, and where potential adverse effects are not fully understood, the activities should not proceed (11 b) World Charter of Nature (1982)

Avoidance of irreversible damage to nature principle
Activities which are likely to cause irreversible damage to nature shall be avoided (11. a) World Charter of Nature (1982)

In 1992, in the UNCED documents there is the full enunciation of the precautionary principle. This principle is present in all the documents in differing forms:

In the Rio Declaration it is expressed in the following way:

“Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.” (Rio Declaration, 1992). : and in the Framework for a Climate Change Convention, it is phrased in a different way:

3. The Parties should take precautionary measures to anticipate, prevent or minimize the causes of climate change and mitigate its adverse effects. Where there are threats of serious or irreversible damage, lack of full scientific certainty should not be used as a reason for postponing such measures, taking into account that policies and measures to deal with climate change should be cost-effective so as to ensure global benefits at the lowest possible cost. To achieve this, such policies and measures should take into account different socio-economic contexts, be comprehensive, cover all relevant sources, sinks and reservoirs of greenhouse gases and adaptation, and comprise all economic sectors. Efforts to address climate change may be carried out co-operatively by interested Parties.” (Climate Change Convention, 1992)

A comparison of these two enunciations of the precautionary principle indicate that the principle has been considerably weakened in the Climate Change Convention where it has moved from "shall" to "should", and where there is no mention made of the need to prevent environmental degradation. The Rio Declaration, though adopted by the global community by consensus, is not legally binding, whereas the Convention, is legally binding. However, in using the term "should" in a legally binding document the framers have perhaps given it no more status that it had in a non-legally binding document with "shall"

3. ESSENTIAL PROPERTIES OF THE PRECAUTIONARY PRINCIPLE DRAWN FROM INTERNATIONAL DOCUMENTS AND NATIONAL DOCUMENTS.

What kind of policy action will be needed in the '80s to address these issues: given the current economic climate, how can nations collectively marshal the political will required to develop and implement the needed policies? what is the role of international co-operation in this and in particular, what is the role of OECD. MacNeill, Director, OECD, Environment Directorate

In this section, to begin to assess policy maker's response in Canada to the precautionary principle, we will examine different properties that have been identified as being essential to addressing the problem in Canada. We have selected as the principal document for this examination, the 1991, Canadian document from the Standing Committee of Global Warming because this is a document that arose from a set of hearings carried out by a committee of parliamentarians from all three political parties. Additional properties are also drawn from other documents from policy makers or advisory or consultative bodies.

The precautionary principle has a number of underlying implicit properties that would have to be considered in determining adherence to the

precautionary principle: these properties are evident in a number of documents emanating from policy makers.

(3.1.). The invoking of the precautionary principle to address one environmental problem should not cause another problem or that the solution to the environmental problem should not itself be an activity or a substance that could potentially cause irreversible harm.

1991 There is little merit in solving one problem by creating others. The Committee has therefore endeavoured to be responsible in making recommendations that clearly have wider implications beyond the problem of global warming."

(Standing Committee on the Environment, p. 18)

(3.2.). The invoking of the precautionary principle might require substantial change

At the same time, however we need to insist that the character and importance of global warming will demand significant changes in the present situation. If we do not alter our "life as usual" to reduce the threat of global warming, changes of climate and rises in sea-level will force unpleasant consequences on us. "(Standing Committee on the Environment, p. 18)

(3.3.) The invoking of the precautionary principle might require the acknowledgement that the inaction could involve risks

Title of Standing Committee report "Out of balance: the risks of irreversible climate change "(Standing Committee on the Environment, 1991)

(3.4)The invoking of the precautionary principle could require supportable evidence not necessarily in the certainty of environmental harm but at least in the likelihood

" Global warming is real and serious

1.1. Our report is based on three main premises:

- global warming has been proved scientifically;
- It is an inevitable and continuing consequence of past and present patterns of human activity; and
- it represents a severe threat to both Canada and the planet as a whole

(1991, Standing Committee on the Environment)

(3.5.). The invoking of the precautionary principle will require a demonstration of the credibility of those who frame the problem

1.7 As regards the reality of global warming, the international scientific community has during the last two to three years, undertaken and urgent and comprehensive review of the evidence. This inquiry by the IPCC under the auspices of the WMO and UNEP reported its findings at the Second World

Climate Conference in 1990. The panel reported that we are certain of the following:

“The greenhouse effect is real

Man-made emissions are substantially increasing the atmospheric concentrations of the greenhouse gases: carbon dioxide, methane, the CFCs, nitrous oxide and tropospheric ozone. These increases will lead to a warming of the Earth's surface...

We calculate with confidence that:

Atmospheric concentrations of the long-lived gases (Carbon dioxide, nitrous oxide and the CFCs) adjust only slowly to changes in emissions. Present day emissions of these gases are committing us to increased concentrations for decades to centuries...

the long-lived gases would require reductions in man-made emissions of 60-80% to stabilize their concentrations at today's levels; methane would require only a 15%-20% reduction.” (Intergovernmental panel on Global change p. 29 as cited in the standing committee Report, p. 5)

(3.6.). The invoking of the precautionary principle will require an understanding of the position of experts who do not agree with the assessment of the problem, and the supplying of good arguments to justify the position to implement the precautionary principle

1.5 There is no mystery to what is happening, yet there are still some who are unconvinced. A very few of these are scientists who offer alternative explanations for the measurements and other data that have convinced the vast majority of their colleagues. A larger group of people lack the scientific background required to evaluate the evidence and appears reluctant to accept as reality what cannot yet be seen or touched. A third groups, apparently including many Canadians, regards the prospect of global warming as something desirable, and therefore no cause for concern.

1.6. the Committee's first task, therefore is to explain briefly why we are convinced to the basic premises set out in para 1.1. In doing so, we need to respond both to those who doubt global warming and to those who accept that it is taking place, but believe that it should be welcomed by Canadians.

1.10. In any case, it is clear from the evidence it provided to us, and from its report, that the Marshall Institute is mainly urging expanded research on global warming in a 3-5-year period and the avoidance of drastic policy changes before that research is undertaken.

Dr. Seitz,

" ... I want to make it clear that I do not place those who express a word of warning in the same category as the boy who cried wolf too often, since there may indeed be a wolf somewhere in the forest. There is too much to be gained by continuing on with our form of civilization to deviate radically without more solid evidence that the biosphere is in mortal danger in the immediate future from uncontrolled warming. I fully realize that this attitude involves a calculated risk, but I also feel that we must balance that risk against the certain damage that will be done if we shut down our power stations and our factories, halt the great advances in communication and transportation

achieved in the last century or so. These comments do not imply that we should not use fossil fuel in the most efficient and conservative manner or that we should not consider the use of alternative, non-polluting sources such as nuclear energy when appropriate. Indeed, economic factors alone may dictate such shifts. "Scientific Perspectives on the Greenhouse Problem, George C. Marshall Institute, Washington, D.C., 1989

1.11. We recommend that action should be taken now, not 3 to 5 years from now, to reduce substantially the rate of greenhouse gas emissions throughout the world and specifically in Canada.

1.16 ..Canada should be as active as other nations in taking action to reduce or delay such warming. ... p. 8

(3.7.). The invoking of the precautionary principle will require commitment to the principle that even though Canada may not benefit, for the sake of the global community, we must act.

1.16.4. Even if global warming could be shown to benefit Canada, which is far from being the case, there is growing evidence of its potentially severe and even disastrous implications in other parts of the world, and especially in developing countries. Canada cannot adopt a laissez-faire attitude to what is happening. Many millions of people live on the margin of survival not merely in terms of nutrition and similar measures; small changes of climate or of sea-level would make their physical environment uninhabitable.

Man-made emissions are substantially increasing the atmospheric concentrations of greenhouse gas emissions.

"Environmental policy should be integrated fully into other policies. It should be considered as a fundamental factor when economic decisions are taken. In this context we stress the importance of sustainable development; prevention rather than cure; environmental impact assessment; setting environmental standards on the basis of best technology; and development of less polluting and more cost-effective technologies, including those for controlling emissions at source. (5) "the Way forward Environment ministers London, 1984

"Environmental policy should be integrated fully into other policies. It should be considered as a fundamental factor when economic decisions are taken. In this context we stress the importance of sustainable development; prevention rather than cure; environmental impact assessment; setting environmental standards on the basis of best technology; and development of less polluting and more cost-effective technologies, including those for controlling emissions at source. (5) "the Way forward Environment ministers London, 1984

(3.8.). The invoking of the precautionary principle will require the commitment that the solution lies in prevention not cure or repair

"It is essential, in both developing and developed countries, to manage sustainable resources wisely, and to this end we emphasize that prevention of damage is better than repair.

This principle is fully effective only in the framework of intensive international co-operation because many of these problems range far more widely than any one of our countries. (2) "the Way forward Environment ministers London, 1984

"the 'polluter pays Principle' is of key importance to ensuring that environmentally correct prices and market signals are given and should be developed and applied more widely (5) "the Way forward Environment ministers London, 1984

" We must also be more forward-looking in addressing emerging environmental issues such as possible climatic changes resulting from human activities, the need to examine alternative energy strategies, and the environmental impact of new forms of industry including biotechnology." (5) ("the Way forward Environment ministers London, 1984)

IV Environmental Policies

12. New approaches and strengthened international co-operation are essential to anticipate and prevent damage to the environment, which knows no national frontiers....We shall also address other concerns such as climatic change, the protection of the ozone layer...1985 Bonn economic Declaration May 4, 1985

4. Economic progress and the preservation of the natural environment are necessary and mutually supportive goals. Effective environmental protection is a central element in our national and international policies. 1985 Bonn economic Declaration May 4, 1985

13. We shall harness both the mechanisms of governmental vigilance and the disciplines of the market to solve environmental problems. We shall develop and apply the polluter pays principles more widely. Science and technology must contribute to reconciling environmental protection and economic growth. 1985 Bonn economic Declaration May 4, 1985

(3.9.). The invoking of the precautionary principle will require the commitment that the solution calls for new initiatives and the maintaining of options (non-reduction of options)

1980 The Global 2000

" If these trends are to be altered and the problems diminished, vigorous, determined new initiatives will be required worldwide to meet human needs while protecting and restoring the earth's capacity to support life. Basic natural resources — farmlands, fisheries, forests, minerals, energy, air and water — must be conserved and better managed. Changes in public policy are needed around the world before problems worsen and options for effective action are reduced. iv

" If decisions are delayed until the problems become worse, options for effective action will be severely reduced (5)

(3.10.). The invoking of the precautionary principle will require global actions. Nonetheless, given the urgency, scope, and complexity of the challenges before us, the efforts now underway around the world fall far short of what is needed. An era of unprecedented global co-operation and commitment is essential. iv)

We can avoid polluting our own environment, and we must take care that we do not degrade the global environment. iv Finally to meet the challenges described in the Global 2000 Study our federal government requires a much stronger capability to project and analyze long-term trends. 1980 The Global 2000

"In a remarkable report to the Economic and Social Council of the UN (in May 1969) U Thant, then Secretary General of the UN, portrayed the extraordinary world-wide dangers to man's environment, by saying:

"It has become clear that we all live in one biosphere with which space and resources, though vast are limited.

He then proposed, and the General Assembly agreed to hold an International Conference on Human Environment, in Stockholm in June 1972. Man's environment and the Atlantic Alliance" 1972

(3.11.). The solving of the environmental problem will require acknowledgement of the inertia and time lag that affects effective action 1981

OECD publications

"Our governments today face inflation, unemployment, a leveling-off in the growth of productivity and rising energy prices. At the same time, they have to respond to popular aspirations including continued pressure for an improved environment.

Governments are also faced with a lack of consensus among scientists about the nature, extent and damage of some of the phenomena. Judging from a recent OECD - IEA workshop this is true, for example, of the rate and impact of rising levels of CO₂ on climatic change. In the absence of scientific consensus, political consensus, especially international consensus, is hard to achieve. However, if governments wait for scientific near-certainty, it will often be too late for them to act at all either because of the inertia of the natural phenomena, or because of the time lags associated with policy development and international negotiation. "(Van Lennep, Secretary-General of the OECD "The Environment Challenges for the 80s)

(3.12.). The solving of the environmental problem requires the summoning up of the international political will

" I am sure it is clear to everyone that it will not be easy for our nations collectively to Marshall the political will necessary to deal with these issues. In the absence of scientific consensus, political consensus, especially international consensus, is hard to achieve.

However, if governments wait for scientific near-certainty, it will often be too late for them to act at all either because of the inertia of the natural phenomena, or because of the time lags associated with policy development

and international negotiation. "(Van Lennep, Secretary-General of the OECD "The Environment Challenges for the 80s)

4. OVERVIEW; COMPARISON OF THE 1988 CONFERENCE STATEMENTS, 1988 SCIENCE COUNCIL OF CANADA. THE STANDING COMMITTEE ON THE ENVIRONMENT AND THE 1992 CLIMATE CHANGE CONVENTION IN RELATION TO THE APPROACH TO THE PRECAUTIONARY PRINCIPLE

To attempt to extend the understanding of the social learning that has occurred in Canada in the crucial years leading up to the framing of the *Framework Convention on Climate Change*, we will examine the transition that occurred between the official and the NGO recommendations contained in the proceedings from the international conference, *The Changing Atmosphere*, held in Canada in 1988, and the action plan in the Atmosphere section of Agenda 21/ the binding commitments contained in the Climate Change Convention.

[the Montreal Protocol, and the Canadian proposals to the climate change discussion at the New York Prep Com, and follow-up meeting should also be included]

the following documents and sections from documents will be examined

Recommendation from the Changing Atmosphere, 1988;

Recommendations from the Changing Atmosphere submitted by the NGOs 1988

Atmosphere section in Agenda 21 1992

Climate Change Convention 1992

4.0. Overview

Humanity is conducting an unintended, uncontrolled, globally pervasive experiment whose ultimate consequences could be second only to a global nuclear war. (Conference statement, 1988)

Although we are examining the precautionary principle and the impact of the precautionary principle on the commitment to action to address the global warming issue, it should be acknowledged that the precautionary principle is inextricably linked to the "Environmental assessment" principle, "the full life cycle analysis" principle, the "non-transferring of harmful activities or substances" principle, "polluter pay principle", all enunciated in the documents emanating from UNCED.

Before tracing the precautionary principle as it manifests itself in the documents, and before placing the different sections into the "social learning project" functions (SEE APPENDIX), we will first reflect on a property, of the precautionary principle, which was enunciated in the UN mandate to set up the World Commission on Environment and Development (Brundtland Commission). In the mandate the global community was to "elaborate strategies and measure to halt and reverse the effects of environmental degradation ..." (reported in Agenda 21, section 38.1)

One of the questions that has to be addressed in relation to the precautionary principle, is "is the global community 'halting and reversing the effects of environmental degradation' by stating generally that it will address

the problem, without making a commitment for targets and time-lines? Would this mandate to halt and reverse form the basis for the precautionary principle? Could the global community be committed to adhering to the precautionary principle if the documents contain an enunciation of the precautionary principle but there is no commitment to halt or reverse the effects of environmental degradation? Is the only way of carrying out the precautionary principle to enunciate and act upon targets and time-lines?

Up until the end of the February session of the negotiations for the Framework Convention, targets for CO₂ were included in the Proposed Framework Convention on Climate Change:

section 4.2.1. started with the following: The developed country Parties shall adopt national policies and take corresponding measures on the limitation of anthropogenic emissions of greenhouse gases and the protection and enhancement of greenhouse sinks and reservoirs. These developed country policies and measures will have the effects of as a first step, stabilizing individually or jointly emissions of Carbon dioxide in general by the year 2000 at the 1990 level...

After February, the same section of the Framework Convention read, or at least the final version read as

(a) Each of these Parties shall adopt national policies and take corresponding measures on the mitigation of climate change, by limiting its anthropogenic emissions of greenhouse gases and protecting and enhancing its greenhouse gas sinks and reservoirs. These policies and measures will demonstrate that developed countries are taking the lead in modifying longer-term trends in anthropogenic emissions consistent with the objective of the Convention, recognizing that the return by the end of the present decade to earlier levels of anthropogenic emissions of carbon dioxide and other greenhouse gases not controlled by the Montreal Protocol would contribute to such modification, and taking into account the differences in these Parties' starting points and approaches, economic structures and resource bases, the need to maintain strong and sustainable economic growth, available technologies and other individual circumstances, as well as the need for equitable and appropriate contributions by each of these Parties to the global effort regarding that objective. These Parties may implement such policies and measures jointly with other Parties and may assist other Parties in contributing to the achievement of the objective of the Convention and, in particular, that of this sub-paragraph;

(b) In order to promote progress to this end, each of these Parties shall communicate, within six months of the entry into force of the Convention for it and periodically thereafter, and in accordance with Article 12, detailed information on its policies and measures referred to in sub-paragraph (a) above, as well as on its resulting projected anthropogenic emissions by sources and removals by sinks of greenhouse gases not controlled by the Montreal Protocol for the period referred to in sub-paragraph (a), with the aim of returning individually or jointly to their 1990 levels these anthropogenic emissions of carbon dioxide and other greenhouse gases not controlled by

the Montreal Protocol. This information will be reviewed by the Conference of the Parties, at its first session and periodically thereafter, in accordance with Article 7;

Generally, the reasons for moving from the strong targets was the United States insistence on a Convention with no specific time lines or targets. The United States position was characterized by one member of NGO community in the following way:

The United States — with 25% of global carbon dioxide emissions, remained the main culprit in watering down the text. ... the United States — urged by the coal lobby — ensured that the convention lacked any legally binding commitment to stabilize or reduce emissions of carbon dioxide and other greenhouse gases." (Dubash, N, and Hajost, S., Network, June, 1992, p. 11)

The climate change convention conveys an ambivalent message about the need to implement the precautionary principle, whereas the 1988 Conference and the 1991 parliamentary committee appear to convey a consistent message about the need to implement the precautionary principle. The atmosphere chapter of Agenda 21 appears to be in an intermediary position between ambivalence and consistency. These documents appear to reflect the different frames described in the introduction.

In the conference statement from 1988, and in the NGO statement of 1988, and in the Standing committee of 1991 the recommendations form a consistent whole which appears to reflect the deep concern by the participants for the serious environmental impacts from global warming and ozone depletion. In the Science Council document and in the Framework Convention, however there appears to be an uncomfortable [uneasy] alliance between environmental concern— "Concerned that human activities have been substantially increasing the atmospheric concentrations of greenhouse gases" and economic growth — "the Parties should co-operate to promote a supportive and open international economic system that would lead to sustainable economic growth." This ambivalence is also reflected in the potentially irreconcilable incompatibility between advocating adherence to the precautionary principle and the admonition to consider the impact on economic development that would be required to cease if the precautionary principle were to be adhered to.

Unfortunately, in all legal environmental documents, conventions and charters in contrast to recommendations coming from a gathering of concerned representatives, there appears to always be strong statements that appear to reflect genuine concern for addressing the urgency of the problem that are weakened by the "notwithstanding" clauses that are always present to be ferret out for appropriate self-interest. A comparison between the clear statements made at the international conference in Toronto in 1988, the "Changing Atmosphere" and the ambivalent statements from the Climate Change Convention reflect the contrast between a unifying statement of concern and a potentially irreconcilable conflict between interest and concern.

One underlying theme that pervades these documents, is that in one case there is willingness to accept the certainty or if not the certainty then a willingness to actually use the precautionary principle — not having to wait for

scientific certainty to act —, and in the other, there is a willingness to state the "uncertainty", and then state the precautionary principle without acting upon the precautionary principle. In the preamble of the Convention is a statement noting that there are many uncertainties in predictions of climate change, particularly with regard to the timing, magnitude and regional patterns thereof, " Subsequently in the text is the enunciation of the precautionary principle. If the precautionary principle were adhered to in the document itself, stronger actions to address the "threats of serious irreversible damage" would not have to wait for "scientific certainty." In the climate change issue, because of the scientific uncertainty of many of the outcomes of anthropogenic activity on climate, the precautionary principle which was enunciated in most of the documents from UNCED is particularly significant. Unfortunately, the precautionary principle has been weakened in the Climate Change Convention. It is less strong than the one in the Rio declaration.

In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation." (Principle 15, Rio Declaration)

3. "The Parties should take precautionary measures to anticipate, prevent or minimize the causes of climate change and mitigate its adverse effects. Where there are threats of serious or irreversible damage, lack of full scientific certainty should not be used as a reason for postponing such measures, taking into account that policies and measures to deal with climate change should be cost-effective so as to ensure global benefits at the lowest possible cost. To achieve this, such policies and measures should take into account different socio-economic contexts, be comprehensive, cover all relevant sources, sinks and reservoirs of greenhouse gases and adaptation, and comprise all economic sectors. Efforts to address climate change may be carried out co-operatively by interested Parties." (Climate Change Convention, 1992)

A comparison of these two enunciations of the precautionary principle indicate that the principle has been considerably weakened in the Climate Change Convention where it has moved from "shall" to "should", and where there is no mention made of the need to prevent environmental degradation. The Rio Declaration, though adopted by the global community by consensus, is not legally binding, whereas the Convention, is legally binding. However, in using the term "should" in a legally binding document the framers have perhaps given it no more status that it had in a non-legally binding document with "shall"

There are a number of constraints present in the Convention on Climate Change that were absent in the recommendations from the 1988 Convention. First of all, in 1988, there was a willingness to go beyond the "sovereign right to exploit resources" to perceive of the problem in global terms, and to opt, through international standards, for a form of international environmental governance. In the Climate change convention, the "sovereign

right to exploit resources" (albeit with the traditional trans-boundary proviso) is enshrined:

Recalling also that States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental and developmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction,

This appears to be somewhat qualified in the fourth principle of the Climate Change Convention by indicating that states have the sovereign right not "to exploit their own resources" but to "sustainable development."

The Parties have a right to, and should, promote sustainable development.

Another constraint, is the discouraging of strong unilateral environmental action. In the climate Change convention, not only has there been a reluctance to go beyond relatively established state environmental standards to high international standards, but also there has been an admonition to individual states which may seek high environmental standards that could be construed with interfering with international trade:

5. The Parties should co-operate to promote a supportive and open international economic system that would lead to sustainable economic growth and development in all Parties, particularly developing country Parties, thus enabling them better to address the problems of climate change. Measures taken to combat climate change, including unilateral ones, should not constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade.

A further example of the ambivalence between "concern and interest" appears to be present in the following paragraph of the Climate change convention. The first part of the paragraph appears to place a strong obligation on individual states to take measures "to mitigate" or "limit" anthropogenic emissions and "to protect and enhance sinks." Yet at the same time, advocate "strong and sustainable economic growth," at a time when sustainable development may not be sustained growth.

(a) Each of these Parties shall adopt national 2 policies and take corresponding measures on the mitigation of climate change, by limiting its anthropogenic emissions of greenhouse gases and protecting and enhancing its greenhouse gas sinks and reservoirs. These policies and measures will demonstrate that developed countries are taking the lead in modifying longer-term trends in anthropogenic emissions consistent with the objective of the Convention, recognizing that the return by the end of the present decade to earlier levels of anthropogenic emissions of carbon dioxide and other greenhouse gases not controlled by the Montreal Protocol would contribute to

such modification, and taking into account the differences in these Parties' starting points and approaches, economic structures and resource bases, the need to maintain strong and sustainable economic growth, available technologies and other individual circumstances, as well as the need for equitable and appropriate contributions by each of these Parties to the global effort regarding that objective. These Parties may implement such policies and measures jointly with other Parties and may assist other Parties in contributing to the achievement of the objective of the Convention and, in particular, that of this sub-paragraph;

In 1988 in the NGO recommendations there was a call for the need to provide development opportunities for the poor, and the NGOs linked need with the environmental threat. Although it is implied that the NGO recommendation refers primarily to "humanitarian" development rather than "increasing"—exploitative development (Delegate from Senegal, personal communication, New York Prep Com, 1992). The NGO recommendations does not explicitly make this distinction.

It is imperative for governments and the international community to sustain the agricultural and marine resource base and provide development opportunities for the poor in light of this growing environmental threat to global food security. (Conference statement, 1988)

The commitment to future generations is also indicative of this ambivalence: in the preamble there is a statement indicating that the signatories from the global community are "Determined to protect the climate system for present and future generations".

Yet, in principle 1. it is indicated that the commitment is not in the form of a legally binding mandate but of a discretionary principle — "the Parties should protect the climate system for the benefit of present and future generations of humankind, on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities."

The question that the segment of the global community, that is concerned about global warming, may be left with could be "will the implementation of the Climate change Convention reflect the high ground in the document — actions to address the global warming issue, or will the document be used to devise and justify a new set of pseudo "techno-eco fixes" — such as the cutting down of old growth trees and replacing them with fast growing tree plantations.

3.5. A THOROUGH AND TRANSPARENT REVIEW OF THE OECD GUIDELINES FOR MULTINATIONAL ENTERPRISES

The OECD Guidelines for Multinational Enterprises are up for review this year.

3.5.1. Given the enormous influence Trans National Corporations have

on investments, trade, environmental and social policies globally, we call upon the OECD to promote strict international performance standards for such companies. The Guidelines should be brought into coherence with the requirements of sustainable development as outlined in Agenda 21.

3.5.2. The review must be a cross-ministerial exercise and with regard to the OECD Secretariat, the Environment Directorate must be fully involved from the very beginning.

3.5.3. We call for a review process that is transparent and accessible for citizens' organizations, and in particular we call for consultation procedures of environmental, consumer, human rights, workers Organizations, both from inside the OECD as well as third countries.

3.5.4. The Guidelines should include confirmation that they also apply to the operations outside the OECD-countries of MNE's with their headquarters inside an OECD-country.

3.5.5. All OECD countries should set up formal contact points to facilitate and monitor the implementation of the guidelines.

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"When our outgo exceeds our income, our upkeep becomes our downfall."

() **THAT** in June 1993, I wrote a paper outlining principles that should inform policy pronouncements from the Business Council for Sustainable Development in request from Hugh Faulkner, President, Business Council

EXHIBIT

1993 REPORT TO BUSINESS COUNCIL FOR SUSTAINABLE
DEVELOPMENT
JULY 10 1993
DRAFT: FOR COMMENT ONLY

JOAN RUSSOW
Sessional Lecturer
Global Issues in Sustainability
Environmental Studies

INTRODUCTION;

Although there were systemic constraints which prevented UNCED from fully addressing the urgency of the global situation, there were many significant acknowledgements and principles which emerged from UNCED. (See Annex 1 for suggested "Systemic Constraints Preventing Change,"). The UNCED Documents, such as the non-legally binding Agenda 21 and Rio Declaration were agreed to by consensus by the member states of the United Nations. Although Agenda 21 and the Rio Declaration are not legally binding they hopefully will carry significant weight as "soft" law or as documents of moral suasion. Within these documents are a set of significant principles (see Annex).

In this report, I will examine principles from the UNCED documents, describe what some institutions are doing to implement these principles and make suggestions about where, I think, the Business Council could make a significant contribution.

1. COMPLYING WITH THE ROLE ENVISIONED FOR BUSINESS AND INDUSTRY IN ENVIRONMENTAL TRAINING

1.1. LIMITED YET SIGNIFICANT ROLE FOR INDUSTRY IN TRAINING IN ECOLOGICALLY SOUND EMPLOYMENT

In chapter 36 of Agenda 21, a very important distinction is made between promoting "education," promoting "public awareness," and promoting "training." It appears to be clear in Agenda 21 that non-governmental organizations, community-based groups, women's groups and aboriginal groups are called upon to assist educational authorities in reorienting education. The role of industry is ascertained to be limited to specific areas of business and industrial and training programs.

" Educational authorities, with appropriate assistance of non-governmental organizations, including women's and indigenous peoples' organizations should promote all kinds of adult education programmes for continuing education in environment and development, basing activities around elementary/secondary schools and local problems. The authorities and industry should encourage business, industrial and agricultural schools to include such topics in their curricula. The corporate sector could include sustainable development in their education and training programmes". (Agenda 21, Chapter 36.5 I

In the section of Agenda 21 that addresses the " promoting of public awareness " industry is included not as the dispenser of "education" but as the recipient of needed education.

" Countries and regional organizations should be encouraged, as appropriate, to provide public environmental and development information services for raising the awareness of all groups, the private sector and particularly decision makers." (Agenda 21, section 36.10 c)

In the section of Agenda 21, that addresses the "promoting of training, an important role for industry is envisioned.

"To strengthen national capacities,... in training, to enable governments, employers and workers to meet their environmental and development objectives and to facilitate the transfer and assimilation of new environmentally sound, socially acceptable and appropriate technology and know -how" (Agenda 21, 36.13 c)

The Business Council could make a significant contribution not by attempting to determine the philosophical underpinnings of Education, but in facilitating the transfer and assimilation of new environmentally sound, socially acceptable and appropriate technology and know -how within industry.

1.2. The Business council could promote "Principle-based education among its members"

Here is an outline of a course I will be giving for teachers in the Faculty of Education on Principle-based education

ED B 408 Contemporary Issues in Education: Principle-based education

In 'principle-based education,' principles related to preventing the destruction of the environment, the escalation of war, the violation of human rights, the disregard for social justice and the perpetuation of inequity have been extracted from internationally endorsed documents. These internationally endorsed principles become the foundation for an educational program.

Often in "education about issues," in the name of objectivity, a "both-sides" approach is advocated. Issues are presented as reflecting different values, and because of the difference, opposing views are considered to be legitimately introduced. In this "both-sides" approach often students are encouraged to explore positions which may be in contradistinction to principles that have been endorsed by the global community. The justification for this "both sides" approach is often the need to counteract indoctrination through "value-based" education .

A distinction, however, could be made between indoctrination and principle-based¹ education. In indoctrination the values that are presented are usually those that comprise the belief system of the educator, whereas in principle-based education the principles around which the lessons are developed are drawn not from an educator's particular belief system but from international law.

In principle-based education, the foundation of the course is based on principles derived from international agreements, such as the following:

"Universal Declaration of Human Rights," International Covenant of Social, Cultural Rights; Stockholm Conference on the Human Environment; UN Conservation of Natural Heritage, 1972; Convention on International trade in Endangered Species of Wild Fauna and flora (Washington), 1973; UN Charter of Economic Rights and duties of states 1974; OECD recommendations on the analysis of environmental consequences of significant projects 1974; the World Charter of Nature, 1982; Paris Convention for the prevention of Marine Pollution from Land-Based Sources Global Biodiversity Strategy 1986; Montreal protocol on substances that deplete the ozone layer 1987; Convention on the Rights of the Child 1989; Convention for the Control of trans-boundary movements of hazardous wastes Basel Convention 1989; the Caracas Declaration 1992; Biodiversity Convention, Climate Change Convention and Agenda 21, 1992)

1 "Principle-based education" was introduced in 1985 in Russow, J. "A Method of teaching Human Rights;" In this publication, the concept of "principle-based issue education" and the method of "Issue-principle analysis" were introduced. In this publication, "the violation of Human Rights" was extended to include the destruction of the environment, the escalation of war, the disregard for social justice and the perpetuation of inequity.

In this course, the nature, the implication, the educational processes, and the implementation of principle-based education will be explored in the following way:

- through description of the philosophical underpinnings of principle-based issues education
- through documentation of fundamental principles that emerged from UNCED and from other international conventions, declarations, conferences and agreements (Russow, J. "200 + principles from UNCED documents: Implications for Global Action." 1992)
- through explanation of an approach to principle-based education. In this approach, the instructor begins with principles, and then, with the students, examines issues that emerge from these principles. The following is an outline of a range of possible processes that never to be followed sequentially.
 - Location of principle within "International principle interactive diagram"
 - Statement of principle
 - exploration of principle

- emergence of issues within principle
- actual cases related to principle
- application of principle to actual cases
- adjustment of principle in response to cases
- hypothetical case analysis
- application of principle to hypothetical cases
- adjustment of principle in response to hypothetical cases
- clarification of principle
- determination of action to support principle
- engagement in action
- justification of action

After examining the issues emerging from the principles, the class expand, refine or extend the initial principle.

- through preparation of interactive international principle diagram. Through this international principle diagram students will be able assess which principles relate to issues have been globally endorsed, ratified, and enforced, which principles are globally endorsed and ratified but not enforced. Also through this diagram students will be able to begin to examine the problem of discrepancy between what is said and what is done. (or between rhetoric and action) (See Russow, J and White, D. (1992) Ideagraphic mode of Analysis and Synthesis of Issues: paper commissioned by the Greater Victoria School Board)
- through a series of class discussions and lesson plans based on 'issue-principle analysis," related to a wide range of local and global concerns. Thinking about the complexity and interdependence of issues will be encouraged, as well as the need to attempt to find tentative resolutions based on the full examination of the principles and issues.
- through experimentation with the following prepared materials
 - a document containing a selection of fundamental principles that emerged from UNCED and from other international conferences and agreements, and a series of class discussions and lesson plans based on 'issue-principle analysis," centred around these principles
 - an "international principles diagram" which will expand on the diagram "what is or is not protected?," a diagram that was an integral part of "a Method of Teaching Human Rights"(Russow, 1985). Through this international principle diagram students will be able assess which principles related to issues have been globally endorsed, ratified, and enforced, which principles are globally endorsed and ratified but not enforced. Also through this diagram students will be able to begin to examine the problem of discrepancy between what is said and what is done. (or between rhetoric and action)
 - a series of " 'Cradle to grave, ' or 'life-cycle' Approach Dissemination Diagrams" on various industries. This 'life-cycle/cradle to grave' approach was fully endorsed by the global community in the Agenda 21 document at UNCED.

Through these diagrams, students will be able to understand the complexity of the interconnections involved in the introduction of an industrial activity into an ecosystem, and thus the implications of engaging in a particular industrial activity. It is only when students can see the "cradle to grave" or "full life cycle" approach that they will be able to assess whether the introduction will or will not violate internationally endorsed and ratified principles. (See Uranium Cycle diagram)

- a series of interconnected computer graphic programs, which connect a series of complex charts of various issues. Through this program the students will be able to examine the complex interaction of global issues, and then through a graphic selection program access complex diagrams of individual issues. Through this series of interlocking diagrams, students will be able to appreciate the interdependence of issues, and the confluence of aspects within each issue.

1.2. The business Council could also be involved with developing course material for education of managers.

Here was a course proposal that I co-developed with a professor in Public Administration for a course for MBA course on the management and the environment. (See Annex 2 for outline of proposal)

2. ESTABLISHING ENVIRONMENTAL PROVISIONS WITHIN THE CHARTERS OF INCORPORATION OF TRANSNATIONALS ALONG WITH THE POWER TO REVOKE CHARTERS IF THE CONDITIONS OF THE CHARTER WERE NOT BEING MET

"to promote a 'culture of safety' in all countries ..." (Agenda 21, 7.60, Disasters)

Richard Grossman (1993), an environmental lawyer from the United States has traced the history of the granting of charters to corporations in the US. He indicates that

there was an early tradition in the United States for "citizens [making] certain that legislators issued charters, one at a time and for a limited number of years. They kept a tight hold on corporations by spelling out rules each business had to follow by holding business owners liable for harms or injuries and by revoking charters. (6)

The Business Council could initiate the introduction, in business charters, of environmental provisions which comply with principles from international documents, monitor the compliance with these principles and call for the revoking of charters if the provisions were not being complied with. The 1994 Conference on Public Interest and Environmental Law will be focusing on this issue.

3. ESTABLISHMENT OF CRITERIA FOR AND PREPARATION OF LIFE CYCLE ANALYSIS OF SUBSTANCES AND ACTIVITIES

One of the principles enunciated in Agenda 21 was that there should be life cycle analysis. If this principle is to be acted upon, serious consideration should be given to a full analysis of the environmental impacts of each stage of the processing and production of substances.

Governments, in collaboration with industry and appropriate international organizations, should develop procedures for monitoring the application of the cradle to grave approach, including environmental audits (20.20 e Hazardous wastes)

"[promote efficient use of materials and resources, taking into account all aspects related to life cycles of products.] 9.15 e

"risk reduction involves broad-based approaches to reducing the risks of toxic chemicals, taking into account the entire life cycle of the chemicals. (19.45, Toxic chemicals)

" Governments and international organizations, together with the private sector, should develop criteria and methodologies for the assessment of environmental impacts and resource requirements throughout the full life cycle of products and processes." (Agenda 21, 4.20)

In the past few years many industries have adopted environmental policies. In some cases, these policies may include the full operation— life-cycle — of the industry and in other cases these policies are marginal to the full life cycle of the industry. A significant role for the Business Council could be to set up an independent arm's length body to carry out a full life cycle analysis of products, activities, substances etc.. This life cycle could involve a full assessment of the environmental impact of each stage and of "all aspects" of production.

4. ENCOURAGING PRINCIPLE-BASED DECISION MAKING RATHER THAN ROUNDTABLE INTEREST-BASED DECISION MAKING

One of the outcomes of the Brundtland report in Canada was that Canada institutionalized the multi-sectoral interest-based roundtable to make decisions about "sustainable development" or "sustainability— economic, social and environmental." It appears that this approach has only become prevalent in Canada and that Canada has been advocating the adoption this approach in the international sphere of decision making.

Although a multi-sectoral approach appears to be all-inclusive, its inclusivity depends on the nature of the sectors, on the selection process to determine the nature of the sectors, on who determines the nature of the sectors, on who is selected to represent the sectors, on the method of selecting the individuals representing the sectors, and on whether the sectors are interest-based or conceptually based

... Underlining an interest based multi-sectoral approach is the presumption that the best way to make decisions is through negotiated outcomes rather than reasoned outcomes (distinction made

in Science Council publication, 1984, "Regulating the regulators") with each member functioning on the basis of self-interest. This model of decision making — in an arena of competing interests — often leads to the compromising of principles and possibly to the lowest common denominator. This model of decision making could also be described as the "manufacturing of consensus model" where each sector for practical and participatory purposes eliminates the extreme positions — the positions which could be more principled and could lead to a better overall decision.

This approach is based on the premise that "balanced" decisions will emerge through consensus within an arena of competing interests. One outcome of this approach is that this arena of competing interests could be seen to be in violation of "conflict of interest" legislation. For years those who have been seen to have a conflict of interest have been excluded from the decisions making process [from panels, juries, boards. The multi-sectoral interest-based approach appears to almost glorify conflict of interest.

In a conceptually based or principle-based decision making approach the members are not participating because they have a particular vested interest but because they wish to arrive at an overall decision based on the highest tenable principles.

5. ADVOCATING THE NEED FOR PRECAUTIONARY, NOT ONLY MITIGATIVE ENVIRONMENTAL IMPACT ASSESSMENT REVIEW

A precautionary review is one that attempts to prevent environmental degradation and cultural inappropriateness of a project by examining the potential environmental and cultural impacts of a project to determine whether the project should be allowed to proceed; the outcome of a precautionary review could be a decision to prevent the project from proceeding. A mitigative review, however, is one that attempts to lessen the environmental degradation and cultural inappropriateness of a project which has already been permitted to proceed; the outcome of a mitigative review would not be a decision to prevent the project from proceeding.

Throughout Agenda 21 there is reference to environmental impact assessment; in some cases it is not clear whether preventive or mitigative environmental impact assessment is envisioned.

Ensure that relevant decisions are preceded by environmental impact assessments and also take into account the costs of any ecological consequences (7.42 Settlement)

" Develop improve and apply environmental impact assessments to foster sustainable industrial development (9.15 b. Atmosphere)

" Introduce appropriate environmental impact assessment procedures for proposed projects likely to have significant impacts upon biological diversity... and encourage the

assessment of the impacts of relevant policies and programmes on biological diversity” (15.5 k Biological diversity)

" Development of public education programmes directed at decision makers and the general public to encourage awareness and understanding of the relative benefits and risks of modern biotechnology, according to ethical and cultural considerations." (16.16 b, Biotechnology)

In the following sections, it is clear that a precautionary environmental impact assessment is envisioned:

" a precautionary and anticipatory rather than a reactive approach is necessary to prevent the degradation of the marine environment. This requires inter alia, the adoption of precautionary measures, environmental impact assessments, clean production techniques, recycling, waste audits and minimization, construction and/or improvements of sewage treatment facilities, quality management criteria for the proper handling of hazardous substances, and a comprehensive approach to damaging impacts from air, land and water” (17.22. Marine)

“States, in accordance with the provisions of the United Nations convention on the Law of the Sea on protection and preservation of the marine environment, commit themselves, in accordance with their policies, priorities and resources, to prevent, reduce and control degradation of the marine environmental so as to maintain and improve its life-support and productive capacities. ” (17.23 Marine)

To this end, it is necessary to

" apply preventive, precautionary and anticipatory approaches so as to avoid degradation of the main environment, as well as to reduce the risk of long-term or irreversible adverse effects upon it;" (17.23 a Marine)

" Ensure prior assessment of activities that may have significant adverse impacts upon the marine environment”; (17.23 b Marine)

' In order to promote and strengthen international cooperation in the management, including control and monitoring, of trans-boundary movements of hazardous wastes, a precautionary approach should be applied.” (20.33 Hazardous wastes)

"States, in cooperation with relevant international organizations, where appropriate, should ...b) encourage the London Dumping convention to expedite work to complete studies on replacing

the current voluntary moratorium on disposal of low-level radioactive wastes at sea by a ban, taking into account the precautionary approach, with a view to taking a well informed and time decision on the issue” (22.5 Radioactive wastes)

" Governments should take the lead in establishing and strengthening, as appropriate, national procedures for environmental impact assessment, taking into account the cradle-to-grave approach to the management of hazardous wastes, in order to identify options for minimizing the generation of hazardous wastes, through safer handling, storage, disposal and destruction” (20.20 e Hazardous wastes)

“ Governments, according to their capacities and available resources and with the cooperation of the United Nations and other relevant organizations, as appropriate, should promote and support the integration and operation, at the regional and local levels as appropriate, of institutional and interdisciplinary groups that collaborate, according to their capabilities, in activities oriented towards strengthening risk assessment, risk management and risk reduction with respect to hazardous wastes” (20.25 a Hazardous wastes)

See Annex 3 for An example government's failure to make the distinction between preventive and mitigative environmental assessment reviews.

7. Advocating the polluter pay principle even when it might require retroactive compensation

In both the hazardous waste section and the solid waste section of Agenda 21 the polluter pay principle was advanced

“ Governments should include in national planning and legislation an integrated approach to environmental protection, driven by prevention and source reduction criteria, taking into account the 'polluter pays' principle, and adopt programmes for hazardous waste reduction, including targets and adequate environmental control” (20.20 b Hazardous Wastes)

" Governments should ...(b) apply the 'polluter pays' principle, where appropriate, by setting waste management charges at rates that reflect the costs of providing the service and ensure that those who generate the wastes pay the full cost of disposal in an environmentally safe way” (21.42 b Solid wastes)

The business Council could advocate that when it can be shown that through non-compliance with statutes, and acts industry has caused environmental harm, any request for compensation by industry should take into consideration past environmental costs. For example, section 60 of the Forest Act of B.C. provides for the suspension of tree farm licensees if the licence holder, through non-compliance with the Act, has caused harm to the natural environment. Throughout B.C. environmentalists have been documenting

and submitting evidence of non-compliance to the Forest Act. The Fisheries Department has documented evidence of violation by the forest industry of section 33 of the Fisheries Act. Yet, this section of the Act has never been enforced. The cost of the environmental harm that has arisen from non-compliance with the act should be taken into consideration when the forest industry requests compensations for areas withdrawn from their tree farm licence.

8. Questioning the exclusion of atomic wastes from "hazardous" wastes or dangerous material categorizations

In Agenda 21, atomic wastes are not included in the section of Hazardous wastes. For years atomic wastes have been excluded from international documents addressing the production, transportation and disposal of hazardous wastes. This special status has very serious implications for example, in the recent ruling of the Court, re: the calling for an environmental assessment review of Nuclear armed and nuclear powered vessels, the judge was able to state that an order in council bypassing an environmental review of these visits under the Environmental Assessment Review Process, was justified because it did not violate any existing statute such as the Canadian Environment Protection Act (which does not include hazardous wastes under hazardous wastes section). (See Annex 4, for a comment on the role of the IAEA as both a promoter and regulator of Atomic Energy)

Note also that atomic

Perhaps the Business Council of Sustainable Development could suggest that atomic wastes be included in hazardous wastes [along with the suggestion that nuclear energy should be phased out... I'm sure that would be a popular suggestion in France — I have heard that at least 6 of the civil reactors in France have cracks in them -- again hear say, contact John Carlier, vice president of the "Collectif Environ, a Dimension, Inter." Paris for details if you are interested, in "names and places"]

9. Advocating the true assessment of Environmental costs

In Agenda 21 there was several statements indicating the need to assess the true environmental costs.

Adopt policies that minimize if not altogether avoid environmental damage, whenever possible (7.42 a Settlement) social costs of environmental

[Continue research and other work aimed at developing methodologies and criteria for incorporating the social costs of the environmental and other impacts caused by industrial production, as well as the treatment and disposal of wastes generated, into the prices of the final products;] (9.15 d)

" a lack of awareness of the environmental costs incurred by sectoral and macroeconomic policies and hence their threat to sustainability (14.7 a. agriculture)

(It is necessary to (17.5 Marine) " promote the development and application of methods, such as national resources and

environmental accounting, that reflect changes in value resulting from uses of coastal and marine areas, including pollution, marine erosion, loss of resources and habitat destruction

Governments, in collaboration with industry and appropriate international organizations, should develop procedures for monitoring the application of the cradle to grave approach, including environmental audits” (20.20 e Hazardous wastes)

It also appears that the need to assess the true environmental costs is also a preoccupation of the Auditor General of Canada [misplaced citation]

The Business Council could seriously consider advocating that its members be obliged to take into consideration and make available to the public the full environmental costs of the production activities and substances

10. ADDRESSING THE PROBLEM OF OVERCONSUMPTION; DILEMMA CAN BUSINESS/INDUSTRY STILL FUNCTION IN "ECO-EFFICIENCY" (HARRIS, TERM COINED BY BCSD) AND DISCOURAGE "OVERCONSUMPTION"

Problem of the relationship between production and consumption is currently being addressed within the OECD. The Environment representative of OECD also requested information related to over-consumption, and to alternative ways of reducing consumption.

In Agenda 21 there was several references criticizing current mode of consumption, unsustainable consumption or over-consumption [even though the US desperately tried, and in some cases succeeded in eliminating reference to "consumption"]. In one exchange in Rio the US Reilly indicated that over-consumption in the US contributes to needed development in the South. I have both the hard copy version of pre-Rio Agenda 21 with the bracketed sections — most of them at the instigation of the US- and the computer version of the Rio version. It is interesting to compare what was still included in brackets in New York and what was eliminated in Rio. The following statements are ones that were altered or eliminated in Rio:

[one of the most serious problems now facing the planet is that associated with historical patterns of unsustainable consumption and production, leading to environmental degradation, aggravation of poverty and imbalances in the development of countries.]” (4.3 Changing consumption patterns)

["Health and development are intimately interconnected. both insufficient development leading to poverty and inappropriate development resulting in over-consumption, coupled with an expanding world population, can result in severe environmental health problems in both developing and developed nations.](6.1 Health)

[While poverty largely results in certain kinds of environmental stress one of the most serious problems now facing the planet is that associated with historical patterns of unsustainable

consumption and production, leading to environmental degradation, aggravation of poverty and imbalances in the development of countries] (4.3.)

[Special attention should be paid to the demand for natural resources generated by unsustainable consumption and to the efficient use of those resources consistent with the goal of minimizing depletion and reduction pollution. Although consumption patterns are very high in certain parts of the world, the basic consumer needs of a large section of humanity are not being met. This inequitable distribution of income and wealth results in excessive demands and unsustainable lifestyles among the richer segments, which place immense stress on the environment. The poorer segments, meanwhile, are unable to meet food, health care, shelter and educational needs. Change consumption patterns will require a multi-pronged strategy focusing on demand, meeting the basic needs of the poor, and reduction wastage and the use of finite resources in the production process.] 4.5 note: section put in brackets by U.S. " States should pay special attention to efficient use of natural resources consistent with the goal of minimizing depletion and reducing pollution. This would help countries to meet their peoples food health care shelter and educational needs. The poor suffer from environmental degradation that can deepen the problem of development in particular as they struggle with agricultural problems and problems of health, hygiene which are endemic to the poor. At time environmental degradation caused by the consumptive patterns of others can intensify the environmental problem the poor face. Poverty is closely linked to environmental stress." (U.S Suggestion for alternative to 4.5)

The following are statements that were retained in the final Rio version:

- **Increase in global population**

"The growth of world population and production combined with unsustainable consumption patterns places increasingly severe stress on the life-supporting capacities of our planet. .."(5.2, Demographic dynamics)

- **Extent of air, water and land pollution**

" In many locations around the world the general environment (air, water, and land), workplaces and even individual dwellings are so badly polluted that the health of hundreds of millions of people is adversely affected. This is, inter alia, due to past and present developments in consumption and production patterns and lifestyles, in energy production and use, in industry, in transportation etc. with little or no regard for environmental protection. " (6.40, Protection of health)

- **Nature of inequity between "developed" and "undeveloped" states**

" In industrialized countries, the consumption patterns of cities are severely stressing the global ecosystem, while settlements in the developing world need more raw material, energy, and economic development simply to overcome basic economic and social problems." (7.1. Settlement)

- **Extent of environmental damage from waste accumulation**

" The environment is threatened in all its biotic and abiotic components: animals, plants, microbes and ecosystems comprising biological diversity; water, soil and air, which form the physical components of habitats and ecosystem; and all the interactions between the components of biodiversity and their sustaining habitats and ecosystem. With the continued increase in the use of chemicals, energy and non-renewable resources by expanding global population, associated environmental problems will also increase. Despite increasing efforts to prevent waste accumulation and to promote recycling, the amount of environmental damage caused by over-consumption, the quantities of waste generated and the degree of unsustainable land use appear likely to continue growing." (16.22 Biotechnology)

- **Unprecedented Increase in environmentally persistent wastes**

" Unsustainable patterns of production and consumption are increasing the quantities and variety of environmentally persistent wastes at unprecedented rates. The trend could significantly increase the quantities of wastes produced by the end of the century and increase quantities four to fivefold by the year 2025." (21.7 Solid wastes)

- **Consumptive patterns**

"Achieving the goals of environmental quality and sustainable development will require efficiency in production and changes in consumption patterns in order to emphasize optimization of resource use and minimization of waste. In many instances, this will require reorientation of existing production and consumption patterns that have developed in industrial societies and are in turn emulated in much of the world." (4.15 Changing consumption patterns)

"Measures to be undertaken at the international level for the protection and enhancement of the environment must take fully into account the current imbalances in the global patterns of consumption and production" (4.4 Changing consumption patterns)

" Developing countries should seek to achieve sustainable consumption patterns in their development process, guaranteeing the provision of basic needs for the poor, while avoiding those unsustainable patterns, particularly in industrialized countries, generally recognized as unduly

hazardous to the environment, inefficient and wasteful in their development processes. This requires enhanced technological and other assistance from industrialized countries..." (4.8 c Changing consumption patterns)

" to promote patterns of consumption and production that reduce environmental stress and will meet the basic needs of humanity "(4.7.a Changing Consumption Patterns)

" to develop a better understanding of the role of consumption and how to bring about more sustainable consumption patterns."(4.7.b Changing Consumption Patterns)

It would appear that the consumption and development link has to be also examined in relation to "north" development, such as cash crops in "south"

The Business Council could give valuable assistance to OECD in their deliberations about "over-consumption"

11. CALLING FOR THE BURDEN OF PROOF FROM THOSE THE OPPONENTS OF AN INTERVENTION HAVING TO DEMONSTRATE HARM TO THE PROPONENTS OF THE INTERVENTION HAVING TO DEMONSTRATE SAFETY

A version of the shifting of the burden of proof was delineated in the World Charter of Nature. UN Resolution 37/7 (1982) endorsed by all UN states except the US.

Section 11 b Activities which are likely to pose a significant risk to nature shall be preceded by an exhaustive examination; their proponents shall demonstrate that expected benefits outweigh potential damage to nature and where potential adverse effects are not fully understood, the activities should not proceed.

12. PROMOTING ENVIRONMENTAL PROVISIONS IN TRADE AGREEMENTS AND DISMISSING AS INAPPROPRIATE THE EXCLUSION OF ATOMIC WASTES

•Increased generation of nuclear wastes

" Annually about 200,000 m³ of low-level and intermediate-level waste and 10,000 m³ of high-level waste (as well as spent nuclear fuel destined for final disposal) is generated worldwide from nuclear power production. These volumes are increasing as more nuclear power units are taken into operation, nuclear facilities are decommissioned and the use of radionuclides increases. The high-level waste contains about 99 percent of the radionuclides and thus represents the largest radiological risk". (22.1. Radioactive wastes)

1. (GATT Working group on Export of Domestically prohibited goods and other Hazardous substances report by the Chairman of the working Group July 2 1991)

GATT

(GATT Working group on Export of Domestically prohibited goods and other Hazardous substances report by the Chairman of the working Group (restricted) July 2 1991)

[Note that the only country which did not agree to this document] was the U.S. The U.S. submitted a "communication" proposing the following changes" ; the U.S. changes will be noted in Italics.]

Report by Chairman of the working group on Export of Domestically prohibited goods and other hazardous substances [note linking with " non-transference of goods that are harmful to the environment or to human health] principle in Rio Declaration

At present, although the attached text has been generally agreed by delegations, the country [US] making the reservation remains unable to accept it without amendments.

Decision on Products Banned or Severely Restricted in the Domestic Market

Preamble

Desiring to further the objectives and principles of the GATT
Having regard to the provisions of the GATT as they apply to the products covered by this Decision;

Desiring further to encourage the development of international rules on trade in products that are banned or severely restricted in the domestic market of a contracting party, as well as hazardous wastes, on the grounds that they are dangerous to human, animal or plant life or health, or the environment;

Desiring further to ensure that such rules do not create unnecessary obstacles to international trade nor duplicate the work of other international organizations;

Recognizing the need for complementary action in GATT regarding trade in products covered by this Decision, while taking into account the important contribution that is being made by international organizations which have competence in the areas concerned.

Noting the importance of notification, information exchange systems, prior informed consent procedures and certification systems developed by other international organizations in exchanging information and in assisting contracting parties in deciding whether to permit importation of the products concerned.

Recognizing that every contracting party must assume full responsibility for decisions regarding its own imports, but that the co-operation of exporting contracting parties may be necessary in cases where the importing contracting party's control procedures are not yet fully developed;

Bearing in mind that no contracting party should be prevented from taking measures to ensure the quality of its export products, subject to the requirement that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between contracting parties where the same conditions prevail, or a disguised restriction on international trade;

Mindful of the need for governments to pay the fullest attention possible to the protection of the environment;

Hereby decide as follows:

Article 1

Coverage

1.1. for the purpose of this Decision

(i) A banned product means any product that has been:

(a) prohibited from sale or use, including those cases in which prohibition results from expiration of the approved period of use;

or

(b) refused approval for sale or use; or

c) withdrawn from sale or use

(ii) A severely restricted product means:

a product for which virtually all sales and /or uses have been banned but for which certain specific sales and/or uses remain authorized.

With regard to pharmaceuticals, this includes only those

(a) which are approved and subsequently subjected to restrictions that excluded their use in a substantial proportion of potential target population of patients having regard to its safety, and /or

(b) which contain a substance whose dangerous properties require extraordinarily narrow content limitations.

1.2. This Decision applies to products, substances and wastes (hereinafter referred to as " the products concerned") which are determined by a contracting party:

(i) to present serious and direct danger to human, animal or plant life or health or the environment in its territory, and which for that reason are banned or severely restricted in the domestic market of that contracting party by governmental regulatory action, except:

(a) fissionable and radioactive materials; and

(b) arms, ammunition and implements of war supplied directly or indirectly to a military establishment

Atomic wastes

11 CRITICISING LIMITED VIEW OF APPLICATION OR RELEVANCE OF AGENDA 21 AND OTHER UNCED DOCUMENTS

" It was clear that GATT Contracting Parties welcomed warmly the Rio Declaration and the progress that has been made by the UNCED in fostering further multilateral cooperation, and were determined that GATT should play its full part in ensuring that policies in the fields of trade, the environment and sustainable development are compatible and mutually reinforcing. (Agenda-21 follow-up Activities in GATT at its meeting on 14-25 June 1993)

Although GATT claims to "welcome" the Rio Declaration there are two principles in the Declaration which could have significant impact of trade which may not be that welcoming to the business community:

Precautionary Principle

" Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation." (Rio Declaration, 1992).

Not-transferring-environmentally-harmful-activities or substances principle

States should effectively cooperate to discourage or prevent the relocation and transfer to other states of any activities and substances that cause severe environmental degradation or are found to be harmful to human health (Principle 14, Rio Declaration)

The Business Council for Sustainable Development could assist GATT in understanding the implications of the two above principle.

Also in this document (Agenda-21 follow-up Activities in GATT at its meeting on 14-25 June 1993), it is indicated that the follow-up will consist primarily in addressing those matters raised in chapter 2 of Agenda 21 (trade liberalization— 2, intro, A; trade and environment supportive — 2, B; propositions and principles in 2.21, 2.22 (a),(b),(h) and (k). ... In November 1993, the Council of Representatives will hold a meeting devoted to this ... UNCED follow-up.

I have enclosed a list of almost 200 principles, not from Chapter 2, which are related to trade and environment. Perhaps the Business Council for Sustainable Development could bring to the attention of GATT before its November meeting, that there are many significant principles beyond chapter 2 of Agenda 21.

11. ASSESSING WHETHER PRACTICES THAT HAVE BEEN CRITICIZED BY ECOLOGISTS AND LAUDED BY RESOURCE INDUSTRIES ARE IN FACT ENVIRONMENTALLY AND ECONOMICALLY SUSTAINABLE

5.1. "Undertaking to analyze whether the current practices of logging are in fact environmentally and economically sustainable, and if they are not too seriously look into alternatives." (Business Council of Sustainable Development)

OECD

Contradictions "sustainable economies" "sustainable growth and employment" "sustainable development" (not used "sustainable environment").

Council of the OECD met on 2 and 3 June 1993 at Ministerial level... and the following communique was released:

"Ministers are committed to a concerted strategy for growth and employment. It consists of the following planks, described in detail in this communique

- ... monetary and fiscal policies will exploit the opportunities that may exist...without jeopardizing the objectives of price stability and medium term budget consolidation;
- ..structural reform policies, including labour market policies , will aim for vigorous, competitive and efficient development of OECD economies, exploiting opportunities offered by technological progress and open international competition;
- ... intensive efforts will be made to continue to liberalize trade, to abide and further strengthen multilateral disciplines and as the first priority to achieve a substantial , comprehensive and balanced outcome of the Uruguay Round by the end of the year. which would be a very powerful contributor to bolstering confidence, growth and employment both in OECD Members and elsewhere.

Promoting sustainable growth and employment: the major challenge for the 1990s

YET

In the same communique the environmental policy is described as the following:

19. Genuinely sustainable development over the long term requires worldwide co-operation. OECD member countries intend, even in this period of economic downturn, to continue to play a leading role in the field of sustainable development, including in their commitment to follow up to the outcome of the United Nations Conference on Environment and Development (UNCED). They commit their governments to take effective action aimed at:

- achieving, at the national, regional and international levels, more effective integration and compatibility of environmental and all other relevant policies.

In this regard they welcome the overall progress made by the OECD in this field, including the programme of environmental performance reviews. Ministers ask the OECD to pursue its follow-up to UNCED, and in this regard, to consider the **feasibility of analyzing the relation between consumption and production patterns and sustainable development**; [this phrase was highlighted by the Environmental representative (personal communication, June 28). the representative also indicated that OECD would be focusing on "over-consumption", and requested information]

- More effective use of the variety of available economic instruments, in combination with regulatory and voluntary measures taking into account of national circumstances, to address global, regional and national environmental problems -- with the goals of cost-effective, viable results, including reduction of greenhouse gas emissions, through national and international agreed actions;
- promoting environmental protection through various forms of international co-operation, including relevant international legal instruments; and
- promoting national and international efforts in the development and diffusion of technologies aimed at protecting and restoring the environment.

Annex 1; systemic Constraints preventing change

The following "systemic constraints," may have prevented the global community at UNCED from addressing the urgency:

- the continued willingness to enshrine the sovereign right to exploit natural resources.
- the unwillingness to move beyond sovereign barriers to international environmental governance
- the failure to recognize that the situation is so urgent that international environmental governance ,standards and regulations have to be necessary
- the refusal of states to accept the rule of international law
- the reluctance to establish stringent international environmental standards and technological regulations
- the unwillingness of states to allow for a stringent monitoring program
- the reluctance to recognize that the urgency of the current global situation requires the summoning up of the international political will to move from "should" to "shall"
- the obsession with consensus which may lead to the lowest common denominator rather than striving through collaboration for the highest tenable principles
- the decision making process being conceived as an arena of competing interests
- the designation of failure made by those states, institutions and individuals who do not even live up to the moderate principles established by consensus
- the reluctance to redefine what constitutes development in an ecologically sound way
- the unwillingness to redefine development in terms of ecologically sound practices; such as
 - (i) the degree to which a state has been able to integrate with the ecosystem through ecological sound practices causing its human activity to have little deleterious impact on the environment
 - ii) The degree to which there is an equitable distribution of resources
 - iii) the extent to which a state refrains from contributing to global ecological or military harm

iv) The degree of condemnation, and avoidance of over-consumption

v) the ability to minimize the human impact on the environment through stabilization of population

vi) the degree of compliance with the enshrining of positive rights (right to ecologically sound work, to food, to shelter as well as with negative rights)

(vii) the ability to live within the carrying capacity of the ecosystem; in which case the US could possibly be the least developed

- the stereotyping of countries into categories of "developed, underdeveloped, and developing" rather than designating behaviours and attitudes as being "developed, underdeveloped and developing";
- the simplistic distinction between North (environment) and South (development)
- the presumption that technological transfer should always pass from "North" to "South"
- the revelation of a problem and the presentation of a solution which could have more disastrous or equally disastrous consequences as the problem (nuclear)
- the continued justification and rationalization about the use of ecologically unsound practices in the guise of technological fixes
- the condoning of technological fixes suggested as solutions:
- the continued condoning of research and development into rectifying the harm done through ecologically unsound practices rather than discontinuing ecologically unsound practices (the Green Revolution syndrome)
 - the presence and use of international short term economic provisions which justify the abandoning by sovereign states of high ecological standards. (present in GATT regulations, and evident in Chapter 2 of Agenda 21 "Social and Economic Dimensions.")
- the reluctance of GATT to consider the applicability of any chapters other than Chapter 2
- the persistence of the situation whereby the power to prevent environmental harm or to preserve environmental heritage resides in those whose interest it is to benefit economically from the environment. and that in whose interest it is to benefit economically from the environment tend to ignore ecologically sound practices
- the persistence of the co-option, often through government funding, of groups, whose role should be to act as the conscience of the official decision makers
- the persistence of the situation where those who should be speaking out are constrained because of professional commitments, and where those who are willing to speak out are not heard because the press fails to report their statements
- the sanctioned use of "words of delusion" that either delude the public into thinking that what is unsafe, is safe, or delude the public into thinking that there is the political will to eliminate unsafe practices.
- the sanctioned use of loophole vague terms like "as appropriate" or of loophole provisions like *without prejudice to international trade*

principles. For example in the following section on consumption They should therefore review the purchasing policies of their agencies and departments so that they may improve, where possible, the environmental content of government procurement policies, *without prejudice to international trade principles*. (4.23, Consumption)

- the sanctioned use of the "notwithstanding clause" device. This device allows for the indulging in strong statements about deep concern and the need for significant change and then including a notwithstanding clause that negates the strong statement.

" Implement, as a matter of urgency, *in accordance with country-specific conditions and legal systems*, measures to ensure that women and men have the same right to decide freely and responsibly on the number and spacing of their children and have access to the information, education and means, as appropriate, to enable them to exercise this right *in keeping with their freedom, dignity and personally held values, taking into account ethical and cultural considerations*.

(3..8 j Combating Poverty)

- the sanctioned use of oxymorons like "the environmentally sound management of hazardous wastes" (20.22 Hazardous wastes) or "the promoting the safe and environmentally sound management of radioactive wastes" (Chapter 22 Radioactive wastes)

- the sanctioned use of term like "harmonizing" which usually leads not the highest tenable principles but to the lowest common denominator

- the reluctance to deal with essential issues such as the link between "Nuclear civil reactors and Nuclear Arms Industry" or the Link between Poverty and lack of universal " secondary" as well as "primary" health care system (3.6. e Combating Poverty)

- the reluctance to address the environmental degradation caused by military operations

("Systemic Constraints preventing change," Russow J. & White, D. in progress)

1. 3. Some fundamental principles that would probably be agreed to by Environmentalists as being principles that should form the basis of Environmental education:

- The ecosystem has inherent rights in itself beyond human purpose (Charter of Nature, 1982)

- the realization that the traditional consumptive patterns of development have contributed to poverty, to the inequitable distribution of resources, to overconsumption, to the violation of human rights and to the potentially irreversible degradation of the ecosystem

- the realization that the threats to the biosphere which sustains all life on this planet have increased in rate, magnitude and scale that inaction is negligent. The international community has enough information about the pending state of ecological irreversibility that it must act immediately.

- The ecosystem of which we are a part shall be protected and preserved; ecologically unsound patterns of development shall be condemned and the inequity of development must be addressed and rectified. The mandate to limit growth must prevail
- The precautionary principles shall be extended to require those who wish to intervene in the ecological commons to have to justify their intervention and demonstrate the safety of their intervention. The full environmental costs shall be considered in any proposed development project that may cause ecological harm
- Development activities that benefit the few while compromising the biological inheritance, and quality of life of the many must be condemned as being inherently and ethically wrong
- Most of the third world debt was accumulated as a result of development that was inequitable and detrimental to the ecosystem; remedial and restorative measures shall be undertaken to address the inequity and ecological harm. The third world debt shall be forgiven and redirected for the purpose of addressing inequity and of restoring the ecosystem. While all are responsible for improving environmental quality, those who disproportionately consume the majority of the Earth's resources and pollute the natural environment shall bear the bulk of the costs of ecological restoration and protection.
- States shall not have the sovereign right to exploit resources within their territories. All actions within states must comply with high international ecological standards
- International ecological standards shall be in place so that no short term individual pursuit of self-interest, or short sighted national or international regulations (GATT) could jeopardize the environment. The purpose of these standards is to address the individual and multinational pursuit of self-interest and to prevent the consumption and exploitative use of the environment and not to penalize local communities that wish to function in an interdependent way with the ecosystem. The economic development necessary to eliminate poverty shall not be a mandate to abuse the environment for either short-term gain or economic growth.
- The international community shall condemn and shall disallow the exporting of products deemed to be unsafe in a state where there are advanced testing procedures to other states with less advanced testing procedures. No products or activities shall be

transferred to other states if the transfer could cause harm to health or to the ecosystem.

- The continued build-up of the military complex must cease, and the use of military forces as a means of resolving conflict must be rejected. A radical reduction of the military budgets of the world must occur, and the funds released for ecological and humanitarian purposes.

- The decision making process shall be clearly defined, transparent, accessible and equitable. Criteria in decision making shall be revealed, and the public and affected communities should be involved at the time of formulation of the terms of reference and throughout the process.

Solutions should strive for the highest tenable principles not the lowest common denominator. (Issue under discussion should be reflected upon for a prolonged period of time in order to achieve an optimum solution, rather than simply a compromise)

- Behaviour and attitudes rather than countries should be categorized as "developed, " "developing" or "underdeveloped." The contribution of those people who have been "truly developed" in that they have succeeded in living in interdependence with the ecosystem shall be recognized and their advice sought"

(principles submitted to Canadian Environmental Educators for consideration. These principle were derived from Russow, "Composite Charter" July, 1992, from statements and contributions by NGO to the Earth Charter, at the Global forum, 1992)

Annex 2 Draft proposal for MBA course in Environment (pre-UNCED)

INTRODUCTION

Increasing awareness of the urgency of the global environmental situation has generated a frantic search for solutions. There have been pressures on governments, institutions, individuals and industries to constrain economic growth and to change unsustainable patterns of consumption and resource use. These pressures are multi-directional, both externally and internally derived. The response to these pressures has manifested itself in a) compliance response (an abundance of newly framed environmental laws and regulations at the international, national and local government levels), b) a self-regulatory response ("fox guarding the coop") (a proliferation of proclamations, declarations, charters, codes devised by industries to convey the impression that not external but only internal regulations are required); c) : technological fix

response a plethora of new products and processes (reflecting a fundamental belief in the power of technology to solve all) that will rectify the harm created by ecologically unsound products or processes thus permitting the continuation of those unsound products and processes. d) "MEA culpa syndrome" response. (public confessions by industry about how they failed to consider the environment in the past; confessions accompanied by resolutions to be ecologically prudent) ...(environmental accountability)

As the multi-directional pressures mount there will be a concerted effort to calculate the full environmental costs of not giving primacy to the environment in the decision making process. The possibility of income-generating ecologically sound activity being more economically viable than some traditional but ecologically unsound resource extraction activities must also be considered.

In the face of multi-directional pressures to act in an ecologically sound way and of multiple responses proposed as solutions, what might the role of the manager be? In the past the managers' role has often been reactive rather than proactive with the managers' actions demonstrating the clarity of hindsight rather than the wisdom of foresight. In the following outline, a series of 12 or so seminars on the nature of the multi-directional pressures, on the various approaches to address these pressures, and on the "systemic constraints" are proposed.

Bibliography:

Keller, K. "Calculating the costs of sustainability-- will Accountants find a way out of the woods," Tomorrow. Vol. 2, No. 1, 1992, pp. 60-62. Gray, R. The Greening of Accountancy. London; Chartered Association of Certified Accountants. (date?). "Environmental Stewardship at Shell," Canadian Business Review. Vol. 18, No. 3, Autumn, 1991, p.p. 7-13.

1. PRESSURE FROM THE INDEPENDENT SCIENTIFIC COMMUNITY

In this seminar we will examine the pressure from the independent* international scientific community through its predictions of actual and potential environmental consequences. We will also address the problem that many regulatory decisions are based on non-arm's length research funded and carried out by industry or funded by industry and carried out by Universities.

*independent in that it does not have a vested interest in a particular industry

Bibliography:

Publication from Royal Society of Canada, Global Conference, held in Kingston, June 7-9, 1991; Global conferences.

2. PRESSURE FROM A MORE INFORMED ELECTORATE AND INFORMED ENVIRONMENTAL MOVEMENT

In this seminar we will examine the pressure from a more environmentally informed electorate, and the need to recognize that the traditional role of governance is changing; the electorate no longer expects the elected officials to govern without public consultation. The informed electorate expects to be able to influence and have input into the decision making process. We will also explore the need to move from token consultation where the informed electorate is involved essentially after the decisions have been made to participatory mechanisms where the informed electorate is an integral component of the decision making process.

Bibliography: Pachlbe-Ferguson, Managing Leviathan"

3. a . PRESSURE FROM GOVERNMENT AGENCIES; REGULATIONS, MONITORING ENFORCEMENT

In this seminar we will examine the nature of the pressures reflected in international, national and provincial environmental legislation in place, and the need to eliminate the discrepancy between the rhetoric of laws and regulations on the one hand and the actions of monitoring and enforcement on the other hand. We will also discuss the need to revise and reform the basis and criteria for "environmental assessment reviews" and the need to change the onus of proof from those objecting to the proposal having to demonstrate harm to those proposing the proposal having to demonstrate safety, and the implications of shifting the onus of proof. and the infrastructures in place to enforce and monitor these laws and regulations.

Bibliography:

The Atomic Energy Control Act, R.S. C A-19, S 1

The Emergency Preparedness Act, 1988, C 11.

The Canadian Environmental Protection Act, 1988, C 22.

The Environmental Contaminants Act, 1974-75-76, C 72.

The Fisheries Act, 1977, C 35

The Department of the Environment Act, R.S., C 14 (2nd Supp.), s2

The Government Organization Act 1979, C 13

The Hazardous Products Act, R.S., C H-3, S 1

The Environmental Assessment Review Act, 1992

B.C. Government Consultation Process

3. b PRESSURE FROM NON-GOVERNMENTAL ENVIRONMENTAL ORGANIZATIONS TO FORCE COMPLIANCE WITH REGULATIONS

In this seminar we will examine the nature of the pressure from non-governmental environmental organizations and the need to recognize that often it is members of the environmental groups that have a less specialized but more integrated experience in environmental issues. We will also address the need for managers to be informed about the extent of potentially harmful consequences that could result from each technology, process and product so as to be able to assess the extent of the provisions that are purported to address these consequences. Bibliography: Enforcement, RBA

4 . PRESSURE FROM GOVERNMENT-SPONSORED AND SUPPORTED PUBLIC HEARINGS, ROUND TABLES

In this seminar we will examine the nature of the pressures reflected in government-sponsored public access to the decision making process, and the need to involve the public at significant stages of the decision making process such as at the time of the formulation of the terms of reference. We will also address the problem of informed public intervention versus obstruction and the problem of selection of the participants in government structured consultative bodies.???intervention { these consultative bodies are often weighted on the side of industry because the environmentalists are often perceived to be only one stakeholder, whereas the "exploitative" uses are perceived to have many stakeholders. (consumptive versus non-consumptive uses). We will also assess the different decision making approaches used within these consultative bodies, such as conflict resolution, resolution dispute mechanism, "principle based decision making, " "highest tenable principle, " and the impact of the confrontational system evidenced by high profile environmental law suits.

Bibliography:

a content analysis of documents reflecting a)the composition of the boards, round tables etc., b)the mechanism for selecting the participants, c)the nature and time of the involvement in the process, and d) the willingness by government and industry to act upon the recommendations.

5. PRESSURE FROM ASSOCIATIVE SEGMENTS IN SAME INDUSTRY AND ASSOCIATIVE INDUSTRIES

In this seminar we will examine the nature of the pressures from associative segments within the same industry and among linked industry, and the need to for full integration of environmental concerns in all corporate policy and decision. We will also address the implications of an ecologically sound industry using as a resource, products that themselves were not produced in an ecologically sound manner

6. PRESSURE FROM INSTITUTIONAL INVESTORS WHO WISH TO INVEST IN ECOLOGICALLY SOUND INDUSTRY

In this seminar we will examine the nature of the pressures for environmental change coming from investors who wish to invest in an ethical and ecologically sound way and the type of ethical and ecologically sound investment systems that are in place. We will also evaluate the criteria that is used to determine ethical and ecologically sound investment. [will evaluate the criteria that are used by investments companies to determine what constitute ethical investments.]

7. PRESSURE FROM SMALL SHARE HOLDERS WITHIN INDUSTRY

In this seminar we will examine the nature and range of pressures from shareholders in the company, and the need to make the shareholders aware of the environmental implications of current and proposed technologies, and processes involved in production. We will also address the need for shareholders to condemn the indulging in an end of pipe correction and to support the build-in-solution in decision making from beginning.

8. PRESSURE FROM CONSUMERS THROUGH CONSUMER BOYCOTTS

In this seminar, we will examine the nature of the pressure from International, national and local boycotts of ecologically unsound products practices and processes. We will also explore the implications of advocating boycotts that could have a detrimental effect on an industry that is itself ecologically sound.

9. PRESSURE FROM THE MEDIA

In this seminar we will examine the nature of the pressure from editorial comment, letters to the editor, position pieces and special features, and the need to analysis the ability of the newspapers to retain detachment in the light of the newspapers connection with industry. We will address the issue of the control of the media and the implications for objective reporting on the environmental issues that could jeopardize media interests; and the nature of the media influence in shaping public perceptions.

10 PRESSURE FROM PERSONAL CONTACTS WITH INDIVIDUALS AND WITH COMMUNITY GROUPS TO WHICH INDIVIDUALS FROM INDUSTRY BELONG

In this seminar we will examine the nature of the pressures from a range of categories of individuals, institutions, service clubs etc. to which individual members of industry belong.

We will also address the power of special interest groups and lobby groups who influence industry from behind the scenes.
Bibliography:

11. PRESSURE FROM THE INTERNATIONAL COMMUNITY THROUGH INTERNATIONAL LAW AND TRADE REGULATION

In this seminar we will examine the nature of the pressure from international environmental standards and from international trade regulations and the need to ensure that established environmental regulations that may be perceived to interfere with the free flow of trade will not be sacrificed. We will also address the problem of international trade regulations interfering with high state environmental standards and the problem of low state environmental standards not being required to be raised to higher international standards.

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EFTA members press convening of working party, 82 Focus-GATT Newsletter 2-3 (July 1991). In McDorman, T. "The 1991 U.S.- Mexico GATT Panel Report on Tuna and Dolphin: Implications for Trade and Environment conflicts, January 1992,

12. PRESSURE FROM WITHIN CORPORATIONS

In this seminar we will examine the nature of pressure from within industry from upper, middle and lower management. We will also examine the accommodation of dissent in relation to the establish environmentally policy, and the role of the environmental whistle blower.

Bibliography: Public Administration documents

13. RESPONSE 1.

Improved information and analysis. Resource accounting: full environmental accounting; "polluter pay principle"; economic instruments and property rights. Cost benefit analysis revised to include valuation of natural capital.

14. RESPONSE 2.

Accountability to multiple "stakeholders"

CONCLUSION:

Traditionally industry has had to contend with only bidirectional pressure and accountability to maximize profit for shareholders, and fulfill government technical regulations, now industry is having to confront multi-directional environmental pressures and accountability . Industry's response was initially

to attempt to find loopholes in government laws and regulations, or to contest what appeared to be too high environmental standards; then industry entered into a response phase of reluctant compliance with government laws and regulations. Industry, because of a range of new pressures from consumers, soon recognized the need to appear "environmentally friendly"; this response involved a flurry of new environmentally friendly new logos, slogans and products. Soon industry, having to respond to a wider range of environmental concerns and realizing that eventually industry would be losing community support, recognized a new need: the need to appear "environmentally enlightened"; this response involved a flurry of environmental departments or sections within the industry, of declarations and charters embodying industry's commitment to the environment, and of a facade of environmental concern. As a result of all these measures an "environmental industry" appeared. This industry was and is in place to provide environmentally-friendly technological fixes for the ecologically unsound practices that drive industry. In all the above responses the pressures were essentially external; even when pressures to change come from within industry by shareholders, employees, and different levels of management, the pressures in a sense could still be deemed to be external in that industry has not internalized the values that would be needed to have a truly ecologically sound industry. The internalizing of environmental values, including those of equity and social justice, would require industry to recognize the primacy of the environment. There would have to be a shift in language and a change in perception. The onus of justification would have to change from those objecting to industry's intervention having to justify why they object, to industry recognizing that industry's interventions cause to withdrawing from the environmental heritage of the commons and that industry must justify this withdrawal. It will only be when industry has internalized the multiple pressures, and is willing to accept the primacy of environmental safety and environmental preservation, and is willing to ground their actions in principle.

The transition from the bidirectional pressure to multi-directional pressure may be bringing about the dissolution of the traditional roles and responsibilities of managers. Managers whose line of responsibility was well defined within the traditional industrial unidirectional model, might find a new sense of responsibility to multi-directional complex, fluid, indefinable, indeterminate body of pressures from consumptive interest groups and non-consumptive commons concerns .

Annex 1 An example of failing to make the distinction between preventive and mitigative environmental assessment reviews.

[The Canadian government has refused to undertake an environmental assessment review of the Kemano Completion project, even though the Canadian government has made an international commitment "to ensure that decisions [about projects] are preceded by environmental impact assessments" and "to take into account the costs of any ecological consequences (Agenda 21,7.42). Canadian Law has also committed the Canadian government "to carry out an environmental assessment review to determine if the potentially adverse environmental effect that may be caused by a proposal are significant (S.12, EARP).

The Canadian government has also refused to assess the environmental and cultural impacts of the Kemano Completion project on native communities, even though the Canadian government has made an international commitment to indigenous people "to recognize that the lands of indigenous people and their communities should be protected from activities that are environmentally unsound or that the indigenous people concerned consider to be socially and culturally inappropriate" {Agenda 21, 16.3 a (ii)}.

On January 19,1993, Premier Harcourt issued a press release "Premier Announces Review of Kemano Completion Project." Premier Harcourt's statement was misleading because he did not make a distinction between a "precautionary" and a "mitigative" review. A precautionary review is one that attempts to prevent environmental degradation and cultural inappropriateness of a project by examining the potential environmental and cultural impacts of a project to determine whether the project should be allowed to proceed; the outcome of a precautionary review could be a decision to prevent the project from proceeding. A mitigative review, however, is one that attempts to lessen the environmental degradation and cultural inappropriateness of a project which has already been permitted to proceed; the outcome of a mitigative review would not be a decision to prevent the project from proceeding.

The terms of reference of the proposed B.C. government's public review of Kemano Completion are *not* to determine whether the project should proceed but to assess the options for mitigating impacts associated with the Project." There is a significant distinction between undertaking to carry out an environmental assessment review of the Kemano Completion project to determine if the project should proceed, and undertaking a "public review" of the impact of the Kemano II project after the decision has been made to allow the project to proceed.

The Cheslatta Carrier nation, displaced by the Kemano I project, is advocating a review that, if carried out, would probably fully justify immediate mitigation of the impacts of the Kemano I project, and justify the prevention of the Kemano Completion project. In their proposed review, the terms of reference should include but not be limited to the following:

- a thorough investigation into all environmental, economic, social and cultural impacts of Kemano 1 , and prescribe immediate mitigation;
- a thorough review of the terms, conditions and circumstances surrounding the granting of Alcan's 1950 Nechako Water licence including a thorough review of the 1949 water licence 'hearings' held at Wistaria and Victoria

- a thorough review of the 1987 Nechako settlement Agreement, including into terms and conditions and 'mitigative' measures, and the circumstances that led to this settlement
- a full disclosure of all federal and provincial documents and involvement relating to the Kemano projects;
- the commissioning of an independent cost/benefit analysis of the Kemano projects;
- the commissioning of an independent environmental impact assessment of Kemano 2;
- a throughout investigation into possible violations of the Federal Fisheries Act and the provincial Water Act;
- a thorough investigation into power sale contracts between Alcan and B.C. Hydro;
- an investigation into whether Alcan is a 'public utility';
- a thorough investigation into the impact of the reduced water flows on the Nechako River on the concentration of municipal agricultural and industrial effluent;
- a thorough investigation into the past and present management of the Nechako Watershed;
- a thorough investigation of Environcon Ltd and Triton Environmental Consultants Ltd. (April 1993, Cheslatta Nation)

If the proposed Cheslatta review were carried out it could result in the restoration of the environmental degradation of Kemano I, and in the redress for the cultural impacts of Kemano 1. Their review could also result in the prevention of the Kemano Completion project. As pointed out by the Cheslatta band the cost of compensation for any loss that Alcan may have incurred for its preparatory work for Kemano Completion will be far less than the cost of past (Kemano I) and future (Kemano II) environmental degradation and cultural displacement. Any public review that does not fully investigate the impact of Kemano I, and does not have within the terms of reference the possibility of preventing the Kemano Completion project from proceeding is making a mockery of the precautionary principle and of the public process.

Annex 3

THE "NOT-TOO-HIDDEN AGENDA" OF THE INTERNATIONAL ATOMIC ENERGY AGENCY (IAEA) AT UNCED: NUKESPEAK, AND SEDUCTIVE DEVICES, DOCTRINES, DOGMAS, STRATEGIES AND FALLACIES

By Fred Knelman and Joan Russow

Dr Fred Knelman is the Vice President of the Whistler Foundation for a Sustainable Environment, and Joan Russow, was the delegate for the Whistler Foundation at the New York Preparatory Committee for UNCED and at the Earth Summit at Rio. The Whistler Foundation and the Nuclear Age Peace Foundation had circulated a Declaration that was signed by 37 Nobel Laureates; this declaration called for the phasing out of Nuclear energy. They requested permission to read this declaration at one of the plenary session at Rio Centro; permission was denied.

The International Atomic Energy Agency (IAEA) was initially set up in the 1960's to regulate Nuclear energy; they have, however, become one of the

strongest proponents of nuclear energy. A fundamental regulatory principle of the "separation of function" is that "the agency entrusted for regulating a technology cannot be the same agency that promotes the use of that technology"(Knelman, 1975). IAEA , through its UNCED document entitled "Nuclear Techniques and Sustainable Development." acted as a major proponent, not only of the current use, but of the increased use of nuclear energy.

Agenda 21-- the 600 page far-reaching action-plan document from UNCED, was adopted unanimously by the global community represented at the Earth Summit in Rio. In Agenda 21 the following concern about radiation was expressed:

The deterioration of environmental quality, notably air, water and soil pollution owing to toxic chemicals, hazardous wastes, radiation and other sources, is a matter of growing concern. (Chapter 16. subsection 12),

The extent of the consequences of the nuclear industry were also identified in Agenda 21:

Annually about 200,000 m³ of low-level and intermediate- level waste and 10,000 m³ of high-level waste (as well as spent nuclear fuel destined for final disposal) is generated world wide from nuclear power production. These volumes are increasing as more nuclear power units are taken into operation, nuclear facilities are decommissioned and the use of radionuclides increases. (Chapter 22, subsection 1)

Yet at one of the plenary sessions, Mr. Hans Blix, Director-General of the IAEA, was given permission to present a document advocating nuclear energy as being a safe alternative energy for the future. The International Non-Governmental Organizations, (NGOs), however, recognized that the fundamental regulatory principle had been violated, and gave IAEA, the dubious honour of being presented with the International NGO Community's "Most Preposterous Proposal Award" "for presenting nuclear power as the environmental solution in energy and successfully keeping its problems out of the documents."

We would like to highlight some of the SEDUCTIVE DEVICES, STRATEGIES, DOCTRINES, DOGMAS and FALLACIES that have made the IAEA worthy of this honour. The examples will be drawn from IAEA document which was prepared for UNCED. Also references will be made to other UNCED Documents such as Agenda 21 and the Rio Declaration-- the Earth Charter-- 1992, and the Canada's National Report for UNCED, 1992

The seductive devices, strategies and fallacies used by the IAEA all draw upon the fundamental language of 'nukespeak.'" Knelman (1986, 1992) has expanded on the euphemistic nature of Nukespeak: (term first used in Hilgartner S., R. Bell, and R. O'Connor 1982) ‘

The rule is sanitize by euphemism: political euphemism is of course older than nuclear power. How many of us recognize the "elimination of unreliable elements"? There are forbidden words in the language of civil nuclear power. For example, the words "accident", "pollution" or "disease" are never used. Accidents are either "transients," "events," "significant events," "anomalies," occurrences," or "abnormal occurrences." In the extreme, they become "normal abnormalities," i.e. truth becomes lies. Explosions are "events of rapid disengagement" or "prompt criticality." Waste dumps are "residue areas." Thermal pollution becomes "thermal effects" and pollution becomes "impacts." Disease becomes "health effects"; This is a euphemism for cancer and genetic malformations. And missing plutonium, which is the link to clandestine acquisition of nuclear explosives is "material unaccounted for" or simply MUF! (Knelman, 1986.) Other names relating to nuclear accidents are criticality, nuclear excursions, abnormal evolution, normal aberration, plant transients, unnecessary ignition sources. "Nukespeak" is perpetuated through "nuclear acceptance campaigns" by the PR departments of the nuclear establishment, designed to find "palatable synonyms" for "scare words" through the use of "truth squads" in order to remove "undue public concern", create "pro-energy climate" where "technically qualified persons" would agree that nuclear power poses "no significant threat" and could be entrusted" for the timely detection of potential abnormalities, or there is "no evidence" of such threat (as though lack of evidence is proof of assertion) and the promises that turned into lies i.e. that nuclear power would be "too cheap to meter" providing society with "boundless energy" and save us from "freezing in the dark"; this is the language of Orwell's 1984, where peace is war and truth is a lie." (Knelman, 1992).

Seductive devices, doctrines, dogmas, strategies and fallacies

• The "blatant misrepresentation or expedient omission" device

This device involves the convenient exclusion of any part that could be detrimental to one's position.

The IAEA through expedient omission (possibly for advantageous "clarification") has left out a significant section in Agenda 21 which does not include nuclear energy in the list of "safe" technologies for the future. To "clarify" Agenda 21, the IAEA in its UNCED document stated the following:

"The UNCED Agenda 21 notes the need for a transition to environmentally sound energy systems, which will entail major changes in the patterns of energy production and consumption" (IAEA Document, p.5, 1992)

In the Atmosphere chapter of Agenda 21, the following [safe] and sound technologies are advocated:

cooperate to increase the availability of capacity, capabilities and relevant technologies ...for utilizing and producing environmentally [safe and] sound renewable energy resources, such as solar, wind, geothermal, hydropower and biomass,... Each resource should be utilized in a manner that ... minimizes environmental stress and health impacts, (Section 9. Subsection 9 g Agenda 21, 1992)

Thus, we see that in the Energy section of Agenda 21, Nuclear energy is not mentioned as being one of the [safe] or sound technology.

- **The "co-opted terms" strategy**

This strategy involves the stipulating of a new definition for a term that would jeopardize one's own argument.

In the Rio Declaration the following precautionary principle was advocated:

Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation." (Rio Declaration, 1992).

In the following statement, the IAEA redefines the important precautionary principle that was agreed to in the Rio Declaration, 1992.

The basic principles for radiation protection and safety in all applications and activities in nuclear science and technology are precautionary (IAEA Document , p. 2, authors emphasis)

The Rio principle, however, if enacted and truly adhered to, would bring about a moratorium on new nuclear power plants while phasing out currently existing ones.

- **The "comparison of convenience" device**

This device involves the narrowing down of alternatives so that whatever aspect is compared will appear favourable to the proposed alternative.

In the following statement from the IAEA document, the IAEA narrows the alternatives used for comparison to those which would appear to be favourable within the terms of reference of their comparison. Thus, for example, they compare the relatively low volume of nuclear wastes to the much larger volume of wastes from fossil fuels. However, it is the volume of wastes multiplied by their toxicity that is significant. Merely comparing

volumes is a "comparison of convenience." The same false comparison is used to compare fuel requirements for the same energy output.

A nuclear plant would require 27 tonnes of slightly enriched uranium each year, which corresponds to a few truckloads. The corresponding quantity of natural uranium is 160 tonnes. a coal fired plant would need 2.6 million tonnes of coal each year... which corresponds to the load carried by 5 trains, each transporting 1400 tones every day
an oil fired plant would require 2 million tonnes of fuel oil per year, which is about 10 supertanker loads." (IAEA document, 1992, p.12)

The nuclear establishment never fails to compare coal and nuclear as competing energy sources, always claiming the inherent superiority of nuclear . Usually this is accomplished by failing to include the entire fuel cycle over its full life of impacts, social and environmental. They conveniently exclude "safety" factors, "production of wastes," "disposability of wastes," "degree of potential for bioaccumulation,;" lifetimes of wastes, toxicity and proliferation problems associated with nuclear wastes.

Yet no bombs are built of coal, no terrorist is interested in hijacking coal or in the clandestine acquisition of coal weapons, coal plants do not have to be decommissioned and mothballed after some 30 to 50 years of operation, their hazardous wastes do not have to be guarded for 100,000 years, coal dust is easier to contain than radon and coal plants do not require liability subsidies by acts of parliament" (Knelman, 1992)

• The "lull and lure of the technological fix" syndrome (the "misleading assurance" device or the fallacy of "technological omnipotence")

This syndrome, device or fallacy involves the revealing of the seriousness of the problem and the offering of a "solution" which is usually worse than the problem

The proponents of a potentially dangerous act indicate that they recognize the danger and focus on one area for which they can offer a technological fix

In the following statement from the Radioactive Wastes section of Agenda 21, into which it appears that the IAEA had input, the following situation is recognized:

Annually about 200,000 m³ of low-level and intermediate-level waste and 10,000 m³ of high-level waste (as well as spent nuclear fuel destined for final disposal) is generated worldwide from nuclear power production. These volumes are increasing as more nuclear power units are taken into operation, nuclear facilities are decommissioned and the use of radionuclides

increases. The high level waste contains about 99 percent of the radionuclides and thus represents the largest radiological risk." (Agenda 21, Radio Active wastes, 21.1.).

In the IAEA document the authors affirm the certainty of the technological fix.

There is nevertheless a consensus among experts that safe geological disposal of high level wastes, including spent nuclear fuel, is technically feasible. (IAEA Document, p.17)

The view of experts in the field is that safe technological solutions exist for managing the waste. (IAEA Document, 1992, p. 15)

Knelman (1992) points out that

The assumption behind the notion of permanent disposal of High level wastes deep in a stable geological formation is false because this assumption relies on the mistaken belief that anything we do technologically can be permanent This assumption of permanence is particularly false when we are dealing with the lithosphere over some 100,000 years and when we must first disturb the geological structure by digging a very deep hole. AECL(Atomic Energy of Canada Limited) has dug a deep hole near Lac du Bonnet in Manitoba which is totally inappropriate for such so-called "permanent" disposal. For one thing you must, in all events, avoid water. Yet, The AECL hole must be soaked Walt Patterson, a nuclear critic described this AECL research as follows: A drunk has lost his keys and is discovered by a police officer crawling around a street light. When questioned, the drunk admitted that he had lost his keys in front of a dark building, a block away. When asked why the drunk was then searching around the street light, the drunk said " you see, officer, the light is better here" and as Dr Martin Resnik off, an expert on geological waste disposal has put it " the earth does not stand still. In other words, experts in the relevant fields do not agree. (Knelman, 1992, in progress)

• **The "rhetoric of notwithstanding clause" doctrine.**

This doctrine allows for the indulging in strong statements about deep concern and the need for significant change and then including a notwithstanding clause that negates the strong statement.

In the Rio declaration (1992) there is a strong statement about third world dumping:

States should effectively cooperate to discourage or prevent the relocation and transfer to other States of any activities and substances that cause sever environmental degradation or are

found to be harmful to human health.” (Principle 14 Rio Declaration, 1992)

(
There are, however, disturbing "notwithstanding clauses" that appear such as in the following statements:

“Develop regulatory and non-regulatory measures and procedures aimed at preventing the export of chemicals that are banned, severely restricted, withdrawn or not approved for health or environmental reasons, *except when such export has received prior written consent from the importing country or is otherwise in accordance with the PIC procedure;* (Section 19. subsection 53 f ,” (Agenda 21, 1992)

In the following statement in the IAEA document, the IAEA energetically adopts the spirit of the " rhetoric of notwithstanding clauses"

“The IAEA in 1990 promulgated a Code of Practice on the International Trans-boundary Movement of Radioactive Waste as a basis for harmonization of national legislation and policies. The code lays down the conditions and principles for international waste transfers, such as that movement must be made in a manner consistent with the international safety standards, that there must be prior notification and consent of the sending, receiving and transit States, and that each State involved should have a regulatory authority...”(IAEA Document, 1992, p. 20

- **The "flamboyant absurdity" doctrine or dogma**

This doctrine or dogma carries the concerns of one's opponents to the point where the regulations governing the opponents concerns should become the standard by which other potentially lesser concerns will be addressed.

The IAEA appears to advocate that, what is considered to be the most dangerous industry, just because it is dangerous, has developed stringent standards, and that they who contribute to possibly the greatest uncontrollable hazard are the ones who should assist the community in dealing with other hazards.

The basic principles for radiation protection and safety in all applications and activities in nuclear science and technology are precautionary and are so well founded in science and so widely accepted that they are now also being regarded as a source of guidance in controlling pollutants and impacts arising from other human activities. Their wider application would undoubtedly contribute towards sustainable development. (p.2)

- **The "justification through dire consequences of alternatives" device**

This device involves the revealing of the dire consequences of the current practices and offering one own practice as the salvation for the problem

In the following statement the IAEA cites the dire consequences of the other alternatives to justify their proposed alternative:

The problem of acid rain, which is linked to emissions from the burning of fossil fuels, has been recognized for decades..... . the primary concern about the continued and increasing use of fossil fuels is the problem of CO₂ emission and the potential impact on world climate..... World conference on the Changing Atmosphere... need to reduce CO₂ emission (IAEA document, p. 5)
climate change in connection with fossil fuels (p. 9)

•The "benevolent outcome exploitation" strategy

This strategy involves the selection of the outcome which the opposition to the proposed alternative would advocate and the subsequent attempt to demonstrate that the proposed alternative, which the opposition would condemn, would be the best way of achieving that outcome.

In the following statements from the IAEA document, the IAEA focuses on the desired outcomes of reducing acid rain and limiting greenhouse gas to justify the selection of their proposed alternative:

“Several governments have already made commitments to reduce carbon emission, while recognizing that this will be hard to achieve except through drastic policy decisions in the energy sector.” (IAEA Document, 1992, p.6)

“Nuclear power plants in normal operations cause very little environmental detriment and are beneficial when they replace plants which would emit CO₂, SO₂, and NO₂ (p. 12). In this respect they would help to reduce acid rain and limit greenhouse gas emissions” (IAEA Document 1992 , p. 12)

To accomplish the above, IAEA and other nuclear proponents are recommending the construction of some 4000 to 5000 new commercial nuclear power plants. The combination of the multi-trillion cost and the time required for construction renders this proposal no less than bewildering. By the 6 to 10 year period required for construction, other sources of climate-altering gases would wipe out all gains. Secondly at 1/7th to 1/10th the above cost, a much greater reduction in CO₂ and other climate-altering gases can be achieved through simple available conservation and efficiency measures.

• The "flaunting and condoning of the vicious circle principle" strategy

This strategy is best explained by the economic principle that "bad money drives out good." The opportunity costs of nuclear power are unacceptable and prohibitive. Thus, the money spent to subsidize nuclear power is at the expense of the funds required to solve the energy problem with safe alternatives, and consequently, because the research into alternatives will not be effectively carried out, the safe alternatives will not be able to adequately replace the non-renewable forms of energy.

"In the 1992 report to UNCED, following was stated:
Nuclear energy has safety risks associated with the entire uranium cycle, from mining through processing to the ultimate disposal of high-level radioactive wastes. In addition, there are safety risks associated with the reactors used to generate electricity from uranium. And the use of fossil fuel to drive conventional thermal generation produces carbon dioxide and waste heat. (Canada's National report UNCED pp.46- 47)
From a domestic consumption point of view, the least environmentally damaging energy option is energy efficiency." (Canada's National report UNCED p. 47)

Despite the above statement, the document concludes::

New, cleaner technologies such as solar energy may help, but the hard fact is that to a large extent we will have to rely on either thermal, hydro, or nuclear energy in the future. In addition, energy projects for both export and domestic supply provide jobs and economic wealth to the country, and are especially important in some regions of Canada" (p. 47. Canada's National report UNCED June, 1992, authors' emphasis)

The Canadian government has invoked the "vicious circle principle" by cutting subsidies to conservation efficiency and renewals. Canada is thus playing an important role in facilitating this not too hidden agenda by using many strategies, devices, doctrines, etc.

CONCLUSION:

The "nukespeak" and the seductive devices, strategies, syndromes used by the Nuclear Industry involve the language of delusion and distortion. Hopefully, through the continued revealing and categorizing of these words of delusion we could, in some small way, counteract the impact of the not too-hidden-agenda of the IAEA, and the rest of the nuclear establishment and their government supporters.

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() **THAT** in June, 1993 at an international conference, Stopping the Destruction of the World, in Paris I was on a panel addressing issues associated with civil nuclear energy

COMMENT

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Brazilian School of Analytical Trilogy founded by Dr. Norberto R. Keppe. the International Conference, "Stop the Destruction of the World" in Paris

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[Translate this page](#)

A **Trilogia Analítica** é o resultado do desenvolvimento realizado pelo psicanalista **Norberto R. Keppe** e sua assistente, a psicanalista Cláudia B. S. Pacheco, da psicanálise de Sigmund Freud, Jung, Melanie Klein, Wilfred Bion, unidas ao trabalho de filósofos e teólogos de maior importância como: Sócrates, Platão, Santo ...

1993 Panellist: I will be presenting a paper "A Call to action: UN Proclamation for Translating Rhetoric into Action. At the International Conference, "Stop the Destruction of the World" in Paris in June

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I was on a panel and presenting a paper A Call to action: UN Proclamation for Translating Rhetoric into Action. At the International Conference, "Stop the Destruction of the World" in Paris in June

I was organized by a group, **Trilogia Analítica** originated in Brazil by Norberto Keppe. The lectures were held downtown Paris at the Sorbonne until the Sorbonne determined that the group was a cult. What I remember about the group is that it APPEARED to be a group of professionals in different fields who were disenchanted with the status quo they had representatives primarily from Russia Brazil Finland and France drawing from a number of professions psychologists, psychiatrist, medical doctors artist and musicians and entrepreneurs. The members all stated in a chateau that they purchased outside of town. I had stayed with Servas for a couple of days they arranged for me to stay in a convent. I arrived at the convent and noticed right away that there were cots without blankets and then I saw one in the corner. It was June and not too cold. I later found a place to stay in Paris with a woman who was with a Peace group International Institute for reconciliation. I was invited to the castle for an event and was talking with a Brazilian who owned a lot of property in the Amazon. One day he told me that his employees came up to him smiling but their children ran away from him. He realized how they really felt about him, he gave away all of his land and joined the group. Every day for special sessions.

After being told that they could not be associated with the Sorbonne The conference moved to an auditorium in Pigalle; there was an incredible Brasilia drumming group that gave a workshop on stimulating Brazilian culture against the onslaught of US influence. One night a famous flautist came specially from Sweden to play with the drumming group.

() **THAT** in June 1993, I attended the World Heritage Committee meeting, and I intervened and commented on the discrepancy between preamble and the operative clauses in the Convention on the Protection of Cultural and Natural Heritage. I had gone to UNESCO to raise the issue that in the preambular clauses of the convention there is a commitment to preserve sites of universal value, whereas in the operational clauses it is the responsibility of the state to determine which sites are universal value. It was clear to those concerned about sites in Canada, that the Canadian government along with provincial governments succumb to corporate pressure to not protect these areas. I asked if I could speak as an observer from Canada, and was granted the floor. I described the problem in Canada, where in British Columbia world heritage sites that are of universal value are being destroyed because of corporate vested interests, and thus the important commitment in the preambular clause is not being fulfilled.

After I spoke, a woman leapt to her feet and declared that I was not the official Canadian observer and that she was. I did not realize that the term "observer" was an official term designating the government representative, and as it was the first day of the meeting of the committee the president was not aware of the identity of the official representative, I returned later on in the week to the committee meeting, and was approached by the official Canadian government observer, and she told me that she had been on the phone with Harcourt and

Mulroney, and that a decision had been made to establish the Tatatcheni as a world heritage site.

EXHIBIT

CONVENTION INTERVENTION AT THE WORLD HERITAGE COMMITTEE MEETING UNESCO JUNE 1993

CONVENTION FOR THE PROTECTION OF THE WORLD CULTURAL AND NATURAL HERITAGE (PARIS, 23 NOVEMBER 1972) (CPCNH)

Noting that the cultural heritage and the natural heritage are increasingly threatened with destruction not only by the traditional causes of decay, but also by changing social and economic conditions which aggravate the situation with even more formidable phenomena of damage or destruction, (CPCNH)

Considering that deterioration or disappearance of any item of the cultural or natural heritage constitutes a harmful impoverishment of the heritage of all the nations of the world, (CPCNH)

Considering that protection of this heritage at the national level often remains incomplete because of the scale of the resources which it requires and of the insufficient economic, scientific and technical resources of the country where the property to be protected is situated, (CPCNH)

Recalling that the Constitution of the Organization provides that it will maintain, increase and diffuse knowledge, by assuring the conservation and protection of the world's heritage and recommending to the nations concerned the necessary international conventions (CPCNH)

Considering that the existing international conventions recommendations and resolutions concerning cultural and natural property demonstrate the importance, for all the peoples of the world of safeguarding this unique and irreplaceable property, to whatever people it may belong, (CPCNH)

Considering that parts of the cultural or natural heritage are of outstanding interest and therefore need to be preserved as part of the world heritage for [mankind] as a whole, (CPCNH)

Considering that, in view of the magnitude and gravity of the new dangers threatening them, it is incumbent on the international community as a whole to participate in the protection of the cultural and natural heritage of outstanding universal value, by the granting of collective assistance which, although not taking the place of action by the State concerned, will serve as an effective complement thereto, (CPCNH)

Considering that it is essential for this purpose to adopt new provisions in the form of a convention establishing an effective system of collective protection of the cultural and natural heritage of outstanding universal value, organized on a permanent basis and in accordance with modern scientific methods, (CPCNH)

1. Definitions of the Cultural and the Natural Heritage

Article 1

For the purposes of this Convention, the following shall be considered as "cultural heritage" monument: architectural works, works of monumental sculpture and paintings, elements or structures of an archaeological nature, inscriptions, cave dwellings and combinations of features, which are of outstanding universal value from the point of view of history, art or science: (CPCNH)

groups of buildings: groups of separate or connected buildings which, because of their architecture, their homogeneity or their place in the landscape, are of outstanding universal value from the point of view of history, art or science;
sites: works of man or the combined works of nature and of man, and areas including archaeological sites which are of outstanding universal value from the historical, aesthetic, ethnological or anthropological points of view. (CPCNH)

Article 2

For the purposes of this Convention, the following shall be considered as "natural heritage": natural features consisting of physical and biological formations or groups of such formations, which are of outstanding universal value from the aesthetic or scientific point of view; geological and physiographical formations and precisely delineated areas which constitute the habitat of threatened species of animals and plants of outstanding universal value from the point of view of science or conservation;

natural sites or precisely delineated areas of outstanding universal value from the point of view of science, conservation or natural beauty (CPCNH)

Article 3

It is for each State Party to this Convention to identify and delineate the different properties situated on its territory mentioned in Articles 1 and 2 above (CPCNH)

II National Protection and International Protection of the Cultural and Natural Heritage

Article 4

Each State Party to this Convention recognizes that the duty of ensuring the identifications, protection, conservation, presentation and transmission to future generations of the cultural and natural heritage referred to in Article 1 and 2 and situated on its territory, belongs primarily to that State. It will do all it can to this end, to the utmost of its resources and where appropriate with any international assistance and co-operation, in particular, financial, artistic, scientific and technical, which it may be able to obtain. (CPCNH)

Article 5

To ensure that effective and active measures are taken for the protection, conservation and presentation of the cultural and natural heritage situated on its territory, each State Party to this Convention shall endeavour, in so far as possible, and as appropriate for each country:

a) to adopt a general policy which aims to give the cultural and natural heritage a function in the life of the community and to integrate the protection of that heritage into comprehensive planning programmes; (CPCNH)

b) to set up within its territories, where such services do not exist, one or more services for the protection, conservation and presentation of cultural and natural heritage with an appropriate staff and possessing the means to discharge their functions: (CPCNH)

c) to develop scientific and technical studies and research and to work out such operating methods as will make the State capable of counteracting the dangers that threaten its cultural or natural heritage; and (CPCNH)

d) to take the appropriate legal, scientific, technical, administrative and financial measures necessary for the identification, protection, conservation, presentation and rehabilitation of this heritage; and (CPCNH)

e) to foster the establishment or development of national or regional centres for training in the protection, conservation and presentation of the cultural and natural heritage and to encourage scientific research in this field. (CPCNH)

Article 6

1. Whilst fully respecting the sovereignty of the States on whose territory the cultural and natural heritage mentioned in Articles 1 and 2 is situated, and without prejudice to property rights provided by national legislation, the States Parties to this Convention recognize that such heritage constitutes a world heritage for whose protection it is the duty of the international community as a whole to co-operate. (CPCNH)

2. The States parties undertake, in accordance with the provisions of this Convention, to give their help in the identification, protection, conservation and preservation of the cultural and natural heritage referred to in paragraphs 2 and 4 of Article 11 if the States on whose territory it is situated so request (CPCNH)

3. each State Party to this convention undertakes not to take any deliberate measures which might damage directly or indirectly the cultural and natural heritage referred to in Articles 1 and 2 situated on the territory of other States parties to this Convention (CPCNH)

Article 7

For the purpose of this Convention, international protection of the world cultural and natural heritage shall be understood to mean the establishment of a system of international co-operation and assistance designed to support States Parties to the Convention in their efforts to conserve and identify that heritage. (CPCNH)

III Intergovernmental Committee for the Protection of the World Cultural and Natural Heritage

1. An intergovernmental Committee for the Protection of the Cultural and Natural Heritage of Outstanding Universal Value, called "the World Heritage Committee", is hereby established within UNESCO. It shall be composed of 15 States Parties to the Convention, elected; by States Parties to the Convention meeting in general assembly during the ordinary session of the General Conference of the UNESCO. the number of States members of the Committee shall be increased to 21 s from the date of the ordinary session of the General Conference following the entry into force of this Convention for at least 40 states. (CPCNH)

2. Election of members of the Committee shall ensure an equitable representation of the different regions and cultures of the world. (CPCNH)

Article 11

1. Every State party to this Convention shall, in so far as possible, submit to the World Heritage Committee an inventory of property forming part of the cultural and natural heritage, situated in its territory and suitable for inclusion in the list provided for in paragraph 2 of this Article. This inventory, which shall not be considered exhaustive, shall include documentation about the location of the property in question and its significance. (CPCNH)

3. The inclusion of a property in the World Heritage List requires the consent of the State concerned. The inclusion of a property situated in a territory sovereignty or jurisdiction over which is claimed by more than one State shall in no way prejudice the rights of the parties to the dispute. (CPCNH)

4. The Committee shall establish, keep up to date and publish, whenever circumstances shall so require, under the title of "List of World Heritage in Danger", a list of the property appearing in the World Heritage list for the conservation of which major operations are necessary and for which assistance has been requested under this Convention. This list shall contain an estimate of the cost of such operations. The list may include only such property forming part of the cultural and natural heritage is threatened by serious and specific dangers, such as the threat of disappearance caused by accelerated deterioration, large-scale public or private projects or rapid urban or tourist development projects; destruction caused by changes in the use or ownership of the land; major alternations due to unknown causes; abandonment for any reason whatsoever; the outbreak or the threat of an armed conflict; calamities and cataclysms; serious fires, earthquakes, landslides; volcanic eruptions; changes in water level, floods, and tidal waves. The Committee may at any time, in case of urgent need, make a new entry in the List of World Heritage in Danger and publicize such an entry immediately. (CPCNH)

Criticism of Maini representation

() THAT in 1993, I was selected by the British Columbia Environmental Network (BCEN) to attend the CEN meeting in PEI

COMMENT

At the 1993 meeting of the CEN in PEI, I moved a resolution proposing that the International Affairs Caucus do an independent report Card on Canada's compliance or non-compliance with UNCED. This resolution was passed unanimously by those present at the IAC meeting. I have been working on this report. I have extracted a series of principles and have determined what would constitute compliance with these principles in the Canadian context.

() **THAT** in 1993, I obtained the November 1993 document entitled "Environmental Assessment Review of NAFTA, and that I pointed out at public meetings the discrepancy between what was in the actual NAFTA agreement and what the Canadian government claimed was in the agreement [In article 103 of the NAFTA agreement, only three International Instruments were stated as taking priority over NAFTA: CITIES, Montreal Protocol on Ozone Depletion, and the Basel Convention [the few International environmental agreements ratified by the US] and the primacy of other International agreements would be subject to negotiation. The Canadian government had claimed in its 1993 document that Canada's International obligations would take primacy over NAFTA. I argued publicly that the Canadian government had misled the Canadian public about the primacy of international obligations.

() **THAT** from 1992 to 1997, I have criticized the Federal Government for failing to enact the necessary legislation to comply with international

obligations related to the Framework Convention on Climate Change and the Convention on Biological Diversity

() **THAT** in 1992 to 1994 , I sought, through the courts to overturn the injunction in Clayoquot Sound; that I argued that the Judge had failed to take into consideration Canada's international obligations and that the BC government was bound by the Convention on Biological Diversity and the Canadian government was in contravention of its obligations because of the actions in BC. I also argued that an injunction in an equitable remedy that moves with time and circumstance, and that the intention of an injunction was to prevent irreparable harm not to prevent those who strive to prevent irreparable harm from preventing harm.

EXHIBIT

APPEAL FROM FILE # C916306

APPEAL NO. VO1984

IN THE SUPREME COURT OF BRITISH
COLUMBIA COURT OF APPEAL

BETWEEN:	MACMILLAN BLOEDEL	PLAINTIFF (RESPONDENT)
	JOAN RUSSOW	RESPONDENT (LEAVE TO APPEAL APPLICANT)

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A. In the hearing of August 26, 1993, there was a failure to bring to the attention of the Honourable Mr. Justice Hall that the granting of the injunction could contribute to non-compliance with international obligations of Canada and its Courts, and that, in the September 15, 1993 application to rescind the injunction, the Honourable Mr. Justice Drake erred in his assessment of the relevance of international law. PP. 13 — 47 (#25 — #122). TAB 3

- Performance of the treaty in good faith by ensuring the necessary conditions are in place for its performance of the treaty(Article 31, Convention of Law of Treaties)
- International customary law affirmation of requirement to enact the necessary legislation
- Affirmation of a requirement to enact necessary legislation prior to signing
- Provisions for implementing legislation when subject under Provincial jurisdiction
- All levels of Canadian governments, whether federal or provincial, and whether legislative, executive or judicial should endeavour in good faith to comply with treaties
- Principles of guidance from relevant cases from High Court of Australia
- Applicability of section in the Convention on the Law of Treaties on not defeating purpose of treaty from moment of signing (Article 18)
- Applicability of the states being bound not to create the impossibility of performance Article 61
- Consideration of legally binding Conventions
- Failure of federal government to ensure that the treaty obligations would be
- Labour Convention case distinguished
- Evidence of consultation with Provinces
- Criteria derived from the Labour Convention Case for what would constitute "Consultation" with province
- Biodiversity and Climate Change issues considered under residuary powers
- Criteria for inclusion under section 91 residuary powers
- Canada has been obliged not to invoke internal law to justify failure to perform international obligations
- Canada has been in non-compliance since June 1992 because B.C. forest practices have been in contravention of provisions in the Conventions, and has defeated the purposes of the Conventions
- B.C. government applying for an injunction and the Courts granting this injunction which had the result of permitting the continuation of practices that are in violation of the Biodiversity and Climate Change Convention, the courts have inadvertently encouraged non-compliance with international law
- Canada is bound throughout its territory [including the provinces and territories]
- Applicability of section in the Convention on the Law of Treaties on internal law not being invoked to justify non-compliance with obligations
- Failing to identify Biodiversity, failure to carry out an environmental assessment, and failure to invoke the precautionary principles and protect carbon sinks

Canada, through B.C. 's not fulfilling its duty to identify, protect and conserve natural heritage of outstanding universal value, such as Coastal temperate rainforest areas like Clayoquot Sound • Canada since 1972 has failed to discharge its obligation to protect the natural heritage of outstanding universal value for future generations • IUCN condemnation of forest practices and lack of adequate preservation of coastal temperate rainforests • Applicability of the Common Law Doctrine of Legitimate Expectations • Expectations related to fulfilling of obligations under globally adopted United Nations Agreements and resolutions • Non-compliance with globally adopted agreements: Caracas Declaration and Agenda 21

B. This case also addresses the contempt for statutory law that has been demonstrated by industry, and in particular MacMillan Bloedel, in its non-compliance with statutory law, and by governments in their failure to enforce statutory law, particularly in relation to tree farm license (in the manner of a profit a prendre property right claimed by MacMillan Bloedel)

PP. 48 — 53 (#123— #136). TAB 4

- B.C. has not only used internal law — the granting of injunctions to justify non-compliance to international obligations but has failed to invoke its own internal law to prevent violations of international obligations • MacMillan Bloedel in violation of statutory law • Evidence of violations of forest Act and failure of government and courts to enforce statutory law failure to invoke Sections of the Forest Act
- MacMillan Bloedel was aware of alternative economically viable methods of selection logging which would have enabled Mac Milan Bloedel to have fulfilled its obligations under the Forest Act and thus its obligations under the TFL which they claim bestows a property right • MacMillan Bloedel has been convicted under section 33 of the Federal fisheries Act for depositing deleterious substances which caused destruction to fish Habitat • Evidence of type of violations occurring throughout TFL •

Summary of the findings of the Tripp report which was entitled *The Application and Effectiveness of the Coastal Fisheries forestry guidelines in selected cut blocks on Vancouver Island* • Evidence of violations of the Forest Act, collected by the Valhalla Wilderness Society • Evidence through Forest Watch that MacMillan Bloedel violating Forest Act in Clayoquot • Failure to assess the costs of past ecological damage in assessing compensation for taking areas out of TFL • Non-fulfillment of condition of the granting of the license is that logging has to be "sustained"; evidence from leaked document from Inventory Branch of the Ministry of Forests demonstrating MacMillan Bloedel overestimating inventory by over 40% in Queen Charlottes cut block • Given that MacMillan Bloedel has been in violation over the years of many sections of the Forest Act, Waste Management Act and the Fisheries Act, MacMillan Bloedel has not fulfilled the conditions of the TFL under the Forest Act, and thus the contracting party has failed to perform its part of the contract. In this case it would be inappropriate to recognize that MacMillan Bloedel has a property right in the nature of a "profit a • Evidence the Court would recognize that a right cannot be claimed by one who has not fulfilled the responsibilities contingent upon that right.

C. The appeal will rely upon a realistic and objective evaluation of equity. In particular the use of an equitable remedy such as an injunction to justify non-performance of provincial and federal statutory law and to justify non-performance of international legal obligations, and international customary law.

PP. 54 — 58 (#136— #147). TAB 5

Evidence will be submitted that the injunction is an equitable remedy that has been misapplied in the Clayoquot case. Equity could never countenance the destruction of life rearing capacity and life forms in its trust on a massive scale with no genuine regard for future generations • The remedy [of injunction] of course, is an equitable one. "The exercise of the equitable jurisdiction is not to be restricted by the straitjacket of rigid rules but is to be based on broad principles of justice and convenience, equity regarding the substance and not merely the facade or the shadow. It moves with time and circumstances. (Justice J.A. Norris) • The requirement to preserve our environmental heritage and the requirement to save a representative sample of natural ecosystems for future generations have been recognized and have become part of international customary law • An equitable remedy— an injunction, is being used to prosecute citizens of criminal contempt when the justification for the granting of this equitable remedy is still being questioned by the courts • The "impossibility avoidance" or "the avoidance of a disappearing object principle": (not having object disappear while object is under consideration). This principle is enunciated as follows: claimant will not find at the end of a successful trial that the subject matter is gone • Embodiment of a principle of international customary law which is eloquently stated in the Vienna Convention on the Law of Treaties (Article 18 and 61): a state is obliged to "not defeat the object and purpose of a treaty prior to the entry into force" and not to make performance of the treaty impossible • The granting of the injunction would be in violation of the above principle because proceeding with logging when the logging could and would defeat the purpose of any treaty protecting the "ecological rights" within the public trust would defeat the purpose of the treaty • Implications of the principle ("impossibility avoidance" or "the avoidance of a disappearing object principle") should be considered in relation to the Public Trust Doctrine (Friends Patrai Doctrine) • Requirement to take into account the costs of any ecological consequences is a particularly relevant consideration in assessing "irreparable harm" in injunctions • An advisory opinion from the International Court of Law is going to be sought to determine whether Canada, through the actions of B.C. has been in violation of the Biodiversity Convention since the signing of the Convention in June 1992. Until this case is heard nothing should be done on crown lands which could diminish the value of the public trust rights • Since MacMillan Bloedel has been in violation of statutory law as well as international law it should not be able to benefit from the granting of an equitable remedy such as an injunction • Violations of guarantees in the International Covenant on Civil and Political Rights have occurred in the Clayoquot injunction trials (one Judge in response to a Clayoquot Arrestee's citing of a section from the International Covenant on Civil and Political Rights was "that sounds like some international something or other") • When all domestic remedies fail redress can be sought through the Optional Protocol of the International Covenant on Civil and Political Rights

International legally binding agreements:

Globally adopted Resolutions, Charters and Declarations:

NGO/State Resolutions:

Statutory Law:

Government Documents and Correspondence:

Reports:

Doctrines:

Authors cited:

Cases considered:

Cases referred to:

PART 1 -STATEMENT OF FACTS

1. This is an application for Leave to Appeal Mr. Justice Drake's judgment in which he dismissed the Appellant's application to rescind the injunction that was extended by Mr. Justice Hall.

2. August 26, 1993 Mr. Justice Hall dismissed the two applications and granted the application of MacMillan Bloedel to extend the injunction.

3. September 15, 1993 Dr. Betty Kleiman and Joan Russow made an application to rescind the Clayoquot injunction.

4. September 17, 1993 Mr. Justice Drake dismissed the application.

5. October 21, 1993 Russow served a notice of leave to appeal Mr. Justice Drake's decision on MacMillan Bloedel.

6. November 8, 1993 MacMillan Bloedel filed a "Notice of appearance"

7. December 1993 Russow received correspondence from John Hunter, lawyer for Mac Millan Bloedel about participating in the Appeal that would be heard in Vancouver in late January. Russow informed MacMillan Bloedel that she was presenting a paper at the IUCN Annual General Meeting as a member of the IUCN Commission on Education and Communication, and consequently it would be impossible for her to be part of the appeal at that time.

8. Ron Adams, Clerk of the Appeal Court in Victoria, informed Joan Russow that she was under no obligation to appear at that time, and that even, if the injunction were overturned, she could still appeal Judge Drake's decision.

9. Ron Adams, Clerk of the Appeal Court in Victoria also informed Joan Russow that there was no particular time limit for proceeding with the leave to appeal application, and that only if MacMillan Bloedel sought to set aside the appeal would she be required to proceed expeditiously with the leave to appeal.

10. July 21, 1994 Russow filed a praecipe for a Leave to Appeal hearing and served it on MacMillan Bloedel. The proposed date for the Chambers hearing August 16

11. July 22, 1994 John Hunter sent a FAX in which he stated that he would be away on August 16 and wished to change the date and proposed alternatives later on in August. Joan Russow phoned him and expressed concern about the possibility of MacMillan Bloedel's applying for a new order prior to hearing the arguments presented in the Leave to Appeal, and asked him when MacMillan Bloedel would be proceeding with the application to extend the order. He declined to divulge that information. Russow then suggested that someone should appear in his place. She expressed surprise that he would be contesting the Leave to Appeal application, given that in the September 15 application he had stated that the proper place for the submission to be heard was in the Court of Appeal, and given that at the September 15 application he also stated that the issue of applicability of international law had never been raised:

the central point raised by the applicants as to the international law aspects of this, and the applicants are quite correct that no point was made before Mr. Justice Hall as to the international commitments that may have been made by Canada in Rio de Janeiro, by any council.
(John Hunter, Transcripts of September 15, Application

He said that he would consult with his clients but would probably formally apply for an extension. No formal request for an extension was made.

12. August 5, 1994. MacMillan Bloedel served a Notice of Motion seeking to have the application of Appellant Joan Russow for Leave to Appeal be adjourned generally. (See response by Joan Russow in Affidavit, dated August 10, and sworn August 15, 1994)

In the Notice of Motion John Hunter stated that, "The injunction as extended by Mr. Justice Hall expires on August 31, 1994. No application to extend the injunction has been filed and I do not currently have instructions to bring such an application. Such an application may be brought, and I am prepared to ensure that Ms. Russow is advised if such an application is brought. On the other hand, such an application may not be brought."

13. August 7, 1994 with the above assurance, Russow canceled a trip so that she would be able to propose to John Hunter that she could accommodate John Hunter's initial request to adjourn the Leave to Appeal to a future date.

14. August 8, 1994 Given that John Hunter had written in his affidavit that he did not have "instructions to bring such an application [an application to extend the injunction], Russow contacted the office of John Hunter and proposed that if he would agree to adjourn the application to set aside the Leave to Appeal generally then she would agree to adjourn her application for a Leave to Appeal to August 23, one of the dates originally requested by John Hunter.

EXHIBIT: A Letter written by Russow to Hunter

15. August 8, 1994 Russow received correspondence from Davis & Company, the firm to which John Hunter belongs:

Mr. Hunter is away from the office until August 22, 1994 and in his absence Mr. Peter Voith is handling this matter, and Mr. Voith, however, is out of the office until August 9, 1994 at which time your fax will be brought to his attention.

EXHIBIT: B Response from Peter Voith

Russow had understood that the reason that Mr. Hunter had wanted to change the date of the hearing was that he believed:

it would be of assistance to the judge hearing this application if I were able to participate as counsel for MacMillan Bloedel to advise of any details in this course proceedings which may not be apparent from this Affidavit" (John Hunter, Affidavit, August 4, 1994).

16. August 9, 1994 10:15 a.m. There was no reply from Mr. Voith, and Russow continued to prepare her affidavit for the August 12th hearing of MacMillan Bloedel's application. Russow phoned at 10: 15 on Tuesday morning and was informed by Karen, John Hunter's secretary, that Voith had been there since 9:00 but with clients. Russow received a phone call from Shirley, Mr. Voith's secretary who said that he would be responding to my request later on in the afternoon. When Russow said that it was important for her to know as soon as possible because she had to file not only the Leave to Appeal book but also an affidavit for the August 12 application (both of which Russow would have had to have ready to submit on Wednesday, August 10), Shirley stated that he would be responding within 20 minutes. When Russow repeated "within twenty minutes" Shirley countered with it is his decision and he will respond as soon as possible.

At 11:00, Russow received a FAX indicating that he would be prepared to adjourn the Application to adjourn the Leave to Appeal generally, and would proceed with Russow's Leave to Appeal on August 23, as requested.

EXHIBIT: C Letter agreeing to adjourn Leave to Appeal Application to August 23, 1994

17. August 10 1994 Dr. Betty Kleiman, submitted a letter stating the reasons that she had not been able to be part of the Appeal, and expressed the wish that Merv Wilkinson serve in her place:

EXHIBIT: D Letter from Betty Kleiman. Re: Appeal
PART II - REASONS FOR SEEKING LEAVE TO APPEAL

18. The issues of law that are raised in this application are of great import, and bring into question serious discrepancies between the legal obligations undertaken by Canada internationally, and the discharging of these obligations in Canada, both federally and provincially. This application also raises the issue that a positive duty is placed on states to enact the necessary legislation so as to enable the performance of treaties which have been signed by the Federal government with the endorsement of the government of British Columbia. In addition, this appeal will also raise questions of legal responsibility for non-compliance with and non-enforcement of international and statutory law, and with the implications arising from the non-performance of those legal responsibilities. Serious legal issues about the direction being taken within the administration of the law of equity will also be considered on this appeal. In particular, the issue that an equitable remedy— an injunction, is being wrongfully used to prosecute citizens for criminal contempt.

19. The implications of international law were not considered by either of the applicants, namely Greenpeace Canada and Valerie Langer, who were seeking to rescind the injunction before Mr. Justice Hall, on August 26.

At the September 15 hearing, before Mr. Justice Drake in this matter, John Hunter lawyer, for MacMillan Bloedel, affirmed that Mr. Justice Hall had not considered the international commitments:

Now the last thing I wanted to say, just to address the central point raised by the applicants as to the international law aspects of this, and the applicants are quite correct that no point was made before Mr. Justice Hall as to the international commitments that may have been made by Canada in Rio de Janeiro, by any council. (Transcript of application from September 15, 1993).

20. The international law and other grounds for rescinding the injunction, presented by Dr. Betty Kleiman and Joan Russow in the September 15 submissions, were not more than cursorily considered and were not given a fair hearing.

On September 15, 1993 Dr. Betty Kleiman and Joan Russow made an application to rescind the Clayoquot injunction order dated August 26 and

pronounced by Mr. Justice Hall on the following grounds outlined in the oral submission and the exhibits submitted to Judge Drake.

1. Failure to bring to Mr. Justice' Hall's attention that the granting of the injunction could contribute to non-compliance with international obligations
2. Failure to bring to Mr. Justice Hall's attention that the Clayoquot TFL's, are rights in the light of a "profit a prendre", which is a conditional right, and entails a complementary responsibility. Non-compliance with statutory law and previous convictions by the forest company, MacMillan Bloedel, should have been taken into consideration when the equitable remedy of an injunction was granted
3. Failure to bring to the judge's attention that the injunction is an equitable remedy moving with time and circumstances.

On September 17, 1993, Mr. Justice Drake ruled:

Mr. Hunter informs that an application for leave to appeal from the order of Mr. Justice Hall is afoot and is set down for hearing in the Court of Appeal on Tuesday next... In these circumstances, there is no point in dealing with the extensive submission of the applicants, interesting as they were (From p. 2-3 transcript of judgment, September 17).

21. John Hunter also submitted to the judge a copy of an article on international law by L.C. Green in which the 1937 case, *Attorney-General for Canada v Attorney-general for Ontario*. Supreme Court of Canada A.C. 1937, pp. 326 -354 [Labour Convention Case] was submitted as evidence that B.C. was not bound by international law. There was no opportunity to distinguish this case from the present case because Hunter submitted the written document to the judge without orally introducing the case into his submission. In the appeal, the relationship between the Federal and Provincial governments in response to International legally binding treaties in the Labour Convention case will be distinguished from that in response to the UNCED Conventions. In addition, there was no opportunity to raise the "Franklin Dam" decision from the High Court of Australia (High Court of Australia, Australian Law Reports 1983 PP 625-831). Constitutional law [Australian conservation case] which is particularly relevant to the discussion of the relevance of international law to the "inquiry" into the justification of granting the injunction. The Franklin Dam case deals with the following issues:

Protection of natural and cultural heritage — Prohibition of dam construction authorized by Tasmania Whether with Commonwealth power External affairs power. Whether mere existence of treaty enough Whether treaty "obligation" necessary Convention for Protection of the World Cultural and Natural Heritage (UNESCO).

The Franklin Dam case will be examined in the Appeal.

22. It should be noted as a preliminary comment that in the Hunter's submission to Judge Drake there was a reference to L.C. Green:

MR. HUNTER

And it may be of assistance to your lordship to have an excerpt from Elsie[L.C.] Green's work on International Law, Canadian Perspective, and I want to read a portion of what Professor Green has to say about treaty rights and I don't think there's any suggestion there that there has been a treaty but taking its at its extreme --

COURT: Well, there has to be some statutory recognition before the court.

MR. HUNTER: that is the point. And it starts at the bottom of 288 and goes to 289, but that is the simple point, there has to be statutory recognition and there has not been statutory recognition of anything that went on at Rio. I don't know what went on at Rio, ... and in the absence of legislation international matters are not of any relevance to this application. (Transcripts of submission from John Hunter, September, 15, 1993)

John Hunter mentioned Green and the page numbers 288-289 but did not actually cite from Green. The Judge had been subsequently given the aforementioned pages from Green by Hunter. The actual citation from Green was not in the transcripts. Green stated on pp. 288-289 that:

In Canada treaties are not self-executing and do not constitute part of the law of the land merely by virtue of their conclusion. Treaties require implementing legislation in order to change domestic law. (Canada v. (AG0 Labour Conventions Case. [1937] per Lord Atkin: "Within the British Empire there is a well-established rule that the making of a treaty is an executive act, while the performance of its obligations, if they entail alteration of the existing domestic law requires legislative action. [note this case will be examined further on pages...])

This assertion is, however, substantially altered by two significant further statements by Green:

Canada will not normally become a party to an international agreement which requires implementing legislation until the necessary legislation has been enacted [cite references, including 1982 document circulated by External Affairs "Canadian Reply to Questionnaire on Parliaments and the Treaty-making power"]

The full context of this statement comes from the 1982 "Canadian Reply to Questionnaire on Parliaments and the Treaty-making Power"; it is an External Affairs Department communique which was put together in 1982 to assist the External Affairs Officers in explaining the division of powers and constitutional conventions in Canada in relation to international obligations:

Many international agreements require legislation to make them effective in Canadian domestic law. The legislation may be either federal or provincial or a combination of both in fields of shared jurisdiction. Canada will not normally become a party to an international agreement which requires implementing legislation until the necessary legislation has been enacted.

In concluding this section which was referred to by John Hunter, Green, makes a very significant remark, which suggests that Canada is bound by the treaty prior to the enactment into national law:

the fact that a treaty has been signed and ratified but not yet enacted into national law does not preclude the international liability of the signatory under the treaty.

23. It will be submitted that John Hunter, lawyer for MacMillan Bloedel erred in stating that "nothing that happens in Rio affects the law of British Columbia until the province of British Columbia acting through its legislature determines that it shall affect the laws of British Columbia"(Hunter, Transcript, September 15 p. 22):

In my submission it would have been inappropriate to make such a point because that is not a relevant consideration and the reason it is not relevant consideration is that nothing that happens in Rio affects the law of British Columbia until the province of British Columbia acting through its legislature determines that it shall affect the laws of British Columbia. And it may be of assistance to your lordship to have an excerpt from L.C. Greens work on International Law, Canadian perspective [note in this piece there was reference to the 1937 labour case (Attorney-General for Canada v Attorney-general for Ontario. Supreme Court of Canada A.C. 1937. [Labour Convention Case] pp. 326 -354 and to the External Affairs document "Canadian Reply to Questionnaire on Parliaments and the Treaty-making power"].

24. It will also be submitted that Mr. Justice Drake failed to consider the complexity inherent in the legal issues related to international obligations when he ruled " international agreements and resolutions, these not being expressed in Canadian law are not relevant" (Mr. Justice Drake, Transcript of Judgment, September 17, p. 3).

Mr. Justice Drake in his judgment made the following comment about international agreements and resolutions:

However, I will simply say, as far as their merits are concerned, that the argument relating to international agreements and resolutions, these not being expressed in Canadian law, are not relevant to this inquiry." (Mr. Justice Drake, Transcript of Judgment, September 17, p. 3).

Even though the order of Mr. Justice Hall will be expiring on August 31, 1994, it is important that this leave to appeal his order be granted so that the issues raised in the September 15 application to rescind this injunction could be fairly and judiciously considered and so that the September 17 judgment by Mr. Justice Drake could be reevaluated. If this order, and if the decision by Mr. Justice Drake is not challenged, they will be used in subsequent similar cases, as precedents. PART III - ARGUMENT

A. In the hearing of August 26, 1993, there was a failure to bring to the attention of the Honourable Mr. Justice Hall that the granting of the injunction could contribute to non-compliance with international obligations of Canada and its Courts, and that, in the September 15, 1993 application to rescind the injunction, the Honourable Mr. Justice Drake erred in his assessment of the relevance of international law.

25. It will be submitted that Canada, as a signatory, is bound to perform any treaty in good faith by ensuring the necessary conditions are in place for the performance of the treaty.

Under the Vienna Convention on the Law of Treaties, adopted in 1969; signed by Canada, acceded to by Canada on 1970, and in force 1980, Canada, as a signatory to this Convention has been obliged to ensure the performance of treaties in the following ways:

- (i) "to establish conditions under which justice and respect for obligations arising from treaties can be maintained" (Preamble)
- (ii) to demonstrate, through the process of ratification (accession) of a Treaty, that the State has "established on the international plane its consent to be bound by a treaty" (Article 2)
- (iii) to observe that "every treaty in force is binding upon the parties to it and must be performed by them in good faith. (Article 26)
- (iv) to interpret a treaty by agreeing that "A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose. (Article 31)

Consequently, Canada, through acceding to and ratifying treaties has undertaken to perform treaties in good faith, has established on the international plane its consent to be bound, and to establish conditions for the maintaining of justice and respect for obligations under treaties.

26 This principle is reinforced throughout international customary law and extended to include the enacting of the legislation and laws necessary to ensure performance of treaty obligations.

The requirement to enact enabling legislation is evident in the International Covenant on Civil and Political Rights. International customary law places a duty on states to adopt such legislative, judicial or other measures as may be necessary to give effect to international treaties.

In the International Covenant on Civil and Political Rights—adopted 1976, signed and acceded to by Canada and in force in 1976, the principle of "duty-to-adopt-legislative ...measures" is enunciated;

Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

The principle is then further elaborated in the UN Resolution 37/7 World Charter of Nature (1982):

The principles set forth in the present Charter shall be reflected in the law and practice of each State, as well as at that international level (Article 14).

27. This principle is further entrenched in External Affairs policy in Canada by the constitutional convention of ensuring that necessary legislation is enacted before signing international treaties.

In an External Affairs document, "Canadian Reply to Questionnaire on Parliaments and the Treaty-making Power", which deals with Canada's responsibility related to international obligations, it is stated that Canada will "not normally become party to an international agreement until the necessary legislation has been enacted by the provinces."

In the "Canadian Reply to Questionnaire on Parliaments and the Treaty-making Power", the following references are made to international law and federal and provincial legislation:

If the existing laws of Canada (including Provincial and Federal Statutes, as well as the general rules of common law and the civil code of the Province of Quebec) do not confer upon the Government of Canada the capacity to discharge the obligations it proposes to undertake in a treaty, then it will be necessary for the appropriate legislative body, federal or provincial, to enact legislation to enable Canada to discharge its treaty obligations.

28. The "Canadian Reply to Questionnaire on Parliaments and the Treaty-making Power" appeared to ensure that the treaty would be performed either by enacting the necessary legislation prior to becoming a party:

Canada will not normally become a party to an international agreement which requires implementing legislation until the necessary legislation has been enacted or by passing implementing legislation:

The point we wish to make here is that in Canada implementing legislation is only necessary if the performance of treaty obligations cannot be done under existing law or thorough executive action.

In either case, it would appear that Canada has indicated in this document that the necessary legislation will be in place in order to perform the obligations under the treaty.

In an internationally legally binding document such as the Biodiversity Convention, and the Framework Convention on Climate Change, either the enabling legislation was in place prior to signing the treaties, or Canada is bound to enact legislation to enable Canada to perform its Treaty obligations in such a way as to ensure that it will not defeat the purpose of the treaty. This external affairs convention has to also be considered in conjunction with article 18 of the Vienna Convention on the Law of Treaties. Canada it would appear would not be able to defeat the purpose of the treaty from the moment of signing, and in order to comply with this provision Canada would have to ensure that the necessary legislation would be in place to prevent Canada from defeating the purpose.

29. In the appeal the following questions related to obligations will be examined;

- i. If Canada followed the usual constitutional convention as indicated in the above provision, Canada will not normally become a party until the necessary legislation has been enacted. Thus, we can assume from the federal point of view the Federal government believed that the necessary legislation to ensure that Canada would not defeat the purpose of the Convention on Biological Diversity and of the Climate Change Convention. If prior to the moment of signing these conventions in June 1992 if the Federal government was not certain that the necessary legislation was in place to prevent the defeating of the purpose of the Conventions, then implementing legislation would have to have been in place in June 1992.
- ii. In the appeal it will be contended that the Biodiversity Convention and the Climate Change Convention are relevant to the injunctions given by Canadian courts to lumber companies. Canada, by its own conventions is liable to comply, in its judicial, executive and legislative actions.

30. The principles of ensuring legislation enacted or implementing necessary legislation for performance of treaties are further placed in a provincial context when the matters in the treaty are usually deemed to be within provincial jurisdiction.

The 1982 "Canadian Reply to Questionnaire on Parliaments and the Treaty-making Power" further indicated in reference to the ratification and accession to treaties:

A multilateral treaty dealing with matters within provincial jurisdiction would be signed by Canada only after consultation with the provinces had indicated that they accepted the basic principle and objectives of the treaty. Assurances would be obtained from the provinces that they are in a position, under provincial laws and regulations, to carry out the treaty obligations dealing with matters falling within provincial competence, before action is taken by the Government of Canada to ratify or acceded to such a treaty.

Canada thus only proceeds to ratify a treaty when the provinces have been consulted and the provincial laws and regulations are in place to carry out the treaty obligations.

31. The Applicant, Joan Russow contends that all levels of Canadian governments, whether federal or provincial, and whether legislative, executive or judicial should endeavour in good faith to comply with the Biodiversity Convention, the Framework Convention on Climate Change, and the UN Convention for the Protection of Cultural and Natural Heritage. An injunction is judge-made law. Just as Canadian legislators must ensure that their statutes reflect their international treaty obligations, so must judicially made law, such as injunctions. Arguments must be aired in the Court as to this injunction's contravention of international treaty obligations. The proof readily exists that the Biodiversity Convention and the Framework Convention on Climate Change are violated by the activities of MacMillan Bloedel in Clayoquot Sound. The threat to biodiversity from clearcutting in Clayoquot Sound was clearly recognized and found as fact by the scientific panel appointed by the Harcourt government to review their logging plans for Clayoquot Sound. The panel also recognized that the standards of international law should serve as a minimum (First Report from the Clayoquot Sound Scientific Panel, March 1994).

No branch of government and no other law-making authority has a higher obligation than judges to apply the whole of the law and ensure that their own judge made injunctions are complying with the international obligations of Canada. This examination for compliance with international law was not conducted for the series of injunctions which have been granted to MacMillan and Bloedel in Clayoquot Sound.

32 If the provinces have followed the External Affairs convention then they would have assured the federal government that the necessary legislation either was or would be in place to ensure not only the fulfillment of obligations under the treaty but also the prevention of activities that could defeat the purpose of the treaty. If so, it can be presumed that the provinces will be equally responsible for fulfilling the obligations. The implications of this constitutional convention will be considered further in relation to the subsequent section dealing with the Labour Convention case which examines constitution provisions and treaties.

33. With internationally legally binding document such as the Biodiversity Convention or the Framework Convention on Climate Change it is necessary for the appropriate legislative body, federal or provincial, to enact legislation to enable Canada to discharge its treaty obligations, and in particular, from the moment of signing the Conventions in June 1992 so that nothing will defeat the purposes of the treaties.

34. It will be argued in appeal that in Canada the existence of a treaty obligation (under the legally binding Conventions on Biological Diversity and Climate Change) is sufficient to give rise to an "external affair." The legal issues to be addressed in this appeal have been eloquently addressed in a series of Commonwealth cases: including the cases from the High Court in Australia where the constitutional division of powers between the Commonwealth (Federal Government) and the State (Province) were examined, and the responsibility of the Commonwealth government to ensure compliance to the international obligations was recognized. The discussion

of these cases and the principles that have been used will follow; the discussion will be further extended in the Appeal if in the Leave to Appeal Application on August 23, 1994 the Chambers deems that the principles and decisions, given the similar federal structure of the Australian Constitution, from the High Court of Australia are applicable. The Labour Convention case from Canada was referred to by the dissenting judge in the following case: Commonwealth of Australia and Another v State of Tasmania and Others of (C6 of 1983) High Court of Australia, Australian Law Reports 1983 pp. 625-831 Constitutional law (Franklin Dam Case). Note that in the 1937 Labour Convention Case, the Federal government referred to the Australian Case.

It was held in the Commonwealth of Australia and Another v State of Tasmania and Others of (C6 of 1983) High Court of Australia, Australian Law Reports 1983 pp. 625-831 Constitutional law (Franklin Dam Case): Note that in the 1937 Labour Convention Case, the Federal government referred to the Australian case.

1. Existence of a treaty obligation (as there was under the Convention) was sufficient (though not necessary) to give rise to an external affair; there was no additional, independent requirement that the subject-matter of the treaty be of international concern.

Note: Article 34 UN Convention on the Preservation of Cultural and Natural Heritage the following provisions shall apply to those federal or non-unitary states

- a) with regard to the provisions of this Convention, the implementation of which comes under the legal jurisdiction of the federal or central legislative power, the obligations of the federal or central government shall be the same as for those States Parties which are not federal states.
- b) With regard to the provisions of this convention, the implementation of which comes under the legal jurisdiction of individual constitutional system

The following was also held in the Franklin Dam Case by Mason:

Article 34 of the convention, the Federal clause, does not relieve Australia from performance of its obligations under the convention. Para (a) of the article makes it clear that in the case of a central legislative power possessing legal jurisdiction to implement the provisions of the convention. the state party to the convention has an obligation to implement the provisions of the Convention.

35. The role of the courts to determine particular provisions was also addressed in the Franklin Dam case:

In *Airlines of NSW Pty Ltd v New South Wales (No. 2)* (1965) 113 CLR 54, Barwick CJ said (at 86) that "... where a law is to be justified under the external affairs power by reference to the existence of a treaty or convention, the limits of the exercise of the power will be set by the terms of that treaty or convention, that is to say, the Commonwealth will be limited to making laws to perform the obligations or to secure the benefits which the treaty imposes or confers on Australia. Whilst the choice of the legislative means by which the treaty or convention shall be implemented is for the legislative authority, it is for this court to determine whether particular provisions, when challenged, are appropriate and adapted to that end."

the same view was expressed by Starke, Evatt and McTiernan JJ in *Burgess* (at 658, 688) and Menzies J in *Airlines of NSW (No2)* at 141.

Parliament's power to legislate so as to give effect to a treaty conforms to the approach which this court has adopted in deciding whether legislative controls designed to achieve an end within power are themselves within power. (p696)

36. In the Franklin Dam case it was held that the country has the responsibility of giving effect to the principle of international customary law:

Whether failure on the part of Australia to enact domestic legislation incorporating the rules in the convention ... the Convention did not impose an obligation in specific terms to enact domestic legislation of a particular kind. It may be said that the legislation was valid because it gave effect to the principles of customary international law as declared by the Convention. But if Australia became a party to a convention which enacted a new set of rules in relation to the territorial sea and the contiguous zone, but that convention did not attract sufficient support to constitute its provisions as principles of customary international law. domestic legislation giving effect to it would none the less still constitute a valid exercise of the power. [citing *New South Wales v Commonwealth (the Seas and submerged Lands case)* (1975) 135 CLR 337; 8 ALR

37. In *Commonwealth of Australia and Another v State of Tasmania and Others* (C6 of 1983) High Court of Australia, Australian Law Reports 1983 pp 625-831 the Court decided that all domestic law must conform to the treaty:

The law must conform to the treaty and carry its provisions into effect. The fact that the power may extend to the subject matter of the treaty before it is made or adopted by Australia, because the subject matter has become a matter of international concern to Australia, does not mean that Parliament may depart from the provisions of the treaty after it has been entered into by Australia

and enact legislation which goes beyond the treaty or is inconsistent with it.

38. In the Franklin Dam case (1983), the principles established in the *Koaita v Bjelke-Petersen* (1982) 56 ALJR 625: 39 ALR 417 (Koowarta Case), were referred to in the deciding opinion. These principles, cited below in the Australian Commonwealth case, are particularly relevant to the external affairs power of the Federal Government in relation to Provincial Governments:

39. In the Koowarta case the following principle was upheld that becoming a party to a convention entails the undertaking of actions that would discharge obligations under the Convention:

In the *Koowarta v Bjelke-Petersen* (1982) 56 ALJR 625: 39 ALR 417, decided as to the scope of the external affairs power because the correctness of Koowarta was common ground between the parties. There the validity of ss 9 and 12 of the Racial Discrimination Act 1974 (CTH) was upheld as an exercise of the power conferred by s 51 (xxix) of the Constitution on the footing that the enactment of the two sections was a discharge of Australia's obligation under the International Convention on the Elimination of all Forms of Racial Discrimination. By becoming a party to that convention, Australia undertook to prohibit and eliminate racial discrimination in all its forms by appropriate means, including legislation. ...

Effect to an obligation imposed by international convention
section gave effect to an obligation imposed by an international
convention

40. In the Koowarta case the following principle was upheld that entering into a genuine treaty, the state assumes international obligations to enact domestic laws:

The Majority opinion was voiced by the following judges:

Stephen J. at 418.

There existed a quite precise treaty obligation on a subject of major importance in international relationships, which called for domestic implementation within Australia

Mason J. at 418

It would seem to follow inevitably from the plenary nature of the external affairs power that it would enable the parliament to legislate not only for the ratification of a treaty but also for its implementation by carrying out any obligation to enact a law that Australia assumed by the treaty

Brennan J. at 418

If Australia in the conduct of its relations with other nations accepted a treaty obligation with respect to an aspect of Australia's internal legal order, the subject of the obligation thereby because (if it was not previously) an external affair, and a law with respect to that subject was a law with respect to external affairs.

41. The Labour Convention case was used by the dissenting judges at 434 but was not considered to be a relevant precedent. Even one of the Judges, Wilson, who alluded to the case stated at p. 480 that "The decision in that case, though not the accuracy of the observation to which I have referred was subjected to a good deal of criticism." The Majority of the Judges in the Koowarta case followed the principles enunciated in the *R v Burgess: Ex parte Henry* (1936) 55 CLR 608.

42. In the Koowarta case the changed role of international agreements was examined.

Stephen at 452 identified the changed role as being "national governments' increased concern regarding domestic observance of internationally agreed norms of conduct":

"So long as treaties departed little from their early nature as compacts between princes, having no concern with domestic affairs, the conflict was muted: but in the century international conventions have come to assume a more extensive role. They prescribe standards of conduct for both governments and individuals having wide application domestically in areas of primarily regional concern, the very areas which, in federations, have tended to be entrusted to the legislative competence of the regional units of governments. This has necessarily exacerbated the problem which federations encounter in the implementation of international treaties while emphasizing the need for regional units in federations to recognize the legitimacy of national governments' increased concern regarding domestic observance of internationally agreed norms of conduct. "

Thus, areas of what are of purely domestic concern are steadily contracting and those of international concern are ever expanding (Stephen at 453).

post war growth in consensual international law (Stephen at 454)

What has occurred is rather a growth in the content of "external affairs." This growth reflects the new global concern for human rights and the international acknowledgment of the need for

universally recognized norms of conduct particularly in relation to the suppression of racial discrimination (Stephen at 454)

43. In the Koowarta case there was also the recognition of the importance and binding nature of international customary law:

Stephen at 456:

Even where Australia not a party to the Convention, this would not necessarily exclude the topic as a part of its external affairs. It was contended on behalf of the Commonwealth that, quite apart from the Convention, Australia has an international obligations to suppress all forms of racial discrimination because respect for human dignity and fundamental rights and thus the norm of non-discrimination on the grounds of race, is now part of customary international law, as both created and evidenced by state practices and as expounded by jurists and eminent publicists.

44. In the Koowarta case there was also the enunciation of the principle that if there exists a precise treaty obligation on a subject of major importance there should be domestic implementation.

Stephen at 456:

In the present cases it is not necessary to rely upon this aspect of the external affairs power since there exists a quite precise treaty obligation on a subject of major importance in international relationships, which calls for domestic implementation within Australia.

Mason at 459:

It would seem to follow inevitably from the plenary nature of the power that it would enable the parliament to legislate not only for the ratification of a treaty but also for its implementation by carrying out any obligation to enact a law that Australia assumed by the treaty.

45. In the Appeal the R v Burgess: Ex parte Henry case of 1936 will be examined and compared to the Canadian Labour Convention case of 1937.

Even though judges acknowledged that in Australian Law treaties were not self-executing, they acknowledged the power to the Commonwealth to enact implementing legislation:

Mason 459 recognize that it is a well settled principle of the common law that a treaty not terminating a state of war has no legal effect upon the rights and duties of Australian citizens and

is not incorporated into Australian law on its ratification by Australia (Chow Hung Ching v R (1948) not self-executing' ... to achieve this result, the provisions have to be enacted as part of our domestic law, whether by Commonwealth or State statute. Section 51 (xxix, arms the Commonwealth Parliament with a necessary power to bring this about. So much was unanimously decided by the court in R v Burgess: Ex parte Henry (1936) 55 CLR 608.

There the power enabled the Commonwealth Parliament to legislate so as to incorporate into their law the provisions of the Paris Convention for the regulation of aerial navigation.

46. The recognition of the disturbing outcome of the fragmentation of power in relation to international treaties was made in the R. v Burgess case:

Mason at 459 stated:

The consequence of the failure [of the R. v Burgess: Ex parte Henry (1936)] would have been to leave the decision on whether Australia should comply with its international obligations in the hands of the individual States as well as the Commonwealth, for the commonwealth would then lack sufficient legislative power to fully implement the treaty. The ramifications of such a fragmentation of the decision-making process as it affects the assumption and implementation by Australia of its international obligations are altogether too disturbing to contemplate. Such a division of responsibility between the Commonwealth and each of the States would have been a certain recipe for indecision and confusion, seriously weakening Australia's stance and standing in international affairs. Fortunately, the approach in Burgess has since been confirmed by R v Poole; Ex parte Henry (no.2) 1939 61 CLR...

47. The appropriateness of ensuring that state responsibilities will be discharged. was recognized in the Koowarta Case:

Mason at 462. stated:

doubtless the framers of the Constitution did not foresee accurately the extent of the expansion in international and regional co-operation which has occurred since 1900. ...There is no reason at all for thinking that the legislative power conferred by s 51 (xxix) was intended to be less than appropriate and adequate to enable the Commonwealth to discharge Australia's responsibilities in international and regional affairs.

48. It will be contended in the appeal that as in Australia, Canada must be able to commit the whole of Canada to giving effect to obligations:

In the Koowarta case, Mason at 463 stated:

Increasing emphasis is given in the United Nations and in regional organizations to the pursuit by international treaties of idealistic and humanitarian goals. It is important that the Commonwealth should retain its full capacity through the external affairs power to represent Australia, to commit it to participation in these developments when appropriate and to give effect to obligations thereby undertaken. `

49. In the Koowarta case, Mason at 466 and 467 recognized that Australia in common with other nations is bound to enact domestic legislation to enable the implementation of treaties:

Broadly speaking the test which they favoured was whether in substance the legislation carries out or gives effect to the Convention. (At 466)

On the broad view which I take of the power it extends to the implementation of the International Convention on the on the Elimination of all forms of Racial Discrimination. It is an international treaty to which Australia is a party which binds Australia in common with other nations to enact domestic legislation in pursuit of the common objective of the elimination of all forms of racial discrimination.

But I would go further and say that even on the more cautious expression of the scope of the power by Dixon in Burgess, it would extend to the implementation of the convention.

50. In the Koowarta case, Mason at 468 affirmed the imposition of and obligation and the consequences of not performing the obligation:

At the level of international law, the means chosen to attain this end was the formulation of the Convention. It imposes on each of the many parties to it an obligation to eliminate racial discrimination in its territory. The failure of a party to fulfill its obligations becomes a matter of international discussion, disapproval, and perhaps action by way of enforcement.

51. In the Koowarta case Murphy at 471 discussed "the obligations to take legislative measure...

52. Murphy at 472 dissolved the distinction between internal and external affairs:

Preservation of the world's endangered species, maintenance of universal standards of human rights. are for Australia as well as other nations, internal as well as external affairs.

53. Murphy at 473 also affirmed the entitlement of the people to have legislation enacted that will fulfill obligations under a treaty:

the people of the States are entitled as well as obliged to have the legislative and executive conduct of those affairs which are part of Australia's external affairs carried out by the Parliament and executive Government of Australia.

54. A country could be in breach of an obligation imposed on it, if it failed to enact law. In the Franklin Dam in 1983, issues were raised related to external affairs power. In the appeal this issue will be discussed in relation to the Canadian/B.C / international legal obligations context:

55. In the Vienna Convention on the Law of Treaties which Canada adopted in 1969 there was the affirmation that, in addition to the duty to ensure that the necessary legislation has been enacted prior to signing a treaty, there is an obligation not to defeat the purpose of treaties.

Under Article 18 of the Vienna Convention on the Law of Treaties, Canada is obliged to not defeat purpose and object of international conventions from the moment of signing the treaty or convention.

Canada signed (June 5, 1992) and ratified (December, 1992) two legally binding Conventions: The Convention on Biological Diversity and the Framework Convention on Climate Change. Under Article 18 of the Vienna Convention on the Law of Treaties (1969), Canada is obliged to "not defeat the object and purpose of a treaty prior to the entry into force"; this provision in the Vienna Convention on the Law of Treaties would indicate that as of June 1992 Canada was bound not to defeat the purpose and object of both the Convention on Biological Diversity and the Framework Convention on Climate Change.

56. States are also bound not to create a situation which would make it impossible to fulfill the obligations under a treaty.

Canada is bound not to create a situation, such as the reduction and the loss of biodiversity in the coastal temperate rain forest ecosystems, the disappearance of significant carbon sinks, or the fragmentation of sites of outstanding universal value. All these situations would make it impossible to fulfill its obligations under the conventions.

Article 61

Supervening impossibility of performance

1. a party may invoke the impossibility of performing a treaty as a ground for terminating or withdrawing from it if the impossibility results from the permanent disappearance or destruction of an object indispensable for the execution of the treaty."
2. Impossibility of performance may not be invoked by a party as a ground for terminating, withdrawing from or suspending the

operation of a treaty if the impossibility is the result of a breach by that party either of an obligation under the treaty or of any other international obligation owed to any other party to the treaty.

Canada, by not ensuring that the necessary legislation and enforceable law were in place to prevent activities that could defeat the purpose of the Conventions, could permanently "destroy ... an object indispensable ..." such as the biodiversity in significant old growth stands or the carbon sinks of the old growth forest. The reduction and loss of biodiversity, as well as the elimination of carbon sinks of old growth forest could be contributing to a situation that would make it impossible for Canada to fulfill its obligations under the Conventions. By continuing with clear-cut logging and fragmenting currently unfragmented areas, Canada through B.C.'s practices of fragmenting old growth forests may be creating a situation where the object (the pristine old growth forest of outstanding universal value) could fail to fulfill the criteria for being identified as World Heritage Site under the UN Convention for the Protection of Cultural and Natural Heritage (1972).

57. In the appeal the acceptability of Canada's current policy of preserving 12% of the land as parks will be questioned.

Evidence will be submitted that internationally at meetings such as the IUCN Annual General Meeting, the representatives from Parks Canada, including the Assistant Deputy Minister, did not admit that the 12% solution was Canadian Policy.

When it was mentioned in a contact group meeting — a meeting to discuss resolutions, that if we commend B.C., in the resolution, for its current conservation proposals and for the CORE process, that we would be endorsing the "12 % solution." Biologist, Elliot Norse, laughed and stated "Surely no country is still linking conservation to percentages." The representatives from the Canadian government were not prepared to admit at that meeting that the "12 % solution" is Canadian and B.C. government policy.

Also, evidence will be submitted that will demonstrate that the current position of the IUCN on percentages and conservation, is that the linking should be avoided because it has no basis in biology or ecology, and that governments will use it as a minimum, and will justify preserving what has been referred to as "rock and ice" in lieu of significant ecosystems that are under demand from resources. (Comments made from the floor of the Annual General Meeting when a resolution linking percentages and conservation was being discussed.)

The reason that the position of the IUCN is significant is that the IUCN was the international organization that first linked the two in 1982, and continued to do this even up the Earth Summit. It has only been since the Earth Summit that the IUCN has recognized the way the percentage figures have been used. Groups like "Share B.C" have been using the linking of percentages to conservation to support the claim that "12% and no more." The notion of 12% can be used to legitimize the reduction of significant areas of biodiversity,

such as the Clayoquot, and thus contribute to the defeating of the purpose of the Biodiversity Convention.

58. In the appeal, the degree of consultation and the nature of the subject matter of the Attorney-General for Canada v Attorney-general for Ontario Supreme Court of Canada A.C. 1937. (Hereafter referred to as the Labour Convention Case) will be distinguished from the degree of consultation and the nature of the subject matter current matter to be dealt with in the appeal. This Labour Convention case has been purported to be the precedent to support the claim, by provinces, that they are not bound by international Conventions signed by Canada.

It would appear that the Labour Convention case turned on two legal points:

- (i) the fact that the provinces on the matter in that case were not consulted prior to Canada's undertaking obligations under international law; criteria were established for consultation.
- (ii) the designation of "labour" issues as not fulfilling the criteria for invoking Article 91 Constitutional powers

In the Biodiversity Convention and the Framework Convention on Climate Change both sets of criteria were adhered to in a way that would make the decision in the Labour Convention case no longer applicable.

59. It will be submitted that the degree of consultation surrounding the "International Labour Convention" — the subject matter in the Labour Convention case can be distinguished from the degree of consultation surrounding the Biodiversity and Climate Change Conventions and UNCED adopted documents. In the latter there is evidence that B.C. was consulted prior to both the signing and the ratifying of the Biodiversity and Climate Change Conventions, as well as prior to the adoption of Agenda 21.

In the "Canadian Reply to Questionnaire on Parliaments and the Treaty-making Power" there is reference to a constitutional convention to consult provinces prior to signing and ratifying Treaties and Conventions. It would appear that the Labour Convention case could be distinguished on the grounds that there was not consultation with the provinces during the negotiation process of the International Labour Convention. Unlike the Labour Convention, the negotiations surrounding the UNCED conventions, took place in Canada with the full consultation of the provinces. The provinces were fully consulted before the signing and ratifying of the Biodiversity and Climate Change Conventions. This commitment to consult is expressed as follows in the Canadian Reply to Questionnaire on Parliaments and the Treaty-making Power", 1982:

The practice of the Canadian Government, in cases where the subject matter of an international agreement falls either wholly or partly within provincial jurisdiction is to consult each of the provincial governments. The process of

consultation is informal and is usually conducted by letters exchanged between the federal and provincial governments.

A multilateral treaty dealing with matters within provincial jurisdiction would be signed by Canada only after consultation with the provinces had indicated that they accepted the basic principle and objectives of the treaty. Assurances would be obtained from the provinces that they are in a position, under provincial laws and regulations, to carry out the treaty obligations dealing with matters falling within provincial competence, before action is taken by the Government of Canada to ratify or acceded to such a treaty. (Canadian Reply to Questionnaire on Parliaments and the Treaty-making Power", 1982).

60. It should be noted that there appears to be a serious inconsistency within the "Canadian Reply to Questionnaire on Parliaments and the Treaty-making Power" document. On the one hand the document calls for consultation with the provinces prior to signing, along with the assurances that the necessary legislation has already been enacted, and yet the document still considers the applicability of the Labour Convention case which the "Canadian Reply to Questionnaire on Parliaments and the Treaty-making Power" claims has never been overturned.

In the "Canadian Reply to Questionnaire on Parliaments and the Treaty-making Power" the following references were made to the Labour case:

The federal government is not entitled, merely because it has entered into a treaty, to legislate on matters that fall within the competence of the provinces. This is the effect of the Labour Conventions case. Attorney-General of Canada v. Attorney-General of Ontario (labour Conventions) (1937) A.C.

Although it has been argued that legislation to implement a treaty is within the federal power over the peace, order and good government of Canada, and that Section 132 should be interpreted in the light of changing circumstances, the Supreme Court of Canada has yet to rule on this question, which would involve a reconsideration of the reasoning in the Labour Conventions case. (Parliaments and the Treaty-making power —"Canadian Reply to Questionnaire on Parliaments and the Treaty-making Power")

61. In the Labour Convention case, criteria for being part of the decision-making process were proposed.

Several of the Counsels objected to the imposition of federal legislation to comply with international obligations because the provinces were not part of the decision. They cited the following aspects of being part of the decision: "cooperation", "obtaining advice", "obtaining consent" or "asking for approval":

- *Cooperation (at 327)*

...from her new international status Canada incurred obligations, they must, so far as legislation was concerned, when they dealt with Provincial classes of subjects, be dealt with by the totality of powers — by co-operation between the Dominion and the Provinces.

- *Obtaining advice* (at 340)

said that in treaties affecting subject-matters within the legislative competence of the Provincial Legislatures and bring into operation the provisions of s 132 of the BNA act the King should have his assent on the advice of his Provincial advisers as distinct from his dominion advisers.

- *Obtaining consent* (at 339)

The dominion has not brought the draft Conventions before the authority or authorities ' within whose competence the matter lies' and has not obtained the consent of those authorities as required by art 405., paras 5 and 7.

- *Asking for approval* (at 331)

It is ordinary constitutional practice to ask the approval of the body which will, in the event of the engagement being entered into, have the power to enact the legislation.

62. In the Appeal it will be shown that B.C., through consultations with the Federal Government at the ministerial level prior to the signing and the ratifying of the treaties, B.C. was consulted through the Federal governments engaging in "cooperation", "obtaining advice", "obtaining consent" or "asking for approval":

On August 8, 1994, the Strategic Planning Committee of the Council of Ministers of the Environment was contacted by Appellant and asked to forward a chronology of the Federal /Provincial Consultation process that occurred leading up to the Earth Summit and the signing of the UNCED Conventions (June, 1992), and leading up to the ratification of the UNCED Conventions (December, 1992).

63. It is expected that this chronology from their Strategic Planning Committee will have been made available in time to present it at the Leave to Appeal hearing. This evidence which will be submitted will demonstrate that in reference to the Biodiversity Convention and the Framework Convention on Climate Change, the provinces were consulted prior to the signing of the Convention (at numerous Ministerial meetings at the Prep Coms leading up to June, 1992) and prior to ratification (November 23, 1992 meeting prior to the ratification of the document in December of 1992).

64 It would appear that prior to signing and ratifying the Convention the Federal government consulted with the provinces and if the Federal government followed the External Affairs principle of ensuring that the necessary legislation was in place to enable performance of the treaty obligations under the Convention there had been opportunities during the consultation meetings to ensure that the necessary legislation was in place .

65. It would appear that B.C. played a significant role in the provincial endorsement of the UNCED Conventions by moving the endorsement at the November, 1992 Ministerial meeting, and by obtaining Cabinet support:

Jaime Alley, former representative for Corporate Affairs in the Ministry of the Environment said:

"That the provincial governments insisted on not being just another stakeholder in the consultation process but on having government to government consultation."

..."The province endorsed the ratification. We agreed with Canada to ratify it. There was provincial endorsement. The move to endorse the Conventions was made by John Cashore, the then B.C. Minister of Environment" Cashore then went to Cabinet, sought their support and endorsement of the ratification and then stated that the Cabinet had approved the Conventions to the CCME meeting.

"Barbara MacDougal, wrote to all provincial constitutional ministers seeking their advice prior to ratification" "There was continuous consultation you need to contact the CCME for details"

(Personal Communication, August, 1994)

66 In a document obtained through the Freedom of information Act there was evidence of the Provincial cabinet endorsement for the ratification of the Biodiversity and Climate Change Conventions:

EXHIBIT: E "UNCED follow-up: Endorsement of International Convention on Climate change and Biological diversity" November 4, 1992.

67. Through the "UNCED follow-up: Endorsement of International Convention on Climate change and Biological diversity" November 4, 1992, there has been the B.C. Provincial cabinet endorsement of the Biodiversity and Climate Change Conventions.

68. In the Appeal it will be contended that B.C. through a letter prior to August 1992, the then Constitutional Minister of B.C., the Hon Moe Sihota conveyed by letter to the Hon. Barbara McDougall, The Secretary for External Affairs, B.C.'s support for the Biodiversity and Climate Change Conventions.

On August 29 the Hon Barbara McDougall, Minister of State for External Affairs wrote to the Hon Moe Sihota Minister responsible for Constitutional Affairs to acknowledge B. C's support and to indicate that Canada plans to complete the ratification process by the end of 1992 (P. 05 of FAX of Exhibit E)

[The Appellant made an application (July 17, 1994) through the Freedom of Information Act for a copy of this correspondence.

69. In this Cabinet submission, dated November 4, 1992, the B.C. government affirmed that it was bound by the Biodiversity Convention and the Framework Convention on Climate Change:

Canada signed binding International Conventions on climate Change and Biodiversity
.and indicated its support for ...a "Global Green Plan" for sustainable development, entitled Agenda 21.

70. In the event that the Appeal Court will not concur that the Labour Convention case can be distinguished on the basis of the argument that there was sufficient consultation prior to the signing and the ratification of the Convention on Biological Diversity and the Framework Convention on Climate Change, then a subsequent argument will be presented that the subject matter "Biodiversity " and "Climate Change" could come under the residuary powers of Section 91 of the Constitution. At the appeal, the Labour Convention case will also be distinguished on the ground that the decision in that case followed the Supreme Court case "In the Matter of Legislative Jurisdiction over Hours of Labour, [1925] Can. S.C. R. 505. where the Judge stated without discussion that "labour" issues" could come under the head of #13— "Property and civil Rights" or under # 16 "Local and Private Matters Within the Provinces." Thus, labour issues were not perceived to fulfill the categories outlined for justifying the invoking of residuary powers under Section 91. It will be submitted that the "International Labour Convention" — the subject matter in the Labour Convention case can be distinguished from the "Biodiversity," and "Climate Change." — the subject matter United Nations Convention on Environment and Development (UNCED).

71. In the Labour Convention case properties were set out for the designation of matters that could be deemed to come under residuary powers.

It would appear that "labour" issues' not warranting the invoking of residuary powers could be distinguished from "biodiversity" and "climate change issues because both the latter issues fulfilled most of the criteria or properties set down by the judges for determining inclusion in section 91. The subjects of "Biodiversity" and "Climate change" could be justifiably a subject that would not come under Section 92, and thus would fall to federal residuary powers. "Biodiversity" and "Climate Change" could be distinguished from labour on a number of grounds:

In the Labour Convention case Mr. Justice Atkin summarized the distinction between S 91 and S. 92 of the BNA act as follows:

section 91 under the general powers, sometimes called the residuary powers, given by s. 91 to the dominion parliament to make laws for the peace, order and good government of Canada in relation to all matters not coming within the classes of subjects by this act assigned exclusively to the legislatures of the provinces. p. 342 Atkin's judgment

In the Labour Convention case the criteria for determining whether the subject fell under section 92 were the following:

If the new functions affected the classes of subjects enumerated in s. 92 legislation to support the new functions was within the competence of the

provincial legislatures only. If they did not the competence of the Dominion Legislature was declared by s 91 and existed ab origin.

It was decided in this case that Labour relations would quite legitimately be placed under the subjects in section 92. "Property and civil rights in the province" which was assigned exclusively to the legislature of the provinces by head 13 of s92 of the BNA Act.

It was noted in the Labour case at 328 that there must be some grounds for taking the subjects out [of 13 of s 92). The Court was not satisfied that the federal government had established sufficiently the grounds for taking the subject of "labour issues" out of the subject area in section 92, as noted above in the 1925, Supreme Court case.

72. In the Labour Convention case, Counsels for the Attorney General of Canada and for the Attorney Generals for the provinces referred to a number of properties of a subject which would enable the subject to be designated as a new function and then come under the residuary powers of section 91. It was decided that "labour relations" did not fit into this category. In the appeal an attempt will be made to demonstrate that "biodiversity" and "Climate Change" are categories of subjects that could be deemed to invoke the residuary powers because these subjects would fulfill the properties advocated in the Labour Convention case, as well as in re: Regulation and Control of Radio Communication in Canada (Radio Case) (1932] A.C., p. 304 and in Re: The Regulation and Control of Aeronautics in Canada (Aeronautics Case) [1931] A.C. 1932, p. 54.

• *New subject:*

Counsel acting for the Attorney General of New Brunswick distinguished the Radio case on the ground that the subject matter in the radio case, in contrast to that of the Labour Convention Case, was a "new subject not embraced within the enumerated heads of s.92.(338.). It is quite likely that "biodiversity" and "climate change" would fall into this category. Biodiversity, and climate change are issues that transcend national, provincial and state boundaries are certainly new subjects that were not deemed to be limited to regional control.

73. It will be contended in the Appeal that Biodiversity and Climate Change because of the responsibility to not have activities under one jurisdiction impact on other jurisdiction would surely be considered to be activities that would come under "new subjects" and thus come under residuary powers of the federal government. If these two issues would be deemed as new subjects, then the federal government would be obliged to invoke its residuary powers and ensure that as of June 1992, no activities in Canada would defeat the purpose of these treaties. Consequently, federal government would be both entitled and bound to enact legislation that could override provincial legislation in the event that the provincial legislation would not be able to prevent the defeating of the purposes of the Conventions.

• *Matter of "such general importance"*

Further, the present legislation was not concerned with matters of such general importance as to justify the overriding of the normal distinction of powers in SS 91 and 92 (head note of Labour Convention case)

- *"Exceptional Circumstances"* Mr. Justice Atkin at 353

EXHIBIT F: AFFIDAVIT: Affirmation of the urgency of the global situation

EXHIBIT F* Exhibit submitted in the September 15 Application and presented in transcripts

Statements from Royal Society, Science Council, presented before Mr. Justice Drake.

74. From the B.C. government's own "State of the Environment Reporting" document, 1993, the "importance" and "exceptional conditions" of biodiversity are stressed:

Biodiversity is the variety of life on the planet. It is important for a number of reasons. First, we have an ethical stewardship responsibility for other living things with which we share the planet. Second, high species diversity contributes to ecosystem stability. Third, biodiversity has immeasurable aesthetic value; provides food medicine and other products of enormous economic value; and generates critical ecosystem services essential to all life:

"

Standard of necessity" Mr. Justice Atkin at 353

75. From the B.C. government's own "State of the Environment Reporting" document the essence and necessity of Biodiversity is affirmed because of its links to other cycles

Biodiversity is essential to maintain ecosystem processes that support all life. these include; Maintaining the gaseous compositions of the atmosphere, climate control, regulating the hydrological cycle, generating and maintaining soils, cycling nutrients necessary for the growth of living things, and decomposing waste materials.

76 From the B.C. government's own "State of the Environment Reporting" document the B.C. government also recognized the importance of identifying species and its inability to assess the current state in B.C:

Genetic diversity enables species to adapt to changes in their environment over time. It is difficult and costly to measure genetic diversity and therefore difficult to assess its current state in B.C.

77. From the B.C. government's own "State of the Environment Reporting" document the importance of the biodiversity of coastal temperate rainforests is acknowledged

Trees in coastal temperate rain forests grow to very large sizes and exceptionally old ages. Such ecosystems have the highest standing biomass of any ecosystem on earth and provide for tremendous biodiversity. Coastal temperate rain forest occurs in a few scattered spots around the world, and are considered rare on a global scale. North America has the largest continuous tract of coastal temperate rain forest on earth, approximately half of which is in B.C.

- *Matters of national importance* at 335

Matters of national importance of such wide import as to affect the body politic of the dominion in the overriding way that was found in *Russell v the Queen.*, if they were taken out of the specific heads of s. 92, then Ontario is satisfied to see this legislation supported. (At 335 Labour Convention case)

In the press release issued at the time of ratifying the Biodiversity Convention. Prime Minister Brian Mulroney indicated Canada's commitment:

to [fulfill] Canada's commitment to ratify the Convention before the end of 1992. Canada is the first industrialized country to ratify both agreements. The Convention which emerged from last June's Earth Summit in Brazil, exemplify a global commitment to the principles of sustainable development ...as embodied in Agenda 21 and agreed to at the Earth Summit. the Convention on Biological Diversity provides a framework for conserving the planet's animal and plant life and maintaining their habitats.

WHAT IS CANADA'S POSITION ON THE BIODIVERSITY CONVENTION?

Canada supports the international effort to conserve biodiversity. Canadian representatives participated fully in negotiations of the Convention and the federal provincial and territorial governments all believe that the Convention is a good basis for tackling this international problem.

• *Extraordinary peril to the National life of Canada*" Mr. Justice Atkin at 353 The federal government in its background to this press release at the time of ratification of the Biodiversity Convention on December 4, 1992, also affirmed without Biodiversity, "humanity's ability to survive is threatened."

What is biodiversity: Biodiversity provides the very foundation for human life and life support systems. without healthy and stable biological resources, humanity's ability to survive is threatened.
(Press Release on Ratification of the Biodiversity Convention, Dec. 4, 1992)

• Canada is continuing to play an active international role in discussion about the Convention. It has been actively involved in preparing for the implementation of the Convention, by participating in all the UN meeting on biodiversity since the Earth Summit.

• the federal, provincial and territorial government in Canada are proud of Canada's leadership on the issue of biodiversity conservation. As one of the first countries to sign the Convention and the first industrialized country to ratify it, Canada has demonstrated its commitment and leadership to the world. we must of course, continue to ensure that our performance at home lives up [to] that commitment

From these statements both by the provincial government and by the federal government, it would appear that "biodiversity" is of "general importance."

- *Not foreseen matters*

Robertson, KC indicated p.340 (arguing the federal position]

One of the things upon which the parties were able to agree at confederation in respect of matters not provided for not foreseen, was that they were to go to the Dominion. One of the outstanding dangers at the time of confederation and to-day, is that of sectional interests and prejudices and private interests interfering with the good government of Canada as a whole. Reliance is placed on the residuary powers as conferring the performance of treaty obligations: ... Radio case (1932] A.C. 304, 311, 313.

Residual powers for environmental issues which are all pervasive, similar argument could be for climate change. The principle that could apply is the consequences cannot be controlled by a particular jurisdiction within Canada let alone even within Canada. The impact of anthropogenic actions on biodiversity and climate change are not "restrict able" to traditional jurisdictional boundaries. Presumably the largest unit of jurisdictional power should be in control of the fulfillment of obligations under the Convention.

- *Importance which outweighs the civil right of the individual*

Robertson K.C. supporting the federal position indicated:

When a matter has attained an importance which outweighs the civil right of the individual, once it has reached that stage, then the civil right is lost sight of and the matter from an international aspect outshines it, and is the one to which attention should be directed. Here an international obligation has arisen and it is the duty of Canada to see that obligations are performed Canada alone can perform it and Canada, therefore, in these particular circumstances and while the obligation endures, is the body to legislate because it is an international obligation. Is not the proper view that once Canada has properly created international obligations then it is necessary for the peace, order and good government of the Dominion that Canada should perform it? p. 341

Note: the reference to the aeronautics case were not in the original submission. They were, however, referred to in the oral submission. The following references and a subsequent page of documentation was written into the leave to the appellant's appeal book but not fully referred in the court submission

Note: Applicability of Aeronautics case at 71, AC 1931
cites propositions from Attorney General of Can. V Attorney General of B.C.
AC 1930

1. the legislation of the parliament of the dominion, so long as it strictly relates to subjects of legislation expressly enumerated in s91, is of paramount authority

at 71

2. the general power of legislation conferred upon the subjects expressly enumerated must be strictly confined to such matters as are unquestionably of national interest and importance. And must not trench on any of the subjects enumerated in s92, as within the scope of provincial legislation,

unless these matters have attained such dimensions as to affect the body politic of the dominion.

4. there can be a domain in which Provincial and Dominion legislation may overlap, in which case neither legislation will be ultra-vires, if the field is clear, but if the field is not clear and the two legislations meet the dominion legislation must prevail

at 73

it is obvious therefore that there may be cases of emergency where the dominion is empowered to act as a whole" also by reason of the plain terms of s132

78. In the Appeal the relevance of Section 132 of the B.N.A. Act will be reconsidered in the light of the fact that it is the only section that does refer explicitly to obligations under treaties.

The Parliament and government of Canada shall have all powers necessary or proper for performing the obligations of Canada or of any Province thereof, as part of the British Empire, towards foreign countries arising under treaties between the Empire and such foreign countries. (Section 132, B.N.A.)

In the "Aeronautics case" s. 132 was still deemed to be relevant.

At 73, Mr. Justice Swank held that

by reason of the plain terms of s 132, where Canada as a whole having undertaken an obligation is given the power necessary and proper for performing that obligation

at 7070 also held:

The underlying objective of the BNA Act was to establish a system... the real object of the Act was to give the central Government those functions and almost sovereign powers by which uniformity of legislation might be secured on all questions which were of common concern to all provinces as members of a constituent whole

at 73 he stated

there may be cases where the dominion is entitled to speak for the whole...by reason of plain terms of S.132 where Canada as a whole having undertaken an obligation is given the power necessary and proper for performing that obligation.

In the 1992, United Nations Convention on Environment and Development (UNCED) Action plan, Agenda 21, in the Biodiversity Chapter 15, — a positive duty is assumed by governments adopting Agenda 21:

" At the same time, it is particularly important in this context to stress that states have the sovereign right to exploit their own biological resources pursuant to their environmental policies, as well as the responsibility to conserve their biodiversity and use their biological resource sustainably, and

to ensure that activities within their jurisdiction or control do not cause damage to the biological diversity of other States or of areas beyond the limits of national jurisdiction. " (15.3. Agenda 21).

It would appear that it would be possible in the light of "changing circumstances" that a Convention such as the Biodiversity Convention which deals with a phenomenon that does not respect proprietary divisions; that subject areas such as biodiversity and climate change would come under federal purview. In this context it could be argued that biodiversity because of the responsibility to not have activities under jurisdiction impact on other jurisdiction that biodiversity would come under section 132 which bestows upon the federal government overriding powers, in the light of changing circumstances — which in this case would be the pervasiveness of biodiversity. In 1867, no one was thinking of incurring environmental obligations.

79. At the Appeal, evidence will be presented to indicate the assessment of Canada's responsibility to other states for B.C.'s practices:

At the IUCN (World Heritage Union) 1994 Annual General meeting of the IUCN Commission on Environmental Law, the question of Federalism and International Law was raised. In particular, the Appellant raised the question about the responsibility under a treaty of the federal state when there is non-compliance within the sub-unit. As a specific example, Canada's responsibility for B.C.'s actions was raised. Several of the lawyers, some of whom had served as advisers to the International Court of Law or to the United Nations, concurred that Canada could be held responsible under the Conventions to other countries, if through B.C.'s actions Canada was in non-compliance with international legal obligations under the two Conventions signed at UNCED.

80. In the Appeal it will be noted that under the Convention of Law of Treaties, Canada has been obliged not to invoke internal law to justify failure to perform international obligations.

Under Article 27 of the Vienna Convention on the Law of Treaties, Canada is bound to not invoke Internal law to justify failure to perform a treaty:

A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty.

Neither the internal law of the B.C. Government's land use decision regarding Clayoquot Sound, nor the internal law of judicial injunctions justifies failure to meet the provisions within the Conventions.

81. In the Appeal, it will be argued that as a result of MacMillan Bloedel's applying for an injunction and the Court's granting this injunction, the Courts have permitted the continuation of practices that are in violation of the Biodiversity and Climate Change Conventions. The Courts have inadvertently encouraged non-compliance with international law.

In addition, Canada, if not having notified otherwise, is bound by what occurs in B.C.

Under Article 29 of the Convention of Law of Treaties, "territorial scope of treaties", Canada is bound throughout its territory including all provinces and territories:

Unless a different intention appears for the treaty or is otherwise established, a treaty is binding upon each party in respect of its entire territory.

If Canada has expressed a different intention, then it is important that the other states of the world know that when Canada signs an international agreement in areas over which provinces have jurisdiction, the provinces are not bound. Citizens from countries that have endorsed the self-executing principle related to international law presume that if Canada signs and ratifies a treaty that the treaty obligations are binding on all the parts of the country including provinces and territories

EXHIBIT: G Affidavit from a citizen from the US — a country that has endorsed the self-executing principle.

82. It will be contended that Canada has been in non-compliance since June 1992 (UNCED) because B.C. forest practices have been in contravention of provisions in the Conventions, and Canada has thus defeated the purposes of the Conventions.

83. It will be submitted in the Appeal that it can be demonstrated not only that Canada through the practices of B.C. has been defeating the purpose of the Conventions signed in June, 1992 at UNCED, but also that Canada has been defeating the purpose of another Convention that is particularly relevant to Clayoquot and the injunction granted to MacMillan Bloedel: the UN Convention for the Protection of Cultural and Natural Heritage (1972).

The UN Convention for the Protection of Cultural and Natural Heritage was signed in 1972. Canada has been obligated to identify and nominate sites as being sites of "outstanding universal value." Canada and B.C. have been remiss in not identifying and nominating an extensive network of ancient coastal temperate rainforests, including Clayoquot Sound as being a natural heritage of "outstanding universal value."

84. From the B.C. government's own "State of the Environment Reporting" document the importance of the biodiversity of coastal temperate rainforests is acknowledged:

Trees in coastal temperate rain forests grow to very large sizes and exceptionally old ages. Such ecosystems have the highest standing biomass of any ecosystem on earth and provide for tremendous biodiversity. Coastal temperate rain forests occur in a few scattered spots around the world, and are considered rare on a global scale. North America has the largest continuous tract of coastal temperate rain forest on earth, approximately half of which is in B.C.

85. Canada has failed to comply with the Biodiversity Convention and the Climate Change Convention because B.C. since the moment of signing the Biodiversity and Climate Change Conventions has continued to log in an ecologically unsound way, such as clearcutting primary growth coastal temperate rain forests.

86. Canada has contravened the Convention because, B.C. since June 1992 has defeated the purpose of Biodiversity Convention by having failed to identify biodiversity

Under the Convention the parties are required "to identify biodiversity"

At the ratification of the Biodiversity Convention in the December 4, 1992, speech by Prime Minister Mulroney, he informed the public of about the state of identification of species in Canada and admitted that there were an equally large number not reported:

Canada is one of the largest countries in the world and is home to about 70,000 known species and many different habitats. However, many of Canada's ecosystems are threatened.

Biodiversity the web of life (environment Canada publication)

A total of just over 70,000 species of animals, plants and micro-organisms have been described or reported to occur in Canada. The same number remain undescribed or unreported by science. If viruses are added, the total is doubled to 290,000

Canada may claim to be complying with the Biodiversity Convention by indicating that they are developing a "Canadian Biodiversity Strategy" (see draft document June, 1994); however, even by its own admission:

the Status of Biodiversity is also not fully understood. As many as half of the estimated 140,000 species in Canada have not yet been identified.... and that only vertebrates and vascular plants are being evaluated.... . The status of most of Canada's species such as fungi, bacteria and invertebrates -- all of which play crucial roles in ecosystem function — is not fully known.

Yet Canada, through ecologically unsound practices in B.C. continue to log primary forest ecosystems that contain the biodiversity that will be lost before it is identified.

87 From the B.C. government's own "State of the Environment Reporting" document the B.C. government also recognized the importance of identifying species and its inability to assess the current state in B.C:

Genetic diversity enables species to adapt to changes in their environment over time. It is difficult and costly to measure genetic diversity and therefore difficult to assess its current state in B.C.

British Columbia had not sufficiently identified biodiversity at the time of signing the Convention, and British Columbia has continued to permit practices that contribute to the loss of biodiversity. In the event of the government's own admission that it is

virtually impossible to identify species; it should not defeat the purpose of the Biodiversity Convention by ensuring that the storehouses of biodiversity not be logged.

88. Canada since June 1992 has defeated the purpose of Biodiversity Convention through B.C.'s having failed to carry out an environmental assessment review of anything that could contribute to a reduction or loss of biodiversity,

The former Canadian Ambassador for the Environment to the United Nations, Arthur Campeau, who was the head of the Canadian Delegation at UNCED concurred that Canada had been in non-compliance with the Convention because of Canada's failure to carry out an environmental assessment review of anything that could contribute to a reduction or loss of biodiversity [such as clear-cut logging and other ecologically unsound practices]. (Personal communication, March 1994)

In jurisdictions where an environmental impact assessment has been carried out, practices, typical of those carried out currently in BC forests, have been assessed as being destructive of biodiversity. For example, a German biologist, Dr. Schutt, specializing in biodiversity indicated the following about "clearcutting":

The practice of clearcutting, followed by artificial reforestation has undoubtedly many technical and organizational advantages. In the course of time, however, soil scientists and ecologists found out that the practice of clearcutting automatically leads to considerable drawbacks:

- wounding of the soil surface through logging operations.
- Risk of erosion -High irradiation and higher climatic extremes alter the microclimate, the flora and the microflora and deteriorate the growing conditions for a number of valuable tree species. -
- Soil compression and a reduction of species richness
- An accelerated decomposition of organic matter occurs, combined with a wash out of nutrients, and the eutrophication of ground water, rivers and lakes occur (Dr. Schutt, Biological Department, University of Munich, Environmental Ethics Conference, 1992, Vancouver)

89. Canada since June 1992 has defeated the purpose of Biodiversity Convention through B.C. government's and its courts' having failed to avoid or minimize the threat of significant reduction or loss of biological diversity through their not invoking the precautionary principle which reads as follows:

..where there is a threat of significant reduction or loss of biological diversity, lack of full scientific certainty should not be used as a reason for postponing measures to avoid or minimize such a threat (Convention on Biological Diversity)

As of June 1992, Canada undertook the obligation under the Biodiversity Convention to invoke the precautionary principle.

At the ratification of the Biodiversity Convention in the December 4, 1992, speech by Prime Minister Mulroney indicated his awareness of the loss of biodiversity and in particular the impact of modern forestry practices:

Biodiversity is being threatened directly and indirectly by human activity such as

(i) Destruction of wildlife habitat

the conversion of natural areas, on land and at sea, to other uses destroys disrupt animal and plant habitat. Such loss of habitat leads directly to the loss of species. ...

(ii) Over-exploitation of animal and plant species

(iii) Disturbances of natural ecosystems

Each of the world' ecosystems consists of a community of animals, plants and micro-organisms and the sunlight, water, soil and minerals they need to survive. These ecosystems exist in a delicate balance, with each piece of the puzzle playing a specialized role. Any disruption of the balance can cause a ripple effect of disruptions, threatening the entire ecosystem and individual parts of it...

(1v) Modern agricultural and forestry practices

...similarly, modern forestry often replants a single high-yielding tree species after logging a diverse forest ecosystem

Any human activity that has a negative effect on the environment has a negative effect on biodiversity.

Undoubtedly the "modern forestry practices" he was referring to were the silviculture regimes of clearcutting and replanting.

90. It will be brought to the attention of the judges in the Appeal that experts throughout the world recognize that the practice of clear-cut logging destroys biodiversity, and that if Canada were to invoke the precautionary principle, clear-cut logging and other ecologically unsound selective logging practices would be discontinued.

There is sufficient evidence that clear-cut logging destroys biodiversity as defined under the convention. Dr. Richard Mittermeier, President of Conservation International, has correctly, stated that the precautionary principle, if invoked, would justify the banning of clear-cut logging (Personal Communication, IUCN Annual General Meeting, 1994)

91. Canada, since June 1992, is in non-compliance with the Framework Convention on Climate Change through B.C.'s failure to conserve carbon sinks, and through B.C.'s destruction of sinks, Canada has defeated the purpose of the Convention.

B.C. since June 1992 has defeated the purpose of Climate Change Convention by having failed to protect carbon sinks; it has continued to permit the harvesting in significant carbon sinks like primary coastal temperate rainforest such as those of Clayoquot Sound.

Under the Framework Convention on Climate Change Canada is required to protect and enhance Greenhouse gas sinks and reservoirs:

Each of these Parties shall adopt national policies and take corresponding measures on the mitigation of climate change, by

limiting its anthropogenic emissions of greenhouse gases and protecting and enhancing its greenhouse gas sinks and reservoirs.

92. Canada, through B.C. 's not fulfilling its duty to identify, protect and conserve natural heritage of outstanding universal value, such as Coastal temperate rainforest areas like Clayoquot Sound, has since 1972 , when it signed the UN Convention for the Protection of Cultural and Natural Heritage, failed to discharge its obligation to protect the natural heritage of outstanding universal value for future generations under the United Nations Convention for the Protection of Cultural and Natural Heritage:

Each State Party to this Convention recognizes that the duty of ensuring the identification, protection, conservation, presentation and transmission to future generations of the cultural and natural heritage referred to in articles 1 and 2 and situated on its territory, belongs primarily to that State. (United Nations Convention for the Protection of Cultural and Natural Heritage, 1972)

In the UN Conference on Humans and Environment of 1972, the requirement to preserve our environmental heritage and the requirement to save a representative sample of natural ecosystems for future generations were being recognized:

The natural resources of the earth including the air, water, land, flora and fauna and especially representative samples of natural ecosystems must be safeguarded for the benefit of present and future generations (Principle 2)

Man has a special responsibility to safeguard and wisely manage the heritage of wild life and its habitat which are now gravely imperiled by a combination of adverse factors (Principle 4),

This international obligation was reaffirmed in the UN Resolution 37/7 (1982):

Reaffirming that man must acquire the knowledge to maintain and enhance his ability to use natural resources in a manner which ensures the preservation of the species and ecosystems for the benefit of present and future generations, (UN Resolution 37/7, 1982)

In 1988 the trend gravity of the situation for "generations to come" was recognized by the Science Council of Canada

THE ECOLOGICAL CRISIS

The continuing and accelerating deterioration of the planet's ecological base poses a significant threat to the long-term viability of our world. Evidence concerning global warming,

ozone depletion, species depletion and elimination, the spread of the deserts, forest destruction, soil degradation, acidified lakes, rivers and streams, and groundwater pollution exists in abundance in the scientific literature. (1988, Science council of Canada)

Much of the evidence is subject to many qualifications and even scientific debate, but the overall trend and its gravity for our planet, to its multitude of species and to the generations to come, are beyond question. (11)

This Commitment to future generations was restated in the Caracas Declaration in February 1992:

To support the development of national protected area policies which are sensitive to customs and traditions, safeguard the interest of indigenous people, take full account of the roles and interests of both men and women, and respect the interests of children of this and future generations (Caracas Declaration in February 1992, p.3)

It will be noted that throughout the UNCED documents there was expressed the responsibility to future generations.

The principle of considering the need to preserve ecological heritage for future generations, because of its continued inclusion in international documents has become a principle of international customary law.

Not only has Canada been remiss in not ensuring compliance to this principle of international customary law, but also since June 1992, Canada is in non-compliance with both the Biodiversity Convention and the Climate Change Convention for failing to conserve and sustainably use biological diversity for future generations. Under the Biodiversity Convention, Canada has indicated its determination to do the following:

"To conserve and sustainably use biological diversity for the benefit of present and future generations (Biodiversity Convention, UNCED, 1992)

In the appeal there will be an affidavit indicating the impact on the youth of governments undertaking obligations and not fulfilling them

EXHIBIT: H Affidavit by Christopher Scott along with affidavits from representatives of future generations

In the appeal there will be an affidavit indicating the impact on the youth of governments undertaking obligations and not fulfilling them

EXHIBIT: I Affidavit by Susan Gage

Since 1972 Canada has been remiss in not fulfilling its duty under the UN Convention for the Protection of Cultural and Natural Heritage (1972)

In 1972, through this Convention, Canada, along with the other states that are parties to this Convention, recognized the urgent need to address the disappearance of natural heritage and acknowledged the global responsibility to preserve natural heritage:

Considering that parts of the cultural or natural heritage are of outstanding interest and therefore need to be preserved as part of the world heritage of [humankind] as a whole (Convention for the Protection of the World cultural and Natural Heritage, preamble, 1972).

Considering that in view of the magnitude and gravity of the new dangers threatening them, it is incumbent on the international community as a whole to participate in the protection of the cultural and natural heritage of outstanding universal value... (Convention for the Protection of the World cultural and Natural Heritage, preamble, 1972)

Under Article 4 of this Convention, Canada undertook a positive duty of ensuring the identification of natural heritage:

Each State Party to this Convention recognizes that the duty of ensuring the identification, protection, conservation, presentation and transmission to future generations of the cultural and natural heritage referred to in articles 1 and 2 and situated on its territory, belongs primarily to that State. It will do all it can to this end, to the utmost of its own resources and where appropriate with any international assistance and co-operation ...

and under article 5 d the appropriate legal measures must be taken to ensure identification:

- To take the appropriate legal, scientific, technical, administrative and financial measures necessary for the identification, protection, conservation, presentation and rehabilitation of this heritage. (Article 5d)

Canada, and B.C. have failed to fulfill their duties by not identifying a network of coastal temperate rainforests, including Clayoquot Sound, and nominating this network as a World Heritage Site. In 1981, Australia, nominated a large area of its temperate rainforest, and in 1993 nominated an additional network of temperate rain forests. With the continued fragmentation of the forests in B.C. If we do not act immediately, it will be too late to nominate a network of temperate rainforests and conservation corridors because the forested areas in B.C. will no longer be able to fulfill the criteria for being designated as a World Heritage site.

94. In the Appeal the Franklin Dam case will be examined in relation to the UN Convention for the Protection of Cultural and Natural Heritage

In the Franklin Dam case, the area under dispute — a network of temperate old growth forest had already been proposed in 1981 by the state and confederation governments as a World Heritage Site. The network was inspected by the IUCN, the World Conservation Union, which is the body responsible for determining if a proposed site fulfills the criteria for protection as a World Heritage Site.

Although Clayoquot Sound has not yet been nominated by B.C and Canada as a World Heritage site, it was part of a proposal contained in a resolution passed at the 1994, Annual General Meeting of the IUCN. The proposed network was deemed to fulfill the criteria for nomination, even though B.C. and Canada have not undertaken to nominate a network of old growth temperate rainforest as a World Heritage Site.

A network of temperate rainforests including Clayoquot Sound would fulfill the criteria for nomination as a World Heritage Site.

95. A network of old growth temperate rainforests, including Clayoquot Sound would fulfill the following criteria for inclusion in the World Heritage list:

(ii) be outstanding examples representing significant ongoing geological processes... biological evolution and man [human] interaction with his [its] natural environment; as distinct from the periods of the Earth's development, this focuses upon ongoing processes in the development of communities of plants and animals, landforms and marine areas and fresh water bodies;

(iii) contain superlative natural phenomena formations or features for ... outstanding examples of the most important ecosystems, areas of exceptional natural beauty or exceptional combinations of natural and cultural elements;

(iv) containing the most important and significant natural habitats where threatened species of animals or plants of outstanding universal value form the point of view of science or conservation still survive

96. The IUCN (the World Conservation Union) the organization that has been given the responsibility under the UN Convention for the Protection of Cultural and Natural Heritage, passed a resolution at the January 1994 Annual General Meeting; This resolution

called upon B.C. to preserve and nominate a network of temperate coastal rainforests taking into consideration the proposals by the Western Canada Wilderness Committee (whose proposal included Clayoquot Sound).

97. A resolution on North American Coastal Temperate Forests ("19.72REV2 North American Coastal Temperate Forests") was passed by the IUCN General Assembly meeting at Buenos Aires, Tuesday, January 25, 1994. The IUCN is an international organization of state, professional and non-governmental representation from over 125 countries. In order to pass

the resolution has to pass the two houses: the state house composed of state representation from 125 countries and the NGO house with representation from the same countries. This resolution was passed with only one country abstaining, Canada.

This resolution recognized the uniqueness of the area:

UNDERSTANDING that many endemic and unusual plants and animals occur only in these forests; and that in biomass productivity, the old growth forests (ancient forests) of this biome are unequaled anywhere;

This resolution also acknowledged that on Vancouver Island Forest practices have been the cause of the disappearance of these forests:

MINDFUL of the fact that such ancient forests on Vancouver Island and on the mid-coast of British Columbia are disappearing at a rapid rate as a result of practices that have, to date, not been ecologically sustainable;

This Resolution also called upon the governments of Canada and B.C. to consult with groups like the Western Canada Wilderness Committee (WCWC) about networks of protected areas. The network proposed by WCWC does include Clayoquot Sound.

UNDERSTANDING that the Raincoast Conservation Society, the Sierra Club, and the Western Canada Wilderness Committee have proposed a large network of protected areas, including conservation corridors, in areas of such ancient forests on Vancouver Island and the midcoast of British Columbia;

IUCN

2. CALLS UPON the Governments of Canada and British Columbia to substantially expand the amount of land in networks of protected areas, with conservation corridors, on Vancouver Island and the midcoast of British Columbia, taking into consideration the recommendations of environmental groups active in the regions such as the Raincoast Conservation Society, the Sierra Club and the Western Canada Wilderness Committee;

EXHIBIT: J 19.72REV2 North American Coastal Temperate Forests

98. In the Appeal it will be pointed out that the Western Canada Wilderness Committee proposal for a network does include Clayoquot Sound.

EXHIBIT: K Information to be submitted by the Western Canada Wilderness Committee. Copy of vision of Vancouver Island.

99. This appeal will also refer, as was done in the original September 15 submission to Mr. Justice Drake, to the Common Law Doctrine of Legitimate Expectations. If this doctrine were applied it could be argued that citizens of Canada have a legitimate expectation that Canada will fulfill its international legal obligations.

100. Citizens of B.C. have the right to expect that B.C. as part of Canada will fulfill international obligations undertaken by Canada after consultation with B.C.:

In Re: Canada Assistance plan (Canada) 1991 (2SCR at 525), the B.C. government recognized the importance of using the Doctrine of Legitimate Expectation in a dispute with the Federal Government. Even though at the Supreme Court of Canada, the B.C. argument was dismissed, the case supports the contention that the Government of British Columbia, including the Attorney General's office endorsed the doctrine.

"Canada has continually conveyed its professed concern for the environment in a way that should entitled Canadians to expect actions that reflect this concern. For example, in the preface of Canada's National Report, which was submitted to the Earth Summit in Rio, the Canadian government gave the impression that Canadians were "stewards" observing their "environmental responsibility":

as stewards of a vast and beautiful land, and as a people intimately connected to the environment, Canadians are aware of their environmental responsibilities." (Canada's National Report, Preface)

And further in the section on the "quality of life", the Canadian government stated

"As a small population with a large land mass, Canadians have access to relatively unspoiled wilderness areas rich in wildlife ... Canada has an international reputation as a beautiful, safe and mostly unspoiled country. "(Canada's National Report, p.49)

If the government of Canada continues to convey the impression to the global community, through official Internationally circulated documents, that Canadians are concerned about being "stewards" of a "relatively unspoiled wilderness", then the citizens of Canada should legitimately expect that Canada will fulfill this obligation.

There is a maxim of equity which states that "Equity imputes an intention to fulfill an obligation."

This maxim was reaffirmed by the former Ombudsman of British Columbia, Steven Owen:

"To create an expectation is an empty gesture without a promise to fulfill it. Before creating an expectation, an organization must assure itself of its ability to fulfill the promise it implies" (Introduction, Ombudsman Annual Report, 1991)

101 Citizens of Canada can justifiably expect that Canada will adhere to international principles that are part of international agreements signed by Canada, and citizens of Canada can justifiably expect that the courts of Canada will abide by international commitments undertaken by Canada.

102. The Prime Minister, Brian Mulroney, in his address to the General Assembly at the Earth Summit in Rio de Janeiro, 12, June, 1992, indicated the following commitment to the international community:

Our generation has seen our planet from space. We know its beauty and we understand our fragility. We know that nature is part of us as we are a part of nature.

Canada's national soul breathes its life from our forests and plains and mountains and lakes. Our native peoples depend on the environment for their spiritual sustenance and material well-being. Canadians are the stewards of 10 per cent of the world's forests. ...

For Canada, sustainable development is not a slogan it is a prerequisite of our prosperity and a safeguard of our identity. It is also the standard of our responsibility. ...

We are the leaders. We must assume our responsibilities to our own peoples, to each other and to history. We are here to commit our governments to action. The prevention of global climate change and the preservation of the world's animal and plant species is on the top of our agenda.

Countries have a right to manage their forest resources, and humanity has a right to expect that those management decisions will be ecologically wise. Canada wants clear guidelines, on which we all can agree, and a binding international convention which codifies our rights as well as our responsibilities.

... the agreements on climate change and biodiversity require urgent and constructive follow-up...

As political leaders, our job is to force the pace and stretch out the limits of international cooperation. The nations gathered here today have the human genius to create a world free from deprivation and secure from degradation. What remains is for governments to provide the leadership the world so desperately needs.

Let us find that will and marshal it to the task at hand on behalf of the five billion people we represent

Our children, the Rio generation will be our judges and our beneficiaries.

103. In the press release issued at the time of ratifying the Biodiversity Convention in December, 1992. Prime Minister Brian Mulroney conveyed Canada's recognition of the importance of the Convention:

The Convention which emerged from last June's Earth Summit in Brazil, exemplify a global commitment to the principles ... as embodied in Agenda 21 and agreed to at the Earth Summit.
the Convention on Biological Diversity provides a framework for conserving the planets animal and plant life and maintaining their habitats.

104. Not only has the previous Conservative government conveyed to the global community its commitment to "provide the leadership the world so desperately needs", but also the current Liberal government conveyed the impression to the citizens of Canada that it would demonstrate leadership by ensuring that international obligations under the UNCED Conventions would be adhered to in the case of Clayoquot.

[The Liberal party in its pre-election promises, affirmed that it would preserve Clayoquot Sound to be preserved by making it part of Pacific Rim national Park.]

105. The Appeal will not only address the obligations under legally binding documents but also those under globally adopted documents. The fulfillment of these obligations also draws upon the Common law Doctrine of Legitimate Expectations.

Not only was there evidence of Canada's and B.C.'s agreement at the UN Conference on the Environment and Development (UNCED) to the legally binding documents but also to the globally adopted document such as Agenda 21.

106. In the Appeal evidence will be supplied that the representatives from the B.C. government, the Assistant Deputy Minister of Forests, Wes Cheston, and from the Commission on Resources and Environment, Commissioner Steven Owen indicated B.C.'s commitment to fulfill the obligations under all the UNCED documents, the legally binding as well as the globally adopted. This evidence was referred to in a report on an inquiry requested by the appellant into how B.C. was going to be complying with UNCED obligations. Scotty Gardiner, the Senior Investigator in Resource Issues in the Ombudsman's office, stated that he would not release the information, that the information cannot be requested through the Freedom of Information Act, and that the ombudsman's office and officers are not "Compelled" to appear in court to testify.

107. In the Ombudsman's Report from Senior Investigator of Resource Issues, (Russow/Gage Complaint and Inquiry, File No. 91 06247) April 1993, to a request for an inquiry into how the B.C. government was going to fulfill its obligations under UNCED, the Senior investigator from the Ombudsman's office, in his report on the inquiry responded indicating that he had received confirmation of the government's commitment to comply with international agreements from UNCED:

Compliance with International Agreements.

Direct personal discussions were held with Mr. Cheston, Assistant Deputy Minister of Operations Division, Ministry of Forests, and Mr. Owen, Commissioner on Resources and Environment. Both Mr. Cheston's and Mr. Owen's responsibilities reflect the government's priority for those issues of concern to you...

From these meetings, as well as from additional discussions with senior staff from the Ministry of Forests and the Ministry of Environment, Lands and Parks, we have determined that BC intends to comply with the agreements signed at the UNCED in June 1992.

He does not specify that the government will comply with only the legally binding Conventions; it would thus appear from his statement that the government will be complying with other globally adopted documents, such as Agenda 21. Through this statement the Provincial government has demonstrated its intention to adhere to principles from Agenda 21, the Rio Declaration and the Biodiversity Convention.

When asked whether a copy of these expressed commitments could be made available for the Leave to Appeal hearing, the Senior Investigator responded that he would not release the information. A request to proceed through the Freedom of Information Act, was denied and the senior investigator indicated that only the documents submitted to the office by the complainant are accessible to the complainant and that none of the other documents could be released. The Ombudsman's office is beyond the Freedom of information Act. It is thus difficult to confirm part of the commitment because Cheston was recently released from his position. Steven Owen has been contacted. His response will be included in the Appeal.

108. Agenda 21 is a comprehensive plan of action which was adopted by the members of the United Nations participating in UNCED. There are numerous principles that form an intrinsic part of this document.

There is throughout the document a consistent recognition of the urgency of the global situation.

“Humanity stands at a defining moment in history. We are confronted with a perpetuation of disparities between and within nations, a worsening of poverty, hunger, ill health and illiteracy, and the continuing deterioration of the ecosystems on which we depend for our well-being...” (1.1 Preamble, Agenda 21)

109. An essential principle from the UNCED documents is the requirement to carry out environmental audits, or full environmental accounting; and to take into account the costs of ecological consequences.

A principle that was affirmed at UNCED and agreed to by Canada was the need to carry out a full life cycle analysis of activities that could have significantly adverse effects. This principle, if complied with, in the forest industry would entail an examination of the environmental impacts of each stage of current forest practices —

impact of the disruption and sudden elimination of a significant portion of an ecosystem through clearcutting; impact of broadcast burns; impact of treatment by pesticides; impact of off-site planting; impact of replacing a forest with a tree farm; impact of planting monocultures; impact of denying species succession; impact of creating increased susceptibility to forest fires; impact of loss of ecologically sound forest associated employment etc. At UNCED there was also a call for "environmental audits", and "full environmental accounting and "taking into account ecological consequences" of aspects related to life cycles of ...resources", and "for taking into account the costs of any ecological consequences."

Ensure that relevant decisions are preceded by environmental impact assessments and also take into account the costs of any ecological consequences (7.42)

"A full environmental audit of current forest practices has not been undertaken in B.C. The Auditor General has not been requested by government to carry out a full-scale audit of the true costs of the current logging practices, and to compare these costs to those incurred by alternative forestry practices such as ecoforestry. When the Assistant Auditor General was asked by the Appellant, if the Office was going to undertake such an inquiry, which undeniably would be within his mandate, he responded that it would be an almost impossible task and not economically feasible "(Personal Communication, 1993).

110. The requirement to take into account the costs of any ecological consequences is a particularly relevant consideration in assessing "irreparable harm" [see other grounds section B, and the MacMillan Bloedel v Mullin case]

Ensure that relevant decisions are preceded by environmental impact assessments and also take into account the costs of any ecological consequences (7.42)

111. Another principle that came out of UNCED and was agreed to by Canada. is a the positive-duty-to protect-indigenous-lands principle. This principle reads as follows:

"...recognition that the lands of indigenous people and their communities should be protected from activities that are environmentally unsound or that the indigenous people concerned consider to be socially and culturally inappropriate" (Agenda 21, 16.3. ii)

EXHIBIT: K Affidavit Saul Arbess (to be submitted for the Appeal)

112. Similarly, at the Provincial level if the provincial government imputes that it intends to fulfill an obligation, the citizens should be justified in requiring the government to have the obligation fulfilled.

In a letter dated March, 1992, from both the Provincial Ministry of Forests and the Provincial Ministry of Environment (sent to members of the public presumably from a government mail-out list), the following intention is imputed:

As we, in BC Parks and BC Forest Service begin to work on implementing our components of B.C.'s protected areas under the aegis of the Commission on Resources and Environment, we will be mindful of this Declaration [Parks Protected Areas and the Human Future: the Caracas Declaration] and its implications. Our objective will be to have a system of protected areas which we are proud to present to the world.

Through this intention to be "mindful of this Declaration" the Provincial Government of B.C. through its Ministries of Environment and Forests has recognized the Caracas Declaration and the UN Resolution 37/7 (1982) World Charter for Nature.

EXHIBIT: L Letter from Ministries making commitments to the Caracas Declaration.

B.C. has failed to fulfill a commitment made through B.C.'s endorsement of the Caracas Convention (Parks Protected Areas and the Human Future: the Caracas Declaration, February 1992) and in its participation in the Caracas Congress to "move from logging old growth to second growth" (Report on implementation requirements of the Caracas Declaration, Mar. 1992)

113. It will be contended in the Appeal that not only has B.C. not complied with commitments made to the international conference on Parks at Caracas, but also B.C., through its actions in Clayoquot Sound, has failed to adhere to recommendations by the Caracas Congress on means to fulfill the Caracas Declaration

114. Obligations under the "Parks, Protected Areas and the Human Future: The Caracas Declaration" (February, 1992), and under recommendations by the Caracas Congress (CHECK Ref.).

The Caracas Declaration was adopted by over fifteen hundred leaders and participants at the Fourth World Congress on national parks and Protected Areas. (Feb. 1992).

3.2. Conserving Biodiversity

The congress urgently requested that all countries urgently undertake surveys to identify additional sites of critical importance for conservation of biological diversity, and wherever possible, accord total protection to them. Harvesting should be relocated from primary to secondary forests and tree plantations in previously deforested areas; or - where this is not possible sustainable forest harvesting systems which favour natural species diversity should be developed and introduced. (p 8)

3.3. Conservation on a regional scale

Protected areas have sometimes been seen as islands of nature and tranquility, surrounded by incompatible land uses. But the congress made it clear that such an "island mentality" is fatal in

the long run. The congress recognized that it is unlikely that protected areas will be able to conserve biodiversity if they are surrounded by degraded habitats that limit gene-flow alter nutrient and water cycles and produce regional and global climate change that may lead to the final disappearance of these "island parks." Protected areas, therefore need to be part of broader regional approaches to land management. The term bioregion was used to describe extensive areas of land and water which include protected areas and surrounding lands, preferably including complete watersheds, where all agencies and interested parties have agreed to collaborative management.

recommendation 3

Global efforts to conserve biological diversity:

"The loss of biodiversity has reached crisis proportion and if present trends continue up to 25 % of the world's species may be sentenced to extinction or suffer severe genetic depletion in the next several decades, accompanied by equally significant and alarming degradation of habitats and ecosystems. This loss of biological diversity is impoverishing the world of its genetic resources, its species, habitats and ecosystems.

All species deserve respect, regardless of their usefulness to humanity. This Principle was endorsed by the UN Assembly when it adopted the World Charter for nature in 1982. The loss of the living richness of the planet is dangerous, because of the environmental systems of the world support all life, and we do not know which are the key components in maintaining their essential functions.

the IVth World Congress on national Parks and Protected Areas recommends that:

- a) governments make the protection of biological diversity, including species and habitat richness, representativeness and scarcity, a fundamental principle for the identification, establishment, management and public enjoyment of national parks and other protected areas;
 - b) all countries urgently undertake surveys to identify additional sites of critical importance for conservation of biological diversity and wherever possible, accord total protection to them
- Harvesting should be relocated from primary to secondary forests and tree plantations in previous deforested areas; or — where this is not possible — sustainable forest harvesting systems which favour natural species diversity should be developed and introduced: (p. 30)

Recommendation 4:
entitled legal regimes for protected areas.

Protected areas require a mutually reinforcing system of international and national environmental law for their establishment, maintenance and management. International treaties establish a harmonized set of obligations with regard to areas within national jurisdictions and activities having effect beyond national jurisdictional boundaries. These obligations must be reflected in national legislation; otherwise, the treaties cannot be implemented. In turn, innovative national legislation provides a basis and impetus for further international law. The dynamic interaction between the two levels is thus conducive to further progress. (p. 31)

The Caracas Congress which is responsible for interpreting the Declaration made the following recommendations that have been ignored by B.C.:

115. B.C. has failed to move from harvesting primary to secondary forests as recommended by the Caracas Congress

The congress urgently requested that all countries urgently undertake surveys to identify additional sites of critical importance for conservation of biological diversity, and wherever possible, accord total protection to them. Harvesting should be relocated from primary to secondary forests ... (p 8)

116. B.C. has failed to ensure sustainable forest harvesting systems which favour natural species diversity should be developed and introduced: (p. 30)

117. B.C. has failed to prevent incompatible land use. as recommended by the Caracas Congress

Protected areas have sometimes been seen as islands of nature and tranquility, surrounded by incompatible land uses. But the congress made it clear that such an "island mentality" is fatal in the long run. The congress recognized that it is unlikely that protected areas will be able to conserve biodiversity if they are surrounded by degraded habitats that limit gene-flow alter nutrient and water cycles and produce regional and global climate change that may lead to the final disappearance of these "island parks."

118. The Congress also addressed the urgency and the need for global efforts to Global efforts to conserve biological diversity.

"The loss of biodiversity has reached crisis proportion and if present trends continue up to 25 % of the world's species may be sentenced to extinction or suffer severe genetic depletion in the next several decades, accompanied by equally significant and alarming degradation of habitats and ecosystems. This loss of biological diversity is impoverishing the world of its genetic resources, its species, habitats and ecosystems.

All species deserve respect, regardless of their usefulness to humanity. This Principle was endorsed by the UN Assembly when it adopted the UN Resolution 37/7 (1982) World Charter of Nature. The loss of the living richness of the planet is dangerous, because of the environmental systems of the world support all life, and we do not know which are the key components in maintaining their essential functions.

119. It will be shown that it is not only the levels of government that have failed to live up to their stated intentions to fulfill obligations but resource ministries, institutions, organizations and industry have also "imputed an intention to fulfill an obligation," through the Forest Accord, a document which has been signed by Canadian Pulp and Paper Industry, the Council of Forest Industry, Wildlife habitat, Canadian Nature Federation, National Aboriginal Forestry Association, Minister of Forestry, Lands and Wildlife, Alberta, Minister of Natural resources Manitoba, Minister of Forests, B.C. Minister of Parks and Renewable Resources Saskatchewan, Minister of Natural Resources and Energy, New Brunswick, Minister of Natural Resources, Minister of Forestry Canada, Minister of Natural resources Ontario, the following concern and intention was expressed:

- Our forest heritage is part of our past, our present and our future identity as a nation. It is important to maintain a rich tapestry of forests across the Canadian landscape that sustains a diversity of wildlife:
- The spiritual qualities and the inherent beauty of our forests are essential to our physical and our mental well-being
- We will fulfill our global responsibilities in the care and use of forests, maintaining their importance of the environment and the well-being of all living things.]
March, 2, 1992

120. It will be shown that international customary law places a positive duty to act:

"Considering that, in view of the magnitude and gravity of the new dangers threatening them, it is incumbent on the international community as a whole to participate in the protection of the cultural and natural heritage of outstanding universal value, by the granting of collective assistance which, although not taking the place of action by the State concerned, will serve as an effective complement thereto," (26.1 Convention for the Protection ...of Natural Heritage, 1972).

121. In not agreeing to preserve Clayoquot Sound and in permitting ecologically unsound practices in Clayoquot, Canada and B.C. have failed to comply with legally binding conventions such as the Biodiversity Convention, the Climate Change Convention and the UN Convention on the Protection of Cultural and Natural

heritage, and also has failed to comply with obligations undertaken through globally adopted commitments, such as the Caracas Declaration and Agenda 21 . Citizens of Canada should be able to justifiably expect that Canada will adhere to international principles that are part of international agreements signed by Canada. The citizens of Canada, also, should be able to justifiably expect that the courts of Canada will abide by international commitments made by Canada.

B. This case also addresses the contempt for statutory law that has been demonstrated by industry, and in particular MacMillan Bloedel, in its non-compliance with statutory law, and by governments in their failure to enforce statutory law, particularly in relation to tree farm license (in the manner of a profit a prendre property right claimed by MacMillan Bloedel)

122. Evidence will be submitted that B.C. has not only used internal law — the granting of injunctions to justify non-compliance to international obligations but has failed to invoke its own internal law to prevent violations of international obligations.

B.C. has failed to even invoke its own provincial legislation to ensure that it is not in violation with international obligations. The B.C. Ministry of forests has not invoked section 60 of the Forest Act; a section which has given the government discretionary powers to suspend Tree Farm Licenses indefinitely if there is evidence of damage to the natural environment through non-compliance with the Act. There is evidence that the Federal Government and provincial government have failed to enforce their own legislation. Although there have been some convictions against MacMillan Bloedel, the legislation has not been sufficiently enforced, and as a result of non-enforcement international obligations have not been fulfilled.

This section has been enforced by the Ministry of Forests not in a punitive way but in a mitigative way, and consequently no licenses have been suspended for forest practices that have caused serious damage to the natural environment, and canceled under section 61 (cancellation of licenses). If the Ministry of Forests had voluntarily enforced its own legislation, or if there had been a writ of mandamus from the courts to require the Ministry to enforce the Forest Act then the "serious damage to the natural environment" which has occurred would have been minimized. The demonstrations in the forests in the little remaining old growth forests could be attributed in part to the years of the Forest Industries non compliance to the Forest Act and to the years of reluctance on the part of government and the courts to enforce the Forest Act.

123. In the Appeal, affidavit evidence will be submitted that not only has the Ministry of Forests been not enforcing its own legislation but that it has also contributed to the violation of the silviculture sections of the Forest Act. There has been evidence for years that the forest industry has failed to fulfill its obligations related to silviculture and that the government of B.C. has failed to enforce sections in the Forest Act, which require adequate silviculture.

Evidence will also be submitted that the Inventory Branch of the Ministry of Forests became aware of a serious discrepancy between the original estimation of inventory in a block currently being logged by MacMillan Bloedel. It was found through a research study, Omule A.Y., and K.D. Tudor. Report, "Ratio Sampling Analysis" by A.Y. Statistical Decision Support, Forest Inventory Branch, B.C. Ministry of Forests. (March 11), 1993) by inventory specialists that the inventory in Block 6 in the TFL 39 in the Queen Charlottes had been overestimated by over 40 percent. Rather than releasing this

document to the public or calling for suspension of licenses under section 59, the Inventory Branch of the Ministry of Forests asked MacMillan Bloedel to check the findings with their own data. The Appellant and David White became aware of the document and obtained the document through the Freedom of Information Act. It was only at that time that the Ministry of Forests released the information.

EXHIBIT: M. Affidavit from David White, former president of Greenpeaks, a silviculture contracting firm, and researcher responsible for uncovering the Inventory document.

124. In the Appeal, affidavit evidence will be submitted that MacMillan Bloedel was aware of alternative economically viable methods of selection logging which would have enabled Mac Millan Bloedel to have fulfilled its obligations under the Forest Act and thus its obligations under the TFL which they claim bestows a property right.

EXHIBIT: N Affidavit from Merv Wilkinson, Forester and internationally recognized specialists in selection logging

125. MacMillan Bloedel has not fulfilled its responsibility to protect fisheries, and in fact MacMillan Bloedel has been convicted under section 33 of the Federal fisheries Act for depositing deleterious substances which caused destruction to fish Habitat.

EXHIBIT: O Convictions under the Fisheries Act
Request through Freedom of Information Act for Charges.

126. Evidence was compiled by John Stephen from the Department of Fisheries on non-compliance with Ministry of Forest's TFL Engineering Specifications.
In this document, Stephen examined sections in the Engineering Specifications and submitted photographs demonstrating Non-compliance of the Forest Company with the Engineering Specifications. He describes the photographs as being random samples illustrating the ineffectiveness to date of environmental protection regulations attached to the TFL 46 document and its cutting Permits. These photographs are specific to the Loop Creek site in TFL 46, and referred to non-compliance of a Co. that is not MacMillan Bloedel. However, this type of evidence has been commonplace throughout the forest industry in British Columbia.

EXHIBIT: P John Stephen: M.O.F. 's TFL Engineering Specifications (1991)

127. "Recently there has been further evidence of MacMillan Blondel's non fulfillment of responsibility under the Forest Act. The following is a summary of the findings of the Tripp report which was entitled *The Application and Effectiveness of the Coastal Fisheries forestry guidelines in selected cut blocks on Vancouver Island*" (D. Tripp, April, 1992)

Abstract

The Coastal Fisheries Forestry Guidelines, alone or in combination with site specific prescriptions, can effectively reduce the number and severity of the impacts experienced on streams in recently logged areas. Compliance with the guidelines and many prescriptions, however, was generally poor, regardless of location or the type of forest license involved. These were the findings of a recent survey of 21 logged cut blocks on Vancouver Island.

There was, on average, one major or moderate impact on one stream for every cut block inspected. Half of these impacts involved a Class 1 or 11 stream. The other half involved Class III or IV streams that were likely to have a negative effect in the near future on more valuable habitat downstream. Since most of the impacts were the result of debris torrents, large build-ups of sediment and debris were the main types of major impacts recorded in all stream classes.

Approximately 60% of the major problems observed were attributed to excess debris loads in steep gully systems, and a failure to appreciate the transport capabilities of such streams during heavy rains. Other contributing factors were failures to fall and yard away from the streams and failures to clean out the excess debris where cross stream yarding was permitted. Poor drainage controls on roads, and spur roads in particular, were responsible for approximately another 25% of the most significant problems, while a combination of landslides and a poorly located gravel pit accounted for the rest of the problems. Some questionable harvest practices in Streamside Management Zones accounted for six minor or moderate problems, but the long-term implication of the problems was beyond the scope of the present survey.

128. In the appeal evidence of violations of the Forest Act, collected by the Valhalla Wilderness Society, will be submitted.

EXHIBIT: Documentation of over 150 violations of statutory law prepared by the Valhalla Wilderness Society for a previous court case (to be submitted for the Appeal)

129 There has also been a failure on the part of the Ministry of forests to use its discretionary powers to suspend licenses under the Forest Act to address "serious damage to the natural environment"

The government in its response to Steven Owen June 2, 1993, indicated that "the government intends to firmly enforce standards." The government then indicated that, "imminent environmental damage could result in the immediate suspension of operations under Section 60 of the Forest Act" (p.15).

Section 60 of the Forest Act, reads as follow:

Suspension of rights the regional manager, a district manager or a forest officer authorized by either of them may, by written order and without notice, suspend in whole or part the rights under an agreement where he believes on reasonable and probable grounds that its holder has failed to perform an obligation to be performed by him under the agreement or has failed to comply with this Act or the regulations, and that the failure of performance or compliance is causing or may imminently cause serious damage to the natural environment. 1978.

Since 1978 this section has been in place, and since 1978 "serious damage to the natural environment has occurred. (See EXHIBIT, as an example of this damage). This section has neither been enforced by the Ministry of Forests in a punitive way, nor been requested to be enforced by the Ministry of the Environment. When the Appellant contacted an enforcement officer who had been with the Ministry of Environment for 20 years, and asked him "how often the Ministry of Environment had called upon the Forest Ministry to invoke sections 59,60, and 61 of the Forest Act, his response was that he was unaware of these sections.

Sections 59 and 60 have been enforced by the Ministry of Forests not in a punitive way but in a mitigative way, and consequently no licenses were suspended for forest practices that had caused serious damage to the natural environment, and canceled under section 61 (cancellation of licenses). If the Ministry of Forests had voluntarily enforced its own legislation, or if there had been a writ of mandamus from the courts to require the Ministry to enforce the Forest Act then the "serious damage to the natural environment" which has occurred would have been minimized. The demonstrations in the little remaining old growth forests on Vancouver Island could be attributed in part to the years of the Forest Industries' noncompliance to the Forest Act and to the years of reluctance on the part of government and the courts to enforce the Forest Act.

130. The Government claims that the Forest Practice Code will have a strong enforcement component. On the one hand it is reassuring that the government is finally willing to enforce its legislation, but on the other hand, it is not reassuring that for years environmental harm has occurred because, past governments, as well as the current government, have not been willing to enforce sections 59, 60 and 61 of the Forest Act. For years, environmental groups have brought to the attention of the government that the Forest Act was not being complied with and as a result of non-compliance environmental harm has occurred. For years there has been contempt of the law by both industry and government.

131. In the Appeal it will be noted that a strong enforcement policy — enforcing "kinder and gentler" destructive forest practices such as clear-cut logging will not suffice to enable governments to fulfill international obligations under the Biodiversity Convention.

132. It would appear that the government, in making its decision to log Clayoquot Sound, took into consideration the possible cost of compensation to MacMillan Bloedel that would have resulted from setting aside Clayoquot Sound.

“Often intact ecosystems that have been deserving of preservation have been irreversibly destroyed because it was deemed necessary, if these ecosystems were to be withdrawn from an existing tree farm license, for governments to pay compensation. In the past, compensation has been assessed purely on an economic basis without taking into consideration the true environmental costs. In order to assess the environmental costs of the destruction of significant ecosystems one may need to examine if damage to the natural environment within a significant ecosystem has occurred. Section 60 of the Forest Act does permit the suspension of licenses if environmental damage to the natural environment has occurred as a result of non-compliance with the Forest Act. The potential environmental costs of destroying significant ecosystems as a result of the Ministry of Forests not suspending tree farm licenses when there was evidence of destruction to the natural environment is necessary to include in the assessment of compensation.”(Complaint submitted to the Ombudsman's office for investigation by appellant and Andrew Gage, 1991-1993)

133. Not only has the government been notified about non-enforcement of Section 60 of the Forest Act, but also the ombudsman's office has been notified about this non-enforcement (even at the time that Steven Owen was the Ombudsman). To investigate the lack of enforcement of section 60 of the forests act appears to be certainly within the mandate of Ombudsman's office.

It would appear then that the forest industry has, when causing environmental harm been outside the law, because neither the government, the ministry of Forest, the ministry of environment, or the ombudsman's office has demanded that section 60 be enforced and licenses be suspended, and that licenses be canceled under section 61. If licenses had been suspended under section 60 and canceled under section 61 because of the harm caused to the natural environment (section 60), the environmental harm such as the harm reported in the TRIPP report would not have occurred.

EXHIBIT: Q Affidavit re: data on MacMillan Bloedel's current forest practices in Clayoquot Sound submitted by representative from "Forest Watch."

134. In section 28 of the Forest Act there is an indication that one condition of the granting of the license is that logging has to be "sustained." Environmental researcher Jack Etkin expressed the following concern about noncompliance with the responsibilities under the Act.

"MacMillan Bloedel states in their management and working plans that in TFL 44 they will be able to cut about 2.4. million cubic metres of wood a year for the next 200 years. Because they say that 2.4. million is "sustained. We asked the company, how they knew that they could cut 2.4. million cubic metres of wood sustainably for the next 200 years.... they assured us that they have proof that their tree farms will grow sustainably."
(press release, 1993)

In a follow-up letter received by Etkin from MacMillan Bloedel, the company stated:

"In conclusion, there is no hard, scientific proof that third and fourth generation forests are viable [not viable is defined as being able to survive and grow]. On the other hand, what evidence there is overwhelmingly positive (July 6, 1990).

Etkin (1993) in the Bridge newspaper indicated the following:

"The most frequently cited piece of evidence was FORCYTE, a computer simulation model out of UBC. According to the Director General of Forestry Canada, models like FORCYTE provide "Perhaps the strongest scientific evidence that B.C. forests can be sustainably managed..."

But here is what the developers of FORCYTE have to say about their model. "The model predictions should be viewed with caution...The model has not been validated against any long-term experimental data. Hence the precision and accuracy of the results are unknown'

EXHIBIT: R Letter received by Jack Etkin from MacMillan Bloedel (1990)

This suggests that MacMillan Bloedel cannot claim to be fulfilling section 28 of the Forest Act, and consequently one of the conditions that would limit its "right to profit a prendre" has not been fulfilled.

135 Given that MacMillan Bloedel has been in violation over the years of many sections of the Forest Act, Waste Management Act and the Fisheries Act, MacMillan Bloedel has not fulfilled the conditions of the TFL under the

Forest Act, and thus the contracting party has failed to perform its part of the contract. In this case it would be inappropriate to recognize that MacMillan Bloedel has a property right in the nature of a "profit a 'Prendre." Surely the Court would recognize that a right cannot be claimed by one who has not fulfilled the responsibilities contingent upon that right.

C. The appeal will rely upon a realistic and objective evaluation of equity. In particular the use of an equitable remedy such as an injunction to justify non-performance of provincial and federal statutory law and to justify non-performance of international legal obligations, and international customary law.

136. Evidence will be submitted that the injunction is an equitable remedy that has been misapplied in the Clayoquot case. Equity could never countenance the destruction of life rearing capacity and life forms in it trust on a massive scale with no genuine regard for future generations.

In the BC Litigation publication, Justice J.A. Norris described the nature of the injunctive remedy in British Columbia Law in the following way:

The remedy [of injunction] of course, is an equitable one. ' The exercise of the equitable jurisdiction is not to be restricted by the straitjacket of rigid rules but is to be based on broad principles of justice and convenience, equity regarding the substance and not merely the facade or the shadow. It moves with time and circumstances. (Justice J.A. Norris)

Although there is a beginning of the recognition of ecological rights in McMillan Bloedel vs. Mullin [1985, BCD Civ 1892-08] there does not yet appear to be a recognition in B.C. courts of the rights of the public to ecological preservation. In McMillan Bloedel vs. Mullin it was decided that

“The claim by an Indian band for 'aboriginal " title to land cannot be 'rejected summarily' and certainly not at the early stages of litigation. Nor must the right to log crown land given by license to a logging Company be ignored. However, in light of the fact that unless the issue of title to the subject land is settled before logging occurs the Indians, if successful, will be deprived of valuable ecological rights, and in further light of the fact that irreparable harm will not result to the logging Company if timber harvest is delayed pending an expedited adjudication of issue of title, the principles applicable to the issue of interlocutory injunctions will militate that the status quo. be maintained.”

Although the above decision does recognize the concept of ecological rights when there is a dispute over ownership of property, it does not go far enough to accommodate the current and emerging evidence of time and circumstances. The international law and treaties and the public, including scientists and all reasonable persons who seriously consider the impact of our actions on future generations are now demanding preservation of unfragmented areas of biological complexity. In the UN Conference on Humans and the Environment 1972, the requirement to preserve our environmental heritage and the requirement to save a representative sample of natural ecosystems for future generations were being recognized:

‘The natural resources of the earth including the air, water, land, flora and fauna and especially representative samples of natural ecosystems must be safeguarded for the benefit of present and future generations (Principle 2)

Man has a special responsibility to safeguard and wisely manage the heritage of wild life and its habitat which are now gravely imperiled by a combination of adverse factors.”
(Principle 4),

In issues of preservation of ecosystems and ecological rights perhaps the courts should look to international researchers for guidance and to international documents for substance of moral suasion. Research from the international community and international documents could reflect a more accurate estimate of "the time and circumstance" in the domain of forestry issues, than affidavits from forestry companies that seek to perpetuate what is perceived by a substantial sector of the international community as contributing to environmental degradation, soil depletion, loss of biodiversity, loss of genetic diversity and even loss of productivity in their own industry.

The issue that an equitable remedy— an injunction is being used to prosecute citizens of criminal contempt when the justification for granting of this equitable remedy is still being questioned by the courts, will be examined. Reference will be made to the fundamental principle that it appears to be ethically questionable to continue to convict people under an equitable remedy where the legitimacy of the remedy was still under question in the courts.

137. There is the recognition in the MacMillan Bloedel vs. Mullin case of what could be called the "impossibility avoidance" or "the avoidance of a disappearing object principle": This principle is enunciated as follows:

Seaton, who delivered the judgment in the MacMillan v Mullin case, at 151 stated

The proposal is to clear-cut the area. Almost nothing will be left. I cannot think of any native right that could be exercised on lands that have recently been logged. It follows that rights far short of outright ownership might well warrant retaining the area until after a trial.

Seaton affirmed at 151:

I am firmly of the view that the claim to Indian title cannot be rejected at this stage of litigation. The questions raised by the claim are not the type of questions that should be decided on an interlocutory application. A great amount of factual evidence will have to be heard and considered, opinion evidence of those knowledgeable. in these matters will have to be assembled and related to the factual evidence, there will have to be a meticulous study of the law.

Seaton, (at p. 157), stated:

Each of the decisions {[from cases such as Amer. Cyanamid Co. v Ethicon Ltd., [1975] A.C. 396, to Siebart Rustproofing Ltd. v. Ottawa Rustproofing Ont. H.C. 8th February 1978 (unreported). } represents an attempt on the part of the court to see that justice is done. Often it is an attempt to preserve property so that a claimant will not find at the end of a successful trial that the subject matter is gone, and always there is an attempt not to impede others unnecessarily.

Seaton at 157 cited Cotton L.J in Preston v Luck (1884) 27 Ch. D 497 (at 505) referred to an interlocutory injunction:

...The object of which is to keep things in status quo, so that, if at the hearing the Plaintiffs obtain a judgment in their favour, the Defendants will have been prevented from dealing in the meantime with the property in such a way as to make that judgment ineffectual

Seaton at 157 further cited Spry in the Principles of Equitable Remedies, 2nd ed. (1980) after quoting the above, said at p. 423:

A need for protection of this kind most commonly arises where property as to which there is a dispute between the parties is threatened with damage, destruction or removal or where the value of other rights of the plaintiff may be diminished.

Seaton at 157 further referred to this principle as enunciated in Preston v Luck (1884) 27 Ch. D. 497 at 505, referred to an interlocutory injunction:

...the object of which is to keep things in status quo, so that at the hearing the plaintiffs obtain a judgment in their favour, the Defendants will have been prevented from dealing in the meantime with the property in such a way as to make that judgment ineffectual.

Spry in the Principles of Equitable Remedies, 2nd ed. (1980) after quoting the above, said at p. 423

A need for protection of this kind most commonly arises where property as to which there is a dispute between the parties is threatened with damage, destruction or removal or where the value of other rights of the plaintiff may be diminished.

Even MacDonald who dissented in part stated at 168:

"In order to prevent the alleged illegal activity pending trial, an interlocutory injunction is sought. That is so that the question of a permanent injunction after trial will not be rendered academic."

MacDonald stated at 169:

"And the clear message from this court to judges hearing those applications will be that the existing situation should be present while the litigation continues. "

138. This principle enunciated above is to a certain extent an embodiment of a principle of international customary law which is eloquently stated in the Vienna Convention on the Law of Treaties: Under Article 18, a state is obliged to "not defeat the object and purpose of a treaty prior to the entry into force."

139. In the September 15, 1993, before Mr. Justice Drake, application to rescind the injunction the court was asked to consider `the requirement of international obligations related to both the legally binding Conventions from UNCED, signed in 1992, and the globally adopted agreements from UNCED 1992. It was argued that the granting of the injunction would be in violation of the above principle because proceeding with logging when the logging could and would defeat the purpose of any treaty protecting the "ecological rights" within the public trust.

140 The implications of the principle ("impossibility avoidance" or "the avoidance of a disappearing object principle"): enunciated in the MacMillan Bloedel v Mullin case, as well as in Article 18 and 61 of the Vienna Convention on the Law of Treaties, should be considered in relation to the Public Trust Doctrine (Friends Patrai Doctrine). It would appear that if there is a question raised about the legitimacy of eliminating ecological rights within areas coming under the public trust, that full consideration should be given that prior to the discussion and resolution of the question, nothing in the interim should be permitted that would eliminate the ecological rights contained therein. The affirmation of ecological principles contained in the UNCED document, such as the principle of an environmental assessment of any activities that could contribute to a reduction or loss of biodiversity or the principle that would require environmental audits or taking into account ecological consequences or accounting would mean that when considering the irreparable harm and thus the balance of convenience , ecological rights in areas under the public trust doctrine (Friends Patrai Doctrine) should and would have to be taken into consideration.

141. The requirement to take into account the costs of any ecological consequences is a particularly relevant consideration in assessing "irreparable harm" in injunctions. In Agenda 21, the globally agreed to UNCED Action Plan the affirmation of the need to ensure that the costs of any ecological consequences were taken into consideration:

“Ensure that relevant decisions are preceded by environmental impact assessments and also take into account the costs of any ecological consequences” (7.42 Agenda 21, UNCED. 1992)

142. In *MacMillan Bloedel vs. Mullin* it was decided that (at p. 146) that "Monetary damages would not be adequate compensation for the potential injury to Indian culture and social structure."

143. In the BC Litigation publication, Justice J.A. Norris described the nature of the injunctive remedy in British Columbia Law in the following way:

The remedy [of injunction] of course, is an equitable one. " The exercise of the equitable jurisdiction is not to be restricted by the straitjacket of rigid rules but is to be based on broad principles of justice and convenience, equity regarding the substance and not merely the facade or the shadow. It moves with time and circumstances." (Justice J.A. Norris, B.C. Litigation, 1991)

144. As stated in *MacMillan Bloedel vs Mullin* by Seaton at 157 there is an affirmation of the essence of injunctive law (interlocutory injunctions) related to attempting on the part of the court to see that justice is done:

Each of the decisions represents an attempt on the part of the court to see that justice is done. Often it is an attempt to preserve property so that a claimant will not find at the end of a successful trial that the subject matter is gone, and always there is an attempt not to impede others unnecessarily.

145 A case is being researched and will be initiated to determine whether Canada, through the actions of B.C. has been in violation of the Biodiversity Convention since the signing of the Convention in June 1992. Until this case is heard nothing should be done on crown lands which could diminish the value of the public trust rights.

146. The equitable principle of "he who comes to equity must come with clean hands" is a well-established principle of equity.

This principle as stated above should have been applied and if a company like *MacMillan Bloedel* has been in violation of statutory law as well as international law it should not be able to benefit from the granting of an equitable remedy such as an injunction. There is also evidence that the injunction is an equitable remedy that has been misapplied in the *Clayoquot* case, and the injunction should be rescinded, and Mr. Justice Drake's decision related to the applicability of international agreements should be overturned.

There is also evidence that the injunction is an equitable remedy that has been misapplied in the *Clayoquot* case.

147. In addition, in the *Clayoquot* trials, the court has condoned not only violations of guarantees in the Canadian Charter of Rights and Freedoms, but

also violations of guarantees in the International Covenant on Civil and Political Rights, such as the following:

In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him {Article 14 3 (e)}.

[NOTE THAT IN THE CLAYOQUOT TRIALS IN VICTORIA FEW WITNESSES HAVE BEEN PERMITTED TO APPEAR FOR THE DEFENCE]

EXHIBITS: S Affidavits. Ann and Merv Wilkinson

There appears to be little recourse for the Clayoquot Protectors than to eventually seek redress through the Optional Protocol International Covenant on Civil and Political Rights which provides the following remedy:

Subject to the provisions of article 1 individuals who claim that any of their rights enumerated in the Covenant have been violated and who have exhausted all available domestic remedies may submit a written communication to the committee for consideration. (Article 2)

AUTHORITIES:

International legally binding agreements:

UN Conference on the Human Environment, 1972 (#106);
[Also referred to as "Stockholm Convention"] (#92 and #136)

UN Convention for the Protection of Cultural and Natural Heritage, (1972). (#21, #31, #56, #83, #92, #93, #94, #96, #120 Note: error on page 37 #51 should read #93)

International Covenant on Civil and Political Rights, (1976). (#26, #147)

Vienna Convention on the Law of Treaties, (1969). (#25, #26, #28, #55, #80, #81, #138)

Vienna Convention for the Protection of Ozone, (1985)
[referred to in Affidavit, Exhibit F]

Montreal Protocol on Substances that Deplete the Ozone Layer, 1987 (and London and Copenhagen Protocols).
[referred to in Affidavit, Exhibit F linked to #73]

Convention on Biological Diversity, (1992).
(#29, #34, #55, #55, #68, #70, #77, #89, #103)
[also referred to as the Biodiversity Convention]
(#28, #29, #31, #57, #58, #63, #69, #77, #78, #85, #86, #87, #88, #89, #92,
#103, #107, #121, #131, #145)

UN Framework Convention on Climate Change (1992).
(#31, #33, #55, #58, #63, #68, #69, #70, #71, #81, #91)
[Also referred to as "Climate Change Convention"]
(#29, #34, #59, #66, #67, #68, #85, #92, #121)

Globally adopted Resolutions, Charters and Declarations:

Agenda 21, UNCED (1992).
(#59, #69, #77, #78, #79, #103, #105, #107, #108, #112, #121, #141)

Caracas Convention (Parks Protected Areas and the Human Future: the
Caracas Declaration, February 1992)
(#92, #112, #113, #114, #121)

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Caracas Congress. IUCN Nov. 1973
(#113, #114, #115, #117, #121)

World Charter of Nature, UN Resolution 37/71982
(#26, #92, #112, #118)

NGO/State Resolutions:

19.72REV2 North American Coastal Temperate Forests
IUCN Resolution passes at the 1994 IUCN Annual General Meeting, Buenos
Aires
(#97)

Statutory Law:

Forest Act (in particular Sections, 11, 28, 59, 60, 61, and Sections on
silviculture, and inventory.
(#122, #123, #124, #127, #128, #129, #131, #132, #133, #134, #135)

Fisheries Act (in particular, section 33)
(#125, #135)

Waste Management Act (in particular, evidence of MacMillan Bloedel's
violations)
in EXHIBIT O

Government Documents and Correspondence:

Backgrounder to this press release at the time of ratification of the Biodiversity Convention on December 4, 1992
(#77)

B.C. "State of the Environment Reporting" document , (1993).
(#74, #76, #77, #84, #87)

Draft: Canadian Biodiversity Strategy. (June 1994).
the Federal-Provincial-Territorial Biodiversity Working Group
(#87)

The UNCED Follow-up: Endorsement of International Conventions on Climate Change and Biological Diversity. Cabinet Submission (November, 1992).
(#66, #67, #68)

Reports:

Greenpeace. Report on Forest Watch (1994).
(#134)

Science Council Annual Report, 1988
Ottawa: Science Council of Canada
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Tripp, D. *The Application and Effectiveness of the Coastal Fisheries Forestry Guidelines in Selected Cut Blocks on Vancouver Island*
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Report from the Clayoquot Sound Scientific Panel, (March 1994).
(#34) [Referred, in error, to in text as International Scientific Panel]

Letter from MacMillan Bloedel to Jack Etkin: Re: Forests Forever (1990)
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(#136, #143)

Roscoe Pound in Cambridge Legal Essays (1926), pp259 et seq., cited from
P.V. Baker and P. St Langar (1990). *Snell's Equity* London Sweet and
Maxiwell,

Spry, Principles of Equitable Remedies, 2nd ed. (1980)
(#137)

Cases considered:

Attorney-General for Canada v Attorney-general for Ontario Supreme Court of
Canada A.C. 1937. pp. 326 -354 .
[Referred to as the "Labour Convention Case"]
(#21, #22, #23, #32, #34, #41, #45, #58, #59, #60, #61, #70, #71, #72, #73,
#77, #78)

Canada Assistance Plan (Canada) 1991 (2SCR at 525).
(#100)

Commonwealth of Australia and Another v State of Tasmania and Others of
(C6 of 1983) High Court of Australia, Australian Law Reports 1983 pp 625-
831 Constitutional law [Franklin Dam Case]:
(#21, #34, #35, #36, #38, #54, #94)

Koowarta v Bjelke-Petersen (1982) 56 ALJR 625: 39 ALR 417 (Koowarta Case)
(#38, #39, #40, #41, #42, #43, #44, #47, #48, #49, #50, #51)
[also spelled Kooarta]

R v Burgess: Ex parte Henry (1936) 55 (at 645/453)
(#35, #41, #46, #49)

Cases referred to:

Airlines of NSW Pty Ltd v New South Wales (No. 2) (1965) 113 CLR 54
(#35)

Amer. Cyanamid Co. v Ethicon Ltd., [1975] A.C. 396
(#137)

Preston v Luck (1884) 27 Ch. D 497 (at 505)
(#137)

New South Wales v Commonwealth (the Seas and submerged Lands case
(1975) 135 CLR 337; 8 ALR
(#36)

Radio case (1932] A.C.
(#72, #78)

R v Poole; Ex parte Henry (no.2) and They were repeated in Airlines of NSW
(No 2) by Windeyer J (at 152
(#46)

Siebart Rustproofing Ltd. v. Ottawa Rustproofing Ont. H.C. 8th February 1978
(unreported). }
(#137)

EXHIBITS:

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Chris Scott
Bruce Torrie
David White

Saul Arbess

Al

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Mathew Re: Forest Watch

Western Canada Wilderness Committee

Susan Gage

EXHIBITS

19.72 REV2 North American Coastal Temperate Forests
(Retyped with January 25 Amendments from the floor)

RECOGNISING that temperate coniferous forests, and especially rain forests, constitute a very rare type of ecosystem in the world, originally covering less than one-fifth of one percent of the earth's land surface, and that one half of the earth's original forest of this type occurs along the pacific Coast of North America from northwestern California to southeastern Alaska;

UNDERSTANDING that many endemic and unusual plants and animals occur only in these forests; and that in biomass productivity, the old growth forests (ancient forests) of this biome are unequaled anywhere;

AWARE that more than one half of the Earth's original coastal coniferous forests (ancient forests) have been logged, including more than 40 % of the ancient forests of this type on North America, and that few large unfragmented examples of this type of forest, other than in protected areas, exist outside of British Columbia and Alaska;

MINDFUL of the fact that such ancient forests on Vancouver Island and on the mid-coast of British Columbia are disappearing at a rapid rate as a result of practices that have, to date, not been ecologically sustainable;

ALSO, MINDFUL that past management practices have been controversial, while the US government has enacted legislation to ensure sustainable management of all forests, questions continue to arise;

UNDERSTANDING that the Raincoast Conservation Society, the Sierra Club, and the Western Canada Wilderness Committee have proposed a large network of protected areas, including conservation corridors, in areas of such ancient forests on Vancouver Island and the midcoast of British Columbia;

AWARE of the fact that none of the protected areas that Canada maintains in forest areas along the Pacific Coast have been designated as World Heritage sites under the provisions of the World Heritage Convention[s] and that these ancient forests may be of outstanding universal value;

The General Assembly of IUCN — the World Conservation Union, at its 19th Session in Buenos Aires, Argentina, 17-26 January 1994:

1. URGES the Government of Canada and the United States to properly manage the temperate coastal coniferous forests of the Pacific Coast of North America by establishing appropriate protected areas and by adopting ecologically oriented systems of forest management which can be permanently sustained and which protect biodiversity;
2. CALLS UPON the Governments of Canada and British Columbia to substantially expand the amount of land in networks of protected areas, with conservation corridors, on Vancouver Island and the midcoast of British Columbia, taking into consideration the recommendations of environmental groups active in the regions such as the Raincoast Conservation Society, the Sierra Club and the Western Canada Wilderness Committee;
3. URGES the Government of Canada to consider nominating sites or combinations of sites (such as networks), in these forests as World Heritage sites under the World Heritage Convention[s];
4. RECOMMENDS that special efforts be made by these parties and their citizens to restore degraded parts of these forests and to secure the overall integrity of the biome by linking now separate forest stands

Resolution proposed by Michael McCloskey, Sierra Club USA, in collaboration with Joan Russow (B.C. Canada) member of the IUCN Commission on Education and Communication

27. The dissenting judges had attempted to apply the 1937 Labour Convention case see **EXHIBIT**

27. The 1937 case was distinguished by Brennan J. at 482

Lord Atkin in delivering the reasons for judgment....distinguished between the formation and the performance of treaty obligations. The making of a treaty is a function of the executive, but legislation to implement a treaty is a matter for the legislature. he said in reference to the Canadian constitution (at 348): The obligations imposed by treaty may have to be performed, if at all, by several legislatures and the executive have the task of obtaining the legislative assent not of the one parliament to whom they may be responsible, but possibly of several Parliaments to whom they stand in no direct relation. The question is not how is the obligation formed, that is the function of the executive: but how is the obligation to be performed, and that depends upon the authority of the competent legislature or legislatures. "

Brennan at 485

when the subject matter of a law is the subject of a treaty obligation and is 'indisputably international in character', para (xxix) is available to support the law. the present questions whether a law which creates or affects rights, duties powers or privileges regulating a field of activity which is the subject of a treaty obligation is a law with respect to an external affair, or whether some additional quality, "indisputably international" must be found in the subject of the treaty obligations. ...in Burgess..." at 30: "The external affairs power authorizes the parliament to make a law for the purpose of carrying out or giving effect to a treaty, at least if the treaty is in reference to some matter indisputably international in character." and Mason J said (at 470/91): " There is abundant authority for the proposition that the subject matter extends to Australia's relationships with other countries and in particular to carrying into effect treaties and conventions entered into with other countries and in particular to carrying into effect treaties and conventions entered into with other countries provided at any rate that they are truly international in character.

Brennan at 487

Where a particular aspect of the internal legal order of a nation is made the subject of a treaty obligation, there is a powerful indication that subject does affect the parties to the treaty and their relations one with another. They select that aspect as an element of their relationship, the obligee nations expecting and being entitled in international law to action by the obligor nation in performance of the treaty. And therefore, to subject an aspect of the internal legal order to treaty obligations stamps the subject of the obligation with the character of an external affair.

This is consistent with the view of the majority of the court in *R v Burgess*... at 644 said: "The Commonwealth Parliament was given power to legislate to give effect to international obligations binding the Commonwealth or to protect national rights internationally obtained by the commonwealth whenever legislation was necessary or deemed to be desirable for this purpose." Starke J (at 657) said: The constitution, in the legislative power to make laws with respect to external affairs, recognizes that the Commonwealth will have political relations with other Powers and States, and legislative power is conferred upon it in comprehensive terms, so that it may control those foreign or external relations and implement obligations that may have been assumed in the course of those relations. And Evatt and McTiernan JJ said (at 681): " in truth, the King's power to enter into international conventions cannot be limited in advance of the international situations which may from time to time arise. And in our view the fact of an international convention having been duly made about a subject brings that subject within the field of international relations so far as such subject is dealt with by the agreement."

27. Brennan at 487 affirmed that the mere acceptance of a treaty obligation related to an internal matter, makes the matter an external affairs matter

These views were adhered to in *R v Poole; Ex parte Henry* (no.2) and They were repeated in *Airlines of NSW (No 2)* by Windeyer J (at 152): A law necessary to give effect to a particular treaty obligation of the Commonwealth is a law with respect to external affairs." If Australia, in the conduct of its relations with other nations, accepts a treaty obligation with respect to an aspect to Australia's internal legal order, the subject of the obligation thereby becomes (if it was not previously) an external affair, and a law with respect to that subject is a law with respect to external affairs.

27. Brennan at 487 proposed a criterion for assessing the external affairs nature

I would agree, however, that a law with respect to a particular subject would not necessarily attract the support of para (xxix) if a treaty obligation had been accepted with respect to that subject merely as a means of conferring legislative power upon the Commonwealth Parliament. 26. The power to affect the obligation imposed by a convention lies on the Confederation (federal)

In *RV Burgess: Ex parte Henry* (1936) 55 (at 645/453) the judgment of Stephen J...

His Honour stated (at 646/454) that the content of the external affairs power must be determined by what is generally regarded

at any particular time as part of the external affairs of the nation, describing that as " a concept the content of which lies very much in the hands of the community of nations of which Australia forms a part" ... (p. 689)

Case is authority for the proposition that the power authorizes a law which gives effect to an obligation imposed on Australia by a bona fide international convention or treaty to which Australia is a party (689)

EXHIBIT

Stephen J. at 445

The constitution confers upon the Parliament of the commonwealth power to make laws for the peace, order and good government of the Commonwealth." It should be made clear that no question arises as to the power of Australia to enter into the convention. The Governor-General exercising the prerogative over of the Crown can make treaties on subjects which are not within the legislative power of the Commonwealth. However, the treaties when made are not self-executing: they do not give rights to or impose duties on members of the Australian community unless their provisions are given effect by statute. The power of the parliament to carry treaties into effect is not necessarily as wide as the executive power to make them. This was made clear by the Judicial Committee in *Attorney-General for Canada v Attorney-General for Ontario* [1937] AC 326 at 348, where their lordships said: "... in a federal State where legislative authority is limited by a constitutional document, or is divided up between different legislatures in accordance with the classes of subject-matter submitted for legislation, the problem is complex. The obligations imposed by treaty may have to be performed, if at all, by several legislatures; and the executive have the task of obtaining the legislative assent not of the one Parliament to whom they may be responsible, but possibly of several Parliaments to work they stand in no direct relation. The question is not how is the obligation formed, that is the function of the executive but how is the obligation to be performed, and that depends upon the authority of the competent legislature or legislatures."

... and at 435 ..in the *Labour Convention 1937* case at 353-4 their lordships pointed out that their decision in that case that legislation of the Dominion of Canadas giving effect to certain conventions was ultra vires did not have the result that Canada was incompetent to legislate in performance of treaty obligations. They said (at 354): in totality of legislative powers, Dominion and Provincial together, she is fully equipped. But the legislative powers remain distributed, and if in the exercise of her new functions derived from her new international status, Canada incurs obligations they must, so far as legislation be concerned, when they deal with Provincial classes of subjects, be dealt with by the totality of powers, in other words by co-operation between the Dominion and the Provinces."

Koowarta v Bjelke-Petersen and others Queensland v Commonwealth of Australia

2-4 March, 11 May 1982 High Court of Australia, Aust. Law Reports.

Constitutional law — Commonwealth — Legislative Powers — act implementing an international treaty

it was held Sections 9 and 12 were valid laws with respect to external affairs within s 51 (xxix) of the Constitution,

Per Stephen J. at 418. There existed a quite precise treaty obligation on a subject of major importance in international relationships, which called for domestic implementation within Australia

Per Mason J. at 418 It would seem to follow inevitably from the plenary nature of the external affairs power that it would enable the parliament to legislate not only for the ratification of a treaty but also for its implementation by carrying out any obligation to enact a law that Australia assumed by the treaty

Brennan J. at 418 If Australia in the conduct of its relations with other nations accepted a treaty obligation with respect to an aspect of Australia's internal legal order, the subject of the obligation thereby because (if it was not previously) an external affair, and a law with respect to that subject was a law with respect to external affairs.

Wilson at 480 state" the task of ensuring the co-operation of the States may present a political challenge, although the developing practices of including State representation in commonwealth delegations to international conferences on subjects which may call for implementation by State legislatures augurs well for future co-operation in the pursuit of an effective foreign policy and the maintenance of good international relations:

Wilson at 480 [dissenting] raised the Judicial Committee in Attorney-General for Canada v Attorney-General for Ontario [1937]

Where their Lordships expressed the view that in the totality of Dominion and Provincial legislative powers, Canada was fully equipped to implement any international obligations that might be incurred. The decision in that case, though not the accuracy of the observation to which I have referred was subjected to a good deal of criticism.

However, a recent assessment appears in an article by Edward McWhinney in the Canadian Yearbook of International law (1969) vol. 7 p3 wherein (at 4-5) the author wrote: 'Not merely has the Labour Convention decision not rendered impossible the conduct of a national Canadian foreign policy. In fact, no single example has ever been cited, in the years since 1937...where its rationale has presented any practical difficulties, or even mild inconvenience, in the conduct of Canada's foreign relations. At the concrete, empirical level, it has in fact proved easily possible for Canadians to live with the decision...'

The 1937 Canadian Labour case was used by the dissenting judge at 434 It should be made clear that no question arises as to the power of Australia to enter into the convention. The Governor-General exercising the prerogative over of the Crown can make treaties on subjects which are not within the legislative power of the Commonwealth. However, the treaties when made are

not self-executing: they do not give rights to or impose duties on members of the Australian community unless their provisions are given effect by statute. The power of the parliament to carry treaties into effect is not necessarily as wide as the executive power to make them. This was made clear by the Judicial Committee in *Attorney-General for Canada v Attorney-General for Ontario* [1937] AC 326 at 348, where their lordships said: " in a federal State where legislative authority is limited by a constitutional document, or is divided up between different legislatures in accordance with the classes of subject-matter submitted for legislation, the problem is complex." The obligations imposed by treaty may have to be performed, if at all, by several legislatures; and the executive have the task of obtaining the legislative assent not of the one Parliament to whom they may be responsible, but possibly of several Parliaments to work they stand in no direct relation. The question is not how is the obligation formed, that is the function of the executive but how is the obligation to be performed, and that depends upon the authority of the competent legislature or legislatures."

... and at 435 ..in the *Labour Convention 1937* case at 353-4 their lordships pointed out that their decision in that case that legislation of the Dominion of Canada's giving effect to certain conventions was ultra vires did not have the result that Canada was incompetent to legislate in performance of treaty obligations. They said (at 354): in totality of legislative powers, Dominion and Provincial together, she is fully equipped. But the legislative powers remain distributed, and if in the exercise of her new functions derived from her new international status, Canada incurs obligations they must, so far as legislation be concerned, when they deal with Provincial classes of subjects, be dealt with by the totality of powers, in other words by co-operation between the Dominion and the Provinces."

Stephen J. at 445

The constitution confers upon the Parliament of the commonwealth power to make laws for the peace, order and good government of the Commonwealth with respect to the division of powers.

[In the Australian Act, the Racial Discrimination Act" there is the following statement:

"to make provision for giving effect to the Convention

Stephen at 452

"So long as treaties departed little from their early nature as compacts between princes, having no concern with domestic affairs, the conflict was muted: but in the century international conventions have come to assume a more extensive role. They prescribe standards of conduct for both governments and individuals having wide application domestically in areas of primarily regional concern, the very areas which, in federations, have tended to be entrusted to the legislative competence of the regional units of governments. This has necessarily exacerbated the problem which federations encounter in the implementation of international treaties while emphasizing the need for regional units in federations to recognize the legitimacy of national governments' increased concern regarding domestic observance of internationally agreed norms of conduct. "

Stephen at 453 Thus areas of what are of purely domestic concern are steadily contracting and those of international concern are ever expanding.

Stephen at 454 post war growth in consensual international law.

Stephen at 454 What has occurred is rather a growth in the content of "external affairs"; this growth reflects the new global concern for human rights and the international acknowledgment of the need for universally recognized norms of conduct particularly in relation to the suppression of racial discrimination.

Stephen at 456

Even were Australia not a party to the Convention, this would not necessarily exclude the topic as a part of its external affairs. It was contended on behalf of the Commonwealth that, quite apart from the Convention, Australia has an international obligations to suppress all forms of racial discrimination because respect for human dignity and fundamental rights and thus the norm of non-discrimination on the grounds of race, is now part of customary international law, as both created and evidenced by state practices and as expounded by jurists and eminent publicists.

Stephen at 456. In the present cases it is not necessary to rely upon this aspect of the external affairs power since there exists a quite precise treaty obligation on a subject of major importance in international relationships, which calls for domestic implementation within Australia.

Mason at 459 It would seem to follow inevitably from the plenary nature of the power that it would enable the parliament to legislate not only for the ratification of a treaty but also for its implementation by carrying out any obligation to enact a law that Australia assumed by the treaty.

Mason 459 recognized that; "It is a well-settled principle of the common law that a treaty not terminating a state of war has no legal effect upon the rights and duties of Australian citizens and is not incorporated into Australian law on its ratification by Australia (*Chow Hung Ching v R* (1948) not self-executing'

... to achieve this result the provisions have to be enacted as part of our domestic law, whether by Commonwealth of States statute. Section 51 (xxix), arms the Commonwealth Parliament with a necessary power to bring this about. So much was unanimously decided by the court in *R v Burgess: Ex parte Henry* (1936) 55 CLR 608. There the power enabled the Commonwealth Parliament to legislate so as to incorporate into our law the provisions of the Paris Convention for the regulation of aerial navigation.

Mason at 459 ... the consequence of the failure [of the *R. v Burgess: Ex parte Henry* (1936)] would have been to leave the decision on whether Australia should comply with its international obligations in the hands of the individual States as well as the Commonwealth, for the commonwealth would then lack sufficient legislative power to fully implement the treaty. The ramifications of such a fragmentation of the decision-making process as it affects the assumption and implementation by Australia of its international obligations are

altogether too disturbing to contemplate. Such a division of responsibility between the Commonwealth and each of the States would have been a certain recipe for indecision and confusion, seriously weakening Australia's stance and standing in international affairs. Fortunately, the approach in Burgess has since been confirmed by R v Poole; Ex parte Henry (no.2) 1939 61 CLR...

Mason at 462. doubtless the framers of the Constitution did not foresee accurately the extent of the expansion in international and regional co-operation which has occurred since 1900. ...There is no reason at all for thinking that the legislative power conferred by s 51 (xxix) was intended to be less than appropriate and adequate to enable the Commonwealth to discharge Australia's responsibilities in international and regional affairs. mason at 463 Increasing emphasis is given in the United Nations and in regional organizations to the pursuit by international treaties of idealistic and humanitarian goals. It is important that the Commonwealth should retain its full capacity through the external affairs power to represent Australia, to commit it to participation in these developments when appropriate and to give effect to obligations thereby undertaken. `

Mason 466. Broadly speaking the test which they favoured was whether in substance the legislation carries out or gives effect to the Convention.

Mason at 467 " On the broad view which I take of the power it extends to the implementation of the international convention on the... on the Elimination of all forms of Racial Discrimination. It is an international treaty to which Australia is a party which binds Australia in common with other nations to enact domestic legislation in pursuit of the common objective of the elimination of all forms of racial discrimination.

But I would go further and say that even on the more cautious expression of the scope of the power by Dixon in Burgess, it would extend to the implementation of the convention.

Mason at 468 At the level of international law the means chosen to attain this end was the formulation of the Convention. It imposes on each of the many parties to it an obligation to eliminate racial discrimination in its territory. The failure of a party to fulfill its obligations becomes a matter of international discussion, disapproval, and perhaps action by way of enforcement.

Murphy at 471 discussed "the obligations to take legislative measure...

Murphy at 472 Preservation of the world's endangered species, maintenance of universal standards of human rights. are for Australia as well as other nations, internal as well as external affairs.

Murphy at 473. the people of the States are entitled as well as obliged to have the legislative and executive conduct of those affairs which are part of Australia's external affairs carried out by the Parliament and executive Government of Australia.

Wilson at 480 state" the task of ensuring the co-operation of the States may present a political challenge, although the developing practices of including

State representation in commonwealth delegations to international conferences on subjects which may call for implementation by State legislatures augurs well for future co-operation in the pursuit of an effective foreign policy and the maintenance of good international relations:

Wilson at 480 [dissenting] raised the Judicial Committee in *Attorney-General for Canada v Attorney-General for Ontario* [1937]

Where their Lordships expressed the view that in the totality of Dominion and Provincial legislative powers, Canada was fully equipped to implement any international obligations that might be incurred. The decision in that case, though not the accuracy of the observation to which I have referred was subjected to a good deal of criticism.

However, a recent assessment appears in an article by Edward McWhinney in the *Canadian Yearbook of International Law* (1969) vol. 7 p3 wherein (at 4-5) the author wrote: 'Not merely has the Labour Convention decision not rendered impossible the conduct of a national Canadian foreign policy. In fact, no single example has ever been cited, in the years since 1937...where its rationale has presented any practical difficulties, or even mild inconvenience, in the conduct of Canada's foreign relations. At the concrete, empirical level, it has in fact proved easily possible for Canadians to live with the decision...'

Brennan J. at 482 also referred to *Labour Convention Case*... Lord Atkin in delivering the reasons for judgment... distinguished between the formation and the performance of treaty obligations. The making of a treaty is a function of the executive, but legislation to implement a treaty is a matter for the legislature. he said in reference to the Canadian constitution (at 348): The obligations imposed by treaty may have to be performed, if at all, by several legislatures and the executive have the task of obtaining the legislative assent not of the one parliament to whom they may be responsible, but possibly of several Parliaments to whom they stand in no direct relation. The question is not how is the obligation formed, that is the function of the executive: but how is the obligation to be performed, and that depends upon the authority of the competent legislature or legislatures. "

Brennan at 485 when the subject matter of a law is the subject of a treaty obligation and is 'indisputably international in character', para (xxix) is available to support the law. the present questions whether a law which creates or affects rights, duties powers or privileges regulating a field of activity which is the subject of a treaty obligation is a law with respect to an external affair, or whether some additional quality, "indisputably international" must be found in the subject of the treaty obligations. ...in *Burgess*..." at 30: "The external affairs power authorizes the parliament to make a law for the purpose of carrying out or giving effect to a treaty, at least if the treaty is in reference to some matter indisputably international in character." and Mason J said (at 470/91): " There is abundant authority for the proposition that the subject matter extends to Australia's relationships with other countries and in particular to carrying into effect treaties and conventions entered into with other countries and in particular to carrying into effect treaties and

conventions entered into with other countries provided at any rate that they are truly international in character.

Brennan at 487 Where a particular aspect of the internal legal order of a nation is made the subject of a treaty obligation, there is a powerful indication that subject does affect the parties to the treaty and their relations one with another. They select that aspect as an element of their relationship, the obligee nations expecting and being entitled in international law to action by the obligor nation in performance of the treaty. And therefore, to subject an aspect of the internal legal order to treaty obligations stamps the subject of the obligation with the character of an external affair. This is consistent with the view of the majority of the court in *R v Burgess...* at 644 said: "The Commonwealth Parliament was given power to legislate to give effect to international obligations binding the Commonwealth or to protect national rights internationally obtained by the commonwealth whenever legislation was necessary or deemed to be desirable for this purpose." Starke J (at 657) said: The constitution, in the legislative power to make laws with respect to external affairs, recognizes that the Commonwealth will have political relations with other Powers and States, and legislative power is conferred upon it in comprehensive terms, so that it may control those foreign or external relations and implement obligations that may have been assumed in the course of those relations. And Evatt and McTiernan JJ said (at 681): " in truth, the King's power to enter into international conventions cannot be limited in advance of the international situations which may from time to time arise. And in our view the fact of an international convention having been duly made about a subject brings that subject within the field of international relations so far as such subject is dealt with by the agreement."

Brennan at 487 "These views were adhered to in *R v Poole*; *Ex parte Henry* (no.2) and They were repeated in *Airlines of NSW (No 2)* by Windeyer J (at 152): A law necessary to give effect to a particular treaty obligation of the Commonwealth is a law with respect to external affairs." If Australia, in the conduct of its relations with other nations, accepts a treaty obligation with respect to an aspect to Australia's internal legal order, the subject of the obligation thereby becomes (if it was not previously) an external affair, and a law with respect to that subject is a law with respect to external affairs.

Brennan at 487 I would agree, however, that a law with respect to a particular subject would not necessarily attract the support of para (xxix) if a treaty obligation had been accepted with respect to that subject merely as a means of conferring legislative power upon the Commonwealth Parliament. 26. The power to effect the obligation imposed by a convention lies on the Confederation (federal)

In *RV Burgess*: *Ex parte Henry* (1936) 55 (at 645/453) the judgment of Stephen J...

His Honour stated (at 646/454) that the content of the external affairs power must be determined by what is generally regarded at any particular time as part of the external affairs of the nation, describing that as " a concept the content of which lies very much in the hands of the community of nations of which Australia forms a part" ... (p. 689)

Case is authority for the proposition that the power authorizes a law which gives effect to an obligation imposed on Australia by a bonafide international convention or treaty to which Australia is a party (689)

EXHIBIT: EXCERPTS FROM THE FRANKLIN DAM CASE

1. does the enactment of the law constitute an implementation by Australia of an obligation imposed on it by the Convention? conversely would Australia be in breach of an obligation imposed on it by the Convention., if it failed to enact the law or some law substantially to the same effect?
2. Does the subject-matter of the Convention to which the law gives effect in the manner in which it is treated, involve in some way a relationship with other countries or with persons or things outside Australia?
3. Is the subject-matter of the convention to which the law gives effect, something which, although it relates to domestic activity, affects relations between Australia and another or other countries?

the first of the three tests seeks to express the idea that it is the implementation of an obligation imposed on Australia by a treaty that attracts the external affairs power, that it is the treaty obligation and its implementation that constitutes the relevant subject or matter of external affairs. As I pointed out in *Koowarta* (at 648-50/457-62), the treaty itself is a matter of external affairs, as is its implementation by domestic legislation. The insistence in *Burgess* of the legislation to carry into effect provisions of the convention in accordance with the obligations which that Convention imposed on Australia is not inconsistent with what I have said, though it does raise a question as to the scope of the legislative power in this application to a treaty, ...

At this point it is sufficient to say that there is no persuasive reason for thinking that the international character of the subject matter or the existence of international concern is confined to that part of a treaty which imposes an obligation on Australia. A provision in a treaty which is designed to secure to Australia a benefit may be just as much a matter of international concern, possessing an international character, with a potential to affect Australia's relationships with other countries, as a provision in a treaty which imposes an obligation upon Australia.

... But when we have regard to international affairs as they are conducted today, when the nations of the world are accustomed to discuss, negotiate, co-operate and agree on an ever-widening range of topics, it is impossible to enunciate a criterion by which potential for international action can be identified from topics which lack this quality.

... p691

It is suggested that if a topic becomes the subject of international cooperation or an international convention it is necessarily international in character —

...

The fact of entry into and of ratification of, an international convention, evidences the judgment of the Executive and of Parliament that the subject matter of the convention is of international character and concern and that its implementation will be a benefit to Australia...

the court should accept and act upon the decision of the Executive government and upon the expression of the will of Parliament in giving legislative ratification to the treaty or convention. (p. 692)

... Koowarta makes the point that the content of the external affairs power has expanded greatly in recent times along with the increase in the number of international conventions and the extended range of matters with which they deal (ALJR) at 645-6, 650; (ALR) at 453-4, 462-3

Section 51(xxix)

"There is no reason at all for thinking that the legislative power conferred by s51(xxix) was intended to be less than appropriate and adequate to enable the Commonwealth to discharge Australia's responsibilities in international and regional affairs... As the object of conferring the power was to equip the Commonwealth with comprehensive capacity to legislate with respect to external affairs, it is not to the point to say that such is the scope of external affairs in today's world that the content of the power even to the Commonwealth is greater than it was thought to be in 1900."

Accordingly, it conforms to established principle to say that s51 (xxix) was framed as an enduring power in broad and general terms enabling the Parliament to legislate with respect to all aspects of Australia's participation in international affairs and of its relationship with other countries in a changing and developing world and in circumstances and situations that could not be easily foreseen in 1900. (p693) This circumstance is often overlooked by those who are preoccupied with the impact that the exercise of the power may have in areas of legislation traditionally regarded by the States as their own. The consequences to Australia resulting from an inadequate Commonwealth legislative power with respect to external affairs — which represents the price to be paid for the preservation to the States of these areas of legislation — were emphasized in Koowara (ALJR) at 650-1, 656; (ALR)

... it must always be remembered that we are interpreting a constitution broad and general in its terms, intended to apply to the varying conditions which the development of our community must involve."

Despite Norris' assessment of the "equitable remedy of the injunction" in most injunctive cases, the condition for granting an injunction appears to be restricted to a "balance of convenience" (the term "convenience" appears to be interpreted as meaning suitability; and the term "just" appears to be absent indicating perhaps that the courts do not believe that there is a significant distinction between "suitability" and "just"). It is understandable that the courts, in deciding between two competing economic claims, would approach the claims as being a balance of convenience. Not all conflicts, however, can always be justly resolved by balancing conveniences. Further, cases between short term economic claims and long-term ecological concerns of potential irreversible destruction surely must not be resolved by misconstruing an ecological right as being one of convenience, and an economic privilege as being one of irreparable harm as had been done in *Wiigyet vs District Manager*. ∞ FULL

In judicial decisions related to conflicts between short term economic interests and long-term ecological concerns the courts in using equitable remedies must reexamine fundamental principles of justice and equity, so as to ensure that the legal system fosters not inhibits justice and equity. It may also be necessary to accept a limitation on freedoms: i.e., that which was considered to be a right may now only be deemed to be a privilege, and in being a privilege it should receive different and more intense scrutiny.

The global system is presently attaining or approaching an ecological state of irreversibility or privation. The time has passed for the perpetuation of precedence reflecting the exclusive reliance on narrowly defined "convenience" and "balance of convenience" or conflict between "convenience and irreparable damages or harm", and reliance on Forest Company affidavits as a basis for granting injunctions. There appears to be a serious discrepancy or lack of correspondence between the criteria for making injunctive decisions and the current recognition of time and circumstance as reflected by concerns in the international scientific and academic community and by proclamations in international documents.

The need to redefine irreparable damage is made evident in the previously mentioned *Wiigyet vs. District Manager* case. International and national documents could assist the court in defining irreparable damage so that the court could "move with time and circumstance" (Norris).

A F I D A V I T

I, Joan Russow, of 1230 St. Patrick St. of the city of Victoria, Province of British Columbia MAKE OATH AND SAY AS FOLLOWS:

1. THAT I am a Sessional lecturer in Global Issues in the Environmental Studies Program at the University of Victoria; the Chair of the International Affairs Caucus of the British Columbia Network (BCEN); a member of an International Commission-the IUCN (World Conservation Union) Commission on Education and Communication, and founder of the International Law and Obligations Institute (ILOI) — an institute established to monitor compliance to International obligations. Ironically, the Law Society which ignores international law opposed the registration of the name

2. THAT I attended the New York Prep Com (March 1992), the UNCED Earth Summit and Global Forum (June, 1992), the meeting of the World Heritage Committee, and the Annual General Meeting of the IUCN.

3. THAT I am a researcher in an international Harvard -based project, which examines climate change, ozone depletion and acid rain documentation and implementation of policy in eight different countries; and that I am involved in co-coordinating a "Global Compliance Project" for the 1995 UN Conference in Beijing.

4. THAT I have extensive experience in analyzing and categorizing research data and in carrying out content analysis in different disciplines. Since 1985 I have been doing a content analysis of international documents. I have analyzed statements in the following International legal instruments and UN resolutions:

Universal Declaration of Human Rights, 1948; Stockholm Conference on the Human Environment, 1972; UN Conservation of Natural Heritage, 1972; UN Convention on International Trade in Endangered Species of Wild Fauna and Flora, 1973; International Covenant of Social, Cultural Rights; International Covenant on Civil and Political Rights, 1976; the Vienna Convention of Treaties, 1978; the World Charter of Nature, 1982; Non-proliferation of Nuclear weapons; Vienna Convention for the Protection of Ozone, 1985; Montreal Protocol on Substances that Deplete the Ozone Layer, 1987 (and London and Copenhagen Protocols); UN Convention on the Rights of the Child, 1989; Convention for the Control of trans-boundary Movements of Hazardous Wastes (Basel Convention 1989); Environmental Assessment Review of trans-boundary Projects; 1991 ASEAN; Jakarta Declaration. the Caracas Declaration, 1992; Rio Declaration and Agenda 21, 1992, Convention on Biological Diversity, 1992; UN Framework Convention on Climate Change, 1992.

In particular, I have done a content analysis of the UNCED documents, and extracted over 200 principles enunciated in those documents. In October, 1993, at the University of Victoria, I also organized a panel discussion on "International Law and Obligations: Implications for the Clayoquot".

5. THAT I am currently involved in a university project examining B.C. and Canadian environmental legislation

6. THAT I have had input into the drafting of several international documents: a proposed Earth Charter for UNCED; the NGO Earth Charter at the UNCED Global Forum; and the IUCN "Covenant" prepared by the IUCN Commission on Environmental Law.

7. THAT I have reviewed international documents such as the UNCED Forest Principles document, and indicated its inconsistency with other international documents; I have reviewed federal documents such as the proposed Charlottetown Accord, and the CIDA guidelines for international projects, and indicated the inconsistency of these documents with other international and federal documents. I have reviewed provincial documents such as CORE Charter, B.C. Environmental Bill of Rights, the B.C. Prevention Act, the Forest Practices Code; B.C. Standards for Pollution Prevention, and indicated the inconsistency of these documents with other Federal and international documents.

8 THAT I will submit evidence about the following:

6.1. THAT there is a strong indication from statements from international documents, and from experts that there is an urgency to address the global environmental situation, and that "inaction is negligence" (Digby McLaren, Past President of the Royal Society of Canada, Keynote address, Global Issues Conference, 1991).

EXHIBIT A: Evidence of statements about urgency by Science Council of Canada; by the Royal Society of Canada; by the Concerned Scientists, Warning to Humanity; and by the international community in international documents.

6.2. THAT there is a duty expressed in international documents to act to address this urgency, and through international customary law as expressed in the International Covenant on Civil and Political Rights, and in UN Resolution 37/82, a duty has been placed on states to adopt such legislative or ... measures as may be necessary to give effect ... to international documents, and BC has undertaken this duty as a result of this international customary law.

EXHIBIT B: Evidence of statements of duty expressed internationally, nationally and provincially.

6.3. THAT Canada, as well as B.C., has failed in many cases to exercise this duty and comply with its obligations. In particular, Canada has failed to comply with the Convention on Biological Diversity which Canada signed (June, 1992) and ratified (December, 1992); and which has been in force since December 1993; and that Canada under Article 18 of the Convention of Treaties, must not "defeat the purpose of the Treaty in the interim between the signing of the treaty and the coming into force of the treaty."

EXHIBIT C: Evidence that Canada has defeated the purpose of the Treaty since June 1992 by failing to conserve biodiversity, by failing to identify biodiversity, by failing to invoke the precautionary principle to justify the banning of ecologically unsound practices, and by failing to carry out an environmental assessment review of anything that could contribute to the loss or reduction of biodiversity.

6.4. THAT Canada has invoked internal law to justify not complying with these obligations (through claiming that B.C. is not bound by these documents and thus not required to comply. Under Article 27 of the Vienna Convention of Treaties, Canada is bound not to invoke internal law to justify non-compliance to international treaties.

EXHIBIT D1: Evidence that Canada under the Convention of Treaties has undertaken not to invoke internal law to justify not fulfilling international treaty obligations.

EXHIBIT D2: Evidence that indicates that B.C. as well as Canada is bound by these international obligations whether through legally binding documents such as the Biodiversity Convention and the Climate Change Convention, or through international customary law including the Common Law Doctrine of Legitimate Expectation, and evidence that the 1937 International labour Supreme Court Decision can be distinguished in the case of the Convention on Biological Diversity.

6.5. THAT Canada has invoked internal law to justify not complying with these obligations through granting injunctions that prevent the fulfilling of these obligations. Under Article 27 of the Vienna Convention of Treaties, Canada is bound not to invoke internal law to justify non-compliance to international treaties.

EXHIBIT E : Evidence that B.C. has not only used internal law — the granting of injunctions to justify non compliance to International obligations but has failed to invoke its own internal law to prevent violations of international obligations.

6.6. THAT many of the Clayoquot Protectors were informed through circulated material and proclamations that there were international obligations undertaken by Canada and B.C., and that these obligations were being violated in the Clayoquot.

EXHIBIT F: Evidence of examples of documents about B.C. 's non-compliance to international obligations circulated to Clayoquot protectors.

6.7. THAT there has been international condemnation of British Columbia through a resolution from IUCN, an international organization with representation from 125 countries, including representation from governments and non-governmental organizations. I am a member of the Commission on Education and Communication of the IUCN (the World Conservation Union)

—an organization that has both non-governmental and governmental representation, and academic and professional representation from 125 countries. I was instrumental in January 1994 in assisting in the drafting of the "North American Temperate Rainforest" Resolution which passed with only one state abstaining, Canada. The IUCN undertakes to circulate any resolution passed at the Annual General Meeting to all states in the United Nations, and it is the responsibility of the proposer of a resolution to monitor the fulfillment of IUCN resolutions, and to submit documentation about the fulfillment of the resolutions for distribution at the next IUCN Annual General Meeting.

EXHIBIT G: Evidence of International condemnation of forest practices in British Columbia, and of international call for the protection of a large network of original temperate rainforests as recommended by the Western Canada Wilderness Committee whose proposal for a network includes Clayoquot Sound.

6.8. THAT it may not be equitable to prosecute citizens through the use of an equitable remedy— an injunction- when the granting of the equitable remedy is still under question in the courts, and when the equitable remedy is being used against those who call for the adherence to international obligations. I also propose that the issuance of equitable remedy such as an injunction which has usually been issued to prevent irreparable harm, has in this case of Clayoquot sound been issued against those who strive to prevent irreparable harm and call for the adherence to international obligations. [Note: that there have been several attempts to set aside the injunction, the last one being heard in January with no decision yet being handed down in June, and citizens are still being tried as criminals for contempt of court for their not complying with the injunction]

EXHIBIT H: Evidence that the injunction is an equitable remedy that has been misapplied in the Clayoquot case.

In the BC Litigation publication, Justice J.A. Norris described the nature of the injunctive remedy in British Columbia Law in the following way:

The remedy [of injunction] of course, is an equitable one. ' The exercise of the equitable jurisdiction is not to be restricted by the straitjacket of rigid rules but is to be based on broad principles of justice and convenience, equity regarding the substance and not merely the facade or the shadow. It moves with time and circumstances. (Justice J.A. Norris)

6.9. THAT there is a positive duty upon citizens to ensure that a state adheres to its international obligations.

EXHIBIT I: Evidence to support the proposal that it is the responsibility and duty of individuals to act to ensure compliance with international obligations

6.10. THAT in cases of potential irreversibility there may not be time for citizens to wait to exhaust all domestic measures before bringing their concerns to the international forum; and THAT the exercising of this positive duty as was done in Clayoquot Sound by peacefully assembly to protest the non-compliance with international obligations should not be considered to be a demonstration of criminal contempt of court. When established members of the community, such as representatives of government at international conferences, senior scientists from national institutions indicate the gravity and urgency of the global situation, including deforestation, it is inequitable for the courts to impose injunctions that were traditionally an equitable remedy to prevent irreparable harm on those who try to prevent irreparable harm. It is equally inequitable to charge those who call upon governments to live up to their commitments as criminals while those who do not adhere to international commitments, federal laws and provincial statutes are fined occasionally for their "transgressions." Since Canada has made these commitments outlined in the above exhibits, and because these commitments are inconsistent with the continuing to log in significant stands of unfragmented watersheds the injunction should have been rescinded because the injunction is contributing the non-fulfillment of international, national and provincial obligations.

In my opinion the court has violated principles of equitable law, such as the principle that "he who comes to equity must come with clean hands," by granting an equitable remedy to a party, MacMillan Bloedel, that itself has been in violation of international, federal and provincial law. When the ignoring of this equitable principle was brought to the attention of Judge Drake, he ruled that, in equity, "equity follows the law." If that were the case, and if international laws, such as the UN Resolution 37/7 (1982), federal laws, such as the Fisheries Act, and provincial laws, such as the Forest Act had been applied years ago, tree Farm licensees would have been suspended and canceled, and forest practices changed. In the absence of the court's willingness to enforce international law and federal and provincial statutory law, "equity has not followed the law."

In the Clayoquot, the court failed to invoke the law, and instead has demonstrated contempt for its own laws, by misconstruing the purpose of the equitable remedy of an injunction, which is to prevent irreparable harm. In circumstances where the state has failed to exercise its duty to act, and the court has failed to enforce the law, it is the state and the court that has demonstrated contempt for the law. This contempt has been shown at all three levels:
international, federal and provincial.

In addition, in the Clayoquot trials, the court has condoned not only violations of guarantees in the Canadian Charter of Rights and Freedoms, but also violations of guarantees in the International Covenant on Civil and Political Rights, such as the following:

In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him {Article 14 3 (e)}.

[NOTE THAT IN THE CLAYOQUOT TRIALS IN VICTORIA FEW WITNESSES HAVE BEEN PERMITTED TO APPEAR FOR THE DEFENCE]

It is institutions not individuals that have demonstrated contempt for law and justice.

There appears to be little recourse for the Clayoquot Protectors than to eventually seek redress through the Optional Protocol International Convention of Civil and Political Rights which provides the following remedy:

Subject to the provisions of article 1 individuals who claim that any of their rights enumerated in the Covenant have been violated and who have exhausted all available domestic remedies may submit a written communication to the committee for consideration. (Article 2)

Ombudsman

In a letter from the Ombudsman's office indicating the findings of the Ombudsman's office (1993) related to the Russow/Gage inquiry into the way the B.C. government will be fulfilling international commitments: the senior investigator for the Ombudsman's office conveyed the commitment of B.C. to the UNCED obligations:

Compliance with International Agreements.

Direct personal discussions were held with Mr. Cheston, Assistant Deputy Minister of Operations Division, Ministry of Forests, and Mr. Owen, Commissioner on Resources and Environment. Both Mr. Cheston's and Mr. Owen's responsibilities reflect the government's priority for those issues of concern to you...

From these meetings, as well as from additional discussions with senior staff from the Ministry of Forests and the Ministry of Environment, Lands and Parks, we have determined that BC intends to comply with the agreements signed at the UNCED in June 1992.

Canada and B.C. are also bound by the UN convention on Cultural and natural Heritage

Not to do anything that could not to invoke internal law to justify the performance of a treaty

Here are two letters that I wrote in relation to the designation of a network of forests being designated as international heritage sites.

1. Letter to Arthur Campeau; I think this letter got lost in the government shift. Usually, Campeau is good at responding to letters. Unfortunately, I did not follow up with another letter. A redraft of the letter could be resubmitted to John Fraser's office. Perhaps signed by the Friends and the Ecological Rights Association.

2. Letter to President of World Heritage Committee. I did receive a response from the president of the World Heritage Committee. He did not agree with my interpretation of the "heritage in peril clause." He contends that this designation only applies to sites that have already been nominated by the state, approved by the IUCN, and accepted by the World Heritage Committee to be placed on the heritage list. Once a site has been placed on a world heritage list, and the state does not protect it then the site can be placed on the heritage in danger list. I think that we can argue that the intention of the Convention was expressed in the Preamble (the duty placed on the international community to identify sites of outstanding universal value), and that the drafters of the Convention did not envision that states would not be interested in preserving these sites.

Joan Russow (In person) Appearing for the Applicants

John J.L. Hunter Appearing for the Respondent

Place and Date of Hearing Vancouver, British Columbia

October 25, 1994

Place and Date of Judgment Vancouver, British Columbia

December 7, 1994

Court of Appeal for British Columbia

MacMillan Bloedel Limited

- v. -

Joan Russow and Betty Kleiman

- and -

Sheila Simpson et al.

Reasons for Judgment of the Honourable Mr. Justice Carrothers (In Chambers)

- 1 The applicants before me, Joan Russow and Betty Kleiman, by "Notice of Application for Leave to Appeal" filed October 13, 1993, seek leave to appeal an order of Mr. Justice Drake made September 17, 1993, dismissing an application for an order rescinding the order of Mr. Justice Hall made on August 26, 1993, granting interim injunction relief and extending other injunctions until August 31, 1994, or until trial which ever shall be earlier.
- 2 This application is best understood in the context of its involvement in that series of injunctions granted and subsequently varied and extended by a number of judges of the Supreme Court of British Columbia between September 1991 and the summer of 1993, and prohibiting interference with the logging operations of the respondent MacMillan Bloedel Limited in its tree farm licence in the area northwest of Kennedy Lake on Vancouver Island and in the vicinity of Clayoquot Sound.

Of particular concern is that order which I have mentioned of August 26, 1993, made by Mr. Justice Hall granting fresh injunctive relief and the extension of injunction orders previously granted and which were about to expire.

3 On August 23, 1994, the present application for leave to appeal came on in Court of Appeal chambers before Madam Justice Proudfoot, who, advertent to the fact that the injunction itself would expire on August 31, 1994, and that there are totally new grounds of appeal being advanced with reference to this leave application which were not covered in a companion appeal from Mr. Justice Hall's order (which had been heard in this Court January 20 and 21, 1994), adjourned the matter generally.

4 On September 30, 1994, judgment of this Court in the companion appeal of the order of Mr. Justice Hall was delivered and it is reported indexed as **MacMillan Bloedel Ltd. v. Simpson** 1994 943 (BC CA), (1994), 96 B.C.L.R. (2d) 201. Macfarlane J.A. describes the nature of that appeal at p. 206:

1 This appeal [from reflex, (1993), 106 D.L.R. (4th) 556] concerns the granting of injunctions to restrain conduct forming part of a mass public protest against government forest policy.

2 The appeal concerns the validity of interim injunctions granted at the behest of a private party, MacMillan Bloedel Limited, which prohibited named defendants, John Doe, Jane Doe and Persons Unknown, and "all persons having notice of the order" from conduct interfering with alleged private property rights, where the conduct enjoined may not only affect private property but may also be a public wrong for which a remedy lies under the **Criminal Code**.

3 In this case, identified and unidentified persons protesting government forestry policy had blocked a road providing access to the logging operations of MacMillan Bloedel Limited, thereby preventing the company from exercising its alleged property rights. The appellants say the conduct was proscribed by **Criminal Code** s. 430(1) (mischief) and s. 423(1)(g) (blocking or obstructing a highway).

(my emphasis)

- 5 The present applicants fell into that category of persons which I have emphasized in the above passage. That appeal was dismissed. The present applicants did not avail themselves of the opportunity to participate in that appeal. Notwithstanding that, the present applicants are bound by the result which makes the subject appeal moot on its main issue. It is not customary for this Court to hear an appeal which is moot. On that ground alone I would refuse leave to appeal.
- 6 At the chambers hearing before me on October 25, 1994, of the application for leave to appeal, the applicant Joan Russow made extensive submissions which she herself called "a lecture" rather than an argument. The applicant Russow submitted that there was a failure to bring to the attention of Mr. Justice Hall that his granting and extension of the injunctive relief could contribute to non-compliance with international obligations of Canada and its courts on the basis that clear cutting in the Clayoquot Sound area was inconsistent with Canada's obligations under a United Nations convention on biodiversity. Further this applicant suggested that, in the application before Mr. Justice Drake, for rescission of Mr. Justice Hall's order, Mr. Justice Drake erred in his assessment of international law, particularly in relation to biodiversity and climate change issues as affected by current forest industry practices.
- 7 The lengthy submission reflects the large assemblage of material contained in the applicants' leave book, which cannot be summarized. I have taken the time to read and consider substantially all of it. I have not been shown and I have been quite unable to discern or identify any pertinent or applicable principle of international law, whether developed by custom and usage, treaty or convention, or legislative or judicial determination, which falls within the judicial capacity and function of the courts of this province. In my opinion, there is no issue in this case to be advanced on an appeal which warrants the attention of this Court.

COMMENT:

AT FIRST IN THE APPEAL, HUNTER CLAIMED: "SINCE YOU WERE ARRESTED, YOU DO NOT COME TO THE COURT WITH CLEAN HANDS."

I TOLD HIM THAT I HAD NOT BEEN ARRESTED IN CLAYOQUOT SOUND

THEN THE NEXT TIME WE WERE IN COURT, HE STATED "THE APPEAL SHOULD NOT BE HEARD BECAUSE I HAVE NO STANDING."

8 Leave to appeal must be refused.

COMMENT

() EXHIBIT:

EVIDENCE OF LAWYER'S UNWILLING TO USE INTERNATIONAL LAW
Through Freedom of Information I obtained cabinet document in which the BC government had endorsed the Framework Convention on Climate Change, and the Convention on Biological Diversity. I had urged lawyers within the Sierra Legal Defence and Cameron Ward lawyers who were acting on behalf of The Friends of Clayoquot Sound, and Greenpeace, respectively, to use this document to demonstrate that the Province of British Columbia was bound by the Conventions and could not rely on the 1937 Supreme Court Labour Convention case, and that the 1936 radio case was a relevant precedent. Greg McDade QC, formerly with the Sierra Legal Defence refused to use international law in environmental cases, but he ridiculed me and told that judges in BC do not take into consideration international law. He also discredited me for using international law and undermining issues. Cameron Ward responded that using international law in the Clayoquot case, when the case went to the Supreme Court, would muddy the waters.

BACKGROUND FOR THE FREEDOM OF INFORMATION REQUEST

37. Initially when I contacted Premier Harcourt's office to request information about the consultation process with the Federal government surrounding the deliberation at UNCED, I was told that there was no official consultation. It was when I was on a train to Montreal, only by chance I saw, Arthur Campeau –the Canadian Ambassador for the Environment at the UN- whom I had met previously. I told him that it was important for me to know about the extent of consultation with the BC government prior and during Rio, and that I had been told that there had not been official consultation and that I was puzzled because I had seen John Cashore seated with the Canadian Delegation at the UN. Arthur Campeau told me that he had actually seen a cabinet document endorsing the two conventions from Rio.

I then contacted Premier Harcourt's office and asked specifically for the Cabinet document endorsing the conventions from Rio, and within the month I had received the 12-page document with extensive deletions.

It would appear that B.C. played a significant role in the provincial endorsement of the UNCED Conventions by moving the endorsement and by seeking cabinet support

Jaime Alley, former representative for corporate affairs in the Ministry of the Environment, indicated that the provincial governments insisted on not being just another stakeholder in the consultation process but on having government to government consultation"

"Province endorsed the ratification. we agreed with Canada to ratify it. Provincial endorsement. the move to endorse the Conventions John Cashore, the then B.C. Minister of Environment" Cashore went to Cabinet and sought their support and endorsed the ratification and state that to the CCME meeting that it was approved by cabinet"

"Barbara MacDougal, wrote to all provincial constitutional ministers seeking their advice prior to ratification" (Personal Communication, August, 1994)

"There was continuous consultation you need to contact the CCME for details"

36. In the Appeal it will be contended that B.C. through a letter prior to August 1992, the then constitutional minister of B.C., the Hon Moe Sihota indicated to the Hon. Barbara McDougall, The Secretary for External Affairs, B.C.'s support for the Biodiversity and Climate Change Conventions, was bound not to defeat the purpose of the Conventions:

The Hon. Moe Sihota , the then Minister Responsible for Constitutional Affairs communicated to the Hon Barbara McDougall, Minister of State for External Affairs for Canada B.C.'s support for the Convention on Biological Diversity and for the Framework Convention on Climate Change (November 4, 1992, in the B.C. Cabinet Submission , entitled "UNCED follow-up: Endorsement of International Convention on Climate change and Biological diversity") [Note that Russow, on July 17, 1994, made an application through the Freedom of Information Act for a copy of this letter of this letter is being requested through the Freedom of Information Act].

35. In this Cabinet submission, dated November 4, 1992, the B.C. government affirmed that it was bound by the Biodiversity Convention and the Framework Convention on Climate Change:

Canada signed binding International Conventions on climate Change and Biodiversity..and indicated its support for ...a "Global Green Plan" for sustainable development, entitled Agenda 21.

36. Provincial cabinet endorsement of the Biodiversity and Climate Change Conventions binds them to not defeat the purpose of the Convention. In a document obtained through the Freedom of information Act there was evidence of the Provincial cabinet endorsement for the ratification of the Biodiversity and Climate Change Conventions:

"UNCED follow-up: Endorsement of International Convention on Climate change and Biological diversity" November 4, 1992.

38. Evidence will be presented to indicate the assessment of Canada's responsibility for B.C.'s actions in relation to other states.

When the question of Canada's responsibility for actions of B.C. that could impact on the fulfilling of the Convention was raised the IUCN (World Heritage

Union) meeting of the Commission on Environmental Law. Several of the lawyers who had served as advisers to the International Court of Law or to the United Nations, concurred that Canada could be held accountable for B.C.'s non-compliance with international legal obligations under the two Conventions signed at UNCED.

THAT B.C. IS ALSO BOUND BECAUSE OF COMMITMENTS MADE TO THE FEDERAL GOVERNMENT AT THE CABINET LEVEL

(Note document is not included because the cabinet document which was obtained through the Freedom of Information Act, has excluded sections under Section 12 of the Freedom of Information Act. For the court purposes, I would presume that the complete document could be obtained).

EXHIBIT: E UNCED Follow-up: Endorsement of International Convention on Climate change and biological diversity"
(p.26, in text)

EXHIBIT: EVIDENCE OF JUDGES IN BC SHOWING DISRESPECT FOR INTERNATIONAL LAW

() **THAT** In 1993, I organized a panel on Clayoquot Sound and International Law at the University over 300 participated; It was broadcast on Shaw

() **THAT** in 1992 and 1993, I submitted documents to the Roundtable CORE process which was chaired by Stephan Owen. I criticized the Roundtable as being an arena of competing interests that also glorified conflict of interest. I proposed that there be instead principle-based decision making drawn from internationally agreed to principles.

EXHIBIT

**Statement of Obligation
Conservation and Ecologically Sound Practices**

Joan Russow
Sessional Lecture, Global Issues in Sustainability
Environmental Studies Program
University of Victoria

Humanity stands at a defining moment in history. We are confronted with a perpetuation of disparities between and within nations, a worsening of poverty, hunger, ill health and illiteracy, and the continuing deterioration of the ecosystems on which we depend for our well-being. ... (1.1 Preamble, Agenda 21)

Statement of Obligation Conservation and Ecologically Sound Practices

**"Maxim of Equity: Equity imputes an intention to fulfill an obligation."
(Snell's *Equity* 1990)**

Canada has made international commitments, and the public can impute an intention to fulfill these obligations

Convention of treaties:

recognition of urgency

- *Biological diversity is being significantly reduced by certain human activities, (preamble, Convention of Biological Diversity)*
- *Importance of biological diversity for evolution and for maintaining life sustaining systems of the biosphere, (preamble, Convention of Biological Diversity)*
- *Conservation of biological diversity is a common concern of humankind, (preamble, Convention of Biological Diversity)*
- *This natural wealth is being eroded at an unprecedented rate, because of the rapid growth in human numbers, the uneven and often excessive consumption of natural resources, mistaken and socially harmful styles of development, global pollution and defective economic regimes, so that the future of humanity is now threatened (Caracas declaration)*
- *Many people must modify their styles of living and the world community must adopt new and equitable styles of development, based on the care and sustainable use of the environment, and the safeguarding of global life-supporting systems (Caracas declaration)*

Intention: Compliance with international agreements

Canada continually indicates its professed concern for the environment in a way that should entitled Canadians to expect actions that reflect this concern. For example, in the preface of Canada's National Report, which was submitted to the Earth Summit in Rio, the Canadian government gave the impression that Canadians were "stewards" observing their "environmental responsibility."

as stewards of a vast and beautiful land, and as a people intimately connected to the environment, Canadians are aware of their environmental responsibilities (Canada's National Report, Preface).

And further in the section on the "quality of life", the Canadian government stated

"As a small population with a large land mass, Canadians have access to relatively unspoiled wilderness areas rich in wildlife ... Canada has an

international reputation as a beautiful, safe and mostly unspoiled country” (Canada's National Report, p.49).

“If the government of Canada continues to give the impression to the global community that Canadians are concerned about being "stewards" of a "relatively unspoiled wilderness”, then the citizens of Canada have the equitable right to expect that Canada will fulfill this expectation.” (Doctrine of expectation)

Citizens of Canada can justifiably expect that Canada will adhere to international principles that are part of international agreements signed by Canada, and citizens of Canada can justifiably expect that the courts of Canada will abide by international commitments made by Canada.

Statement of Obligation

Conservation and Ecologically Sound Practices

Similarly, at the Provincial level if the provincial government imputes that it intends to fulfill an obligation, the citizens should be justified in having the obligation fulfilled.

- a letter from the Ombudsman's office indicating the findings of the Ombudsman's office (1993) related to the Russow/Gage inquiry into the way the B.C. government will be fulfilling international commitments.

2 Compliance with International Agreements.

Direct personal discussions were held with Mr. Cheston, Assistant Deputy Minister of Operations Division, Ministry of Forests, and Mr. Owen, Commissioner on Resources and Environment. Both Mr. Cheston's and Mr. Owen's responsibilities reflect the government's priority for those issues of concern to you...

“From these meetings, as well as from additional discussions with senior staff from the Ministry of Forests and the Ministry of Environment, Lands and Parks, we have determined that BC intends to comply with the agreements signed at the UNCED in June 1992.” (Gardiner, 1993)

Through this statement the Provincial government has demonstrated the intention to adhere to principles from Agenda 21, the Rio Declaration and the Biodiversity Convention.

- a letter from both the Provincial Ministry of Forests and the Provincial Ministry of Environment (March, 1992) in which the following intention is imputed:

As we, in BC Parks and BC Forest Service begin to work on implementing our components of B.C.'s protected areas under the aegis of the Commission on Resources and Environment, we will be mindful of this Declaration [the Caracas Declaration: Parks Protected Areas and the Human Future] and its implications. Our objective will be to have a system of protected areas which we are proud to present to the world.

In the Caracas Declaration; Parks Protected Areas and the Human future is the recognition of the following international documents:

bearing in mind the message of *Caring for the Earth: A strategy for Sustainable Living, The Global Biodiversity Strategy*. launched at this Congress, and the earlier messages of the World Conservation /Strategy, the World Charter for Nature and the World Commission on Environment and Development, CD

Through this intention to be "mindful of this Declaration" the Provincial government through its Ministry of Environment and Forests has recognized the CARACAS Declaration and the UN Resolution 37/7 (1982) World Charter for Nature.

The government of Canada has imputed the intent to fulfill obligations under the UNCED documents, the CARACAS Declaration and the World Charter of Nature

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Statement of Obligation
Conservation and Ecologically Sound
Practices
Principles delineating Obligation

Principle that international law shall be reflected in the law and practice of the state

The principles set forth in the present Charter shall be reflected in the law and practice of each State, as well as a that international level (14, World Charter of Nature).

Principle of moral code of action regarding every form of life

• Every form of life is unique, warranting respect regardless of its worth to man, and to accord other organisms such recognition's, man must be guided by a moral code of action (Preamble, World Charter of Nature)

Principle of intrinsic value of biological diversity

• Recognition of the intrinsic value of biological diversity ... (Preamble Biodiversity Convention)

Principle of intrinsic worth of nature

• Nature has intrinsic worth and warrants respect regardless of its usefulness to humanity (Caracas Declaration).

Principle of maintenance of essential ecological processes

-Lasting benefits from nature depend upon the maintenance of essential ecological processes and life support systems, and upon the diversity of life forms, which are jeopardized through excessive exploitation and habitat destruction by man (Preamble, World Charter of Nature)

-Lasting benefits from nature depend upon the maintenance of essential ecological processes and life support systems, and upon the diversity of life forms, which are jeopardized through excessive exploitation and habitat destruction by man (Preamble, World Charter of Nature).

Principle of limit of natural capacity for regeneration

Living resources shall not be utilized in excess of their natural capacity for regeneration (3 a World Charter of Nature).

Principle of burden of proof of benefit being placed on the proponent of intervention into the ecosystem

Activities which are likely to pose a significant risk to nature shall be preceded by an exhaustive examination; their proponents shall demonstrate that expected benefits outweigh potential damage to nature, and where potential adverse effects are not fully understood, the activities should not proceed (11 (b) World Charter of Nature).

Principle of rehabilitation of areas degraded by human activity

Areas degraded by human activities shall be rehabilitated for purposes in accord with their natural potential and compatible with the well-being of affected populations 16. All planning shall include, among its essential elements, the formulation of strategies for the conservation of nature, the establishment of inventories of ecosystems and assessments of the effects on nature of proposed policies and activities; all of these elements shall be disclosed to the public by appropriate means in time to permit effective consultation and participation (11 e World Charter of Nature).

Principle of early intervention and monitoring to protect ecosystems

- The status of natural processes, ecosystems and species shall be closely monitored to enable early detection of degradation or threat, ensure timely intervention and facilitate the evaluation of conservation policies and methods (19, World Charter of Nature).

Principle of informed action

- There is general lack of information and knowledge regarding biological diversity and of the urgent need to develop scientific, technical and institutional capacities to provide the basic understanding upon which to plan and implement appropriate measures (Preamble, Convention of Biological Diversity).

Principle of anticipation and reduction at source

- It is vital to anticipate, prevent and attack the causes of significant reduction or loss of biological diversity at source (preamble, Convention of Biological Diversity).

Precautionary principle

- where there is a threat of significant reduction or loss of biological diversity, lack of full scientific certainty should not be used as a reason for postponing measures to avoid or minimize such a threat (Preamble, Convention of Biological Diversity).

Principle of in-situ conservation

- the fundamental requirement for the conservation of biological diversity is the *in-situ* conservation of ecosystems and natural habitats and the maintenance and recovery of viable populations of species in their natural surroundings (Preamble, Convention of Biological Diversity).

Principle of intergenerational equity:

- To conserve and sustainably use biological diversity for the benefit of present and future generations (Preamble, Convention of Biological Diversity).

Principle of sustainable use and intergenerational equity

- The use of components of biological diversity in a way and at a rate that does not lead to the long-term decline of biological diversity, thereby maintaining its potential to meet the needs and aspirations of present and future generations (Definition, Convention of Biological Diversity).

Principle of ecological diversity

- Means the variability among living organisms from all sources including, *inter alia*, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part; this includes diversity within species, between species and of ecosystems (Definition. Convention of Biological Diversity).

Principle of ecosystem as a dynamic complex

- "*Ecosystem*" means a dynamic complex of plant, animal and micro-organism communities and their non-living environment interacting as a functional unit (Definition. Convention of Biological Diversity).

Principle of in-situ conservation

- "*In-situ conservation*" means the conservation of ecosystems and natural habitats and the maintenance and recovery of viable populations of species in their natural surroundings and, in the case of domesticated or cultivated species, in the surroundings where they have developed their distinctive properties (Definition. Convention of Biological Diversity).

Principle of identification of activities likely to have significant adverse impacts on the conservation

- Identify processes and categories of activities which have or are likely to have significant adverse impacts on the conservation and sustainable use of biological diversity, and monitor their effects through sampling and other techniques (7 c Convention for Biological Diversity).

Principle of establishing system of protected areas

- Establish a system of protected areas or areas where special measures need to be taken to conserve biological diversity (8 a, Convention for Biological Diversity).

Principle of sustainable use of biological diversity

- Regulate or manage biological resources important for the conservation of biological diversity whether within or outside protected areas, with a view to ensuring their conservation and sustainable use (8 c, Convention for Biological Diversity).

Principle of protection of ecosystems

- Promote the protection of ecosystems, natural habitats and the maintenance of viable populations of species in natural surroundings (8 d, Convention for Biological Diversity).

Principle of environmentally sound development adjacent to protected areas

- Promote environmentally sound and sustainable development in areas adjacent to protected areas with a view to furthering protection of these areas (8 e, Convention for Biological Diversity).

Principle of rehabilitation and restoration of degraded ecosystem

- Rehabilitate and restore degraded ecosystems and promote the recovery of threatened species, *inter alia*, through the development and implementation of plans or other management strategies (8 f, Convention for Biological Diversity).

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Statement of Obligation**Conservation and Ecologically Sound****Practices****Principles of Obligation****Principle of protecting and encouraging traditional cultural use (10c, Convention for Biological Diversity)**

- Protect and encourage customary use of biological resources in accordance with traditional cultural practices that are compatible with conservation or sustainable use requirements (10 c Convention for Biological Diversity).

Principle of remedial action

- Support local populations to develop and implement remedial action in degraded areas where biological diversity has been reduced (10d Convention for Biological Diversity).

Principle of promoting understanding of importance and measures required for conservation of biological diversity and sustainable use

- Promote and encourage understanding of the importance of, and the measures required for, the conservation of biological diversity, as well as its propagation through media, and the inclusion of these topics in educational programmes (13, a. Convention of Biological diversity)
- “Cooperate, as appropriate, with other States and international organizations in developing educational and public awareness programmes, with respect to conservation and sustainable use of biological diversity” (13, b. Convention of Biological diversity).

Principle of environmental impact assessment of projects likely to have significant adverse effects on biodiversity

- Introduce appropriate procedures requiring environmental impact assessment of its proposed projects that are likely to have significant adverse effects on biological diversity with a view to avoiding or minimizing such effects and, where appropriate, allow for public participation in such procedures (14 a Convention of Biological Diversity).

Principle of taking into account environmental consequences

- Introduce appropriate arrangements to ensure that the environmental consequences of its programmes and policies that are likely to have significant adverse impacts on biological diversity are duly taken into account (14 a Convention of Biological Diversity).

Principle of Environmental impact assessment should be carried out of projects likely to have significant impacts upon biological diversity

- “Introduce appropriate environmental impact assessment procedures for proposed projects likely to have significant impacts upon biological diversity... ”(Agenda 21, 15.5 k).

Principle of positive duty to protect indigenous lands.

- “The lands of indigenous people and their communities should be protected from activities that are environmentally unsound or that the indigenous people concerned consider to be socially and culturally inappropriate” (Agenda 21, 16.3. ii).

Principle of value of non-damaging-use

- “The implications of the harvesting of forest resources for other values of the forest should be taken fully into consideration in the development of forest policies. It is also possible to increase the value of forest through non-damaging uses such as ecotourism ...” (Agenda 21, 11.22).

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Principle of Environmental impact assessment should be carried out of projects likely to have significant impacts upon biological diversity

- “Introduce appropriate environmental impact assessment procedures for proposed projects likely to have significant impacts upon biological diversity...” (Agenda 21, 15.5 k)

The British Columbia government has failed to insist on an environmental impact assessment on the potentially significant impact of current forest practices, such as clear-cut logging, on biodiversity. Even though, as admitted by Dale Lovick, the Chair of public hearings on the B.C. Environmental Assessment Act, the public was demanding for forest practices to be included on the list of projects and activities which should require an environmental assessment., forest practices appear to be excluded from this Act.

In jurisdictions where an environmental impact assessment has been carried out, practices, typical of those carried out currently in BC forests, have been assessed as being destructive of biodiversity. For example, a German biologist specializing in biodiversity indicated that:

“The practice of clear-cutting, followed by artificial reforestation has undoubtedly many technical and organizational advantages. In the course of time, however, soil scientists and ecologists found out that the practice of clear-cutting automatically leads to considerable drawbacks:

-wounding of the soil surface through logging operations.

- Risk of erosion

-High irradiation and higher climatic extremes alter the microclimate, the flora and the micro flora and deteriorate the growing conditions for a number of valuable tree species. - -Soil compression and a reduction of species richness

-An accelerated decomposition of organic matter occurs, combined with a wash out of nutrients, and the eutrophication of ground water, rivers and lakes occur”

(Dr Schutt, Biological Department, University of Munich, Environmental Ethics Conference, 1992, Vancouver)

Principle of full life cycle analysis of activities that could have significantly adverse effects.

This principle if complied with in the forest industry would entail an examination of the environmental impacts of each stage of current forest practices. At UNCED there was also a call for “environmental audits”, and “full environmental accounting of aspects related to life cycles of ...resources”, and “for taking into account the costs of any ecological consequences.”

- Governments, in collaboration with industry and appropriate international organizations, should develop procedures for monitoring the application of the cradle to grave approach, including environmental audits (20.20 e)
- Ensure that relevant decisions are preceded by environmental impact assessments and also take into account the costs of any ecological consequences (7.42)

A full environmental audit of current forest practices has not been undertaken in B.C. the Auditor general has not been requested by government to carry out a full-scale audit of the true costs of the current logging practices, and to

compare these costs to those incurred by alternative forestry practices such as ecoforestry.

Principle related to positive mandate-to conserve

- “Establishing, expanding and managing, as appropriate to each national context, protected area systems, which includes systems of conservation units for their environmental, social and spiritual functions and values, including conservation of forests in representative ecological systems and landscapes, primary old-growth forests, conservation and management of wildlife, nomination of world Heritage Sites under the World Heritage ... and conservation of biological diversity and the traditional forest habitats of indigenous people, forest dwellers and local communities;” (Agenda 21, 11.15 b)

This principle is a reaffirmation of the principle established and endorsed by Canada in 1972 in the Convention for the Preservation of Cultural and Natural Heritage.

- Noting that the cultural heritage and the natural heritage are increasingly threatened with destruction not only by the traditional causes of decay, but also by changing social and economic conditions which aggravate the situation with even more formidable phenomena of damage or destruction"
- Considering that deterioration or disappearance of any item of the cultural or natural heritage constitutes a harmful impoverishment of the heritage of all the nations of the world."
- Considering that the existing international conventions, recommendations and resolutions concerning cultural and natural property demonstrate the importance, for all the peoples of the world, of safeguarding this unique and irreplaceable property, to whatever people it may belong"

"Considering that parts of the cultural or natural heritage are of outstanding interest and therefore need to be preserved as part of the world heritage of [humankind] as a whole"

"Considering that, in view of the magnitude and gravity of the new dangers threatening them, it is incumbent on the international community as a whole to participate in the protection of the cultural and natural heritage of outstanding universal value, by the granting of collective assistance which, although not taking the place of action by the State concerned, will serve as an effective complement thereto,"

Canada has not lived up to its international commitment to preserve a significant area of international worth: a network of intact old growth watershed, conservation corridors including Clayoquot sound (this type of extensive preservation has currently been carried out in Australia, and Australia has applied to have this network of temperate rainforests designated as an international heritage site at the recent meeting in 1993 of the World Heritage Committee at UNESCO)

4. the positive-duty-to protect-indigenous-lands principle. This principle reads as follows:

recognition that the lands of indigenous people and their communities should be protected from activities that are environmentally unsound or that the indigenous people concerned consider to be socially and culturally inappropriate” (Agenda 21, 16.3. ii)

A fifth principle that came out of UNCED and was agreed to by Canada is the recognition of non-damaging-use value principle. This principle reads as follows:

the implications of the harvesting of forest resources for other values of the forest should be taken fully into consideration in the development of forest policies. It is also possible to increase the value of forest through non-damaging uses such as ecotourism ...” (Agenda 21, 11.22)

CONVENTION FOR THE PROTECTION OF THE WORLD CULTURAL AND NATURAL HERITAGE (PARIS,23 NOVEMBER 1972) (CPCNH)

Noting that the cultural heritage and the natural heritage are increasingly threatened with destruction not only by the traditional causes of decay, but also by changing social and economic conditions which aggravate the situation with even more formidable phenomena of damage or destruction, (CPCNH)

Considering that deterioration or disappearance of any item of the cultural or natural heritage constitutes a harmful impoverishment of the heritage of all the nations of the world, (CPCNH)

Considering that protection of this heritage at the national level often remains incomplete because of the scale of the resources which it requires and of the insufficient economic, scientific and technical resources of the country where the property to be protected is situated, (CPCNH)

Recalling that the Constitution of the Organization provides that it will maintain, increase and diffuse knowledge, by assuring the conservation and protection of the world's heritage and recommending to the nations concerned the necessary international conventions (CPCNH)

Considering that the existing international conventions recommendations and resolutions concerning cultural and natural property demonstrate the importance, for all the peoples of the world of safeguarding this unique and irreplaceable property, to whatever people it may belong, (CPCNH)

Considering that parts of the cultural or natural heritage are of outstanding interest and therefore need to be preserved as part of the world heritage for [mankind] as a whole, (CPCNH)

Considering that, in view of the magnitude and gravity of the new dangers threatening them, it is incumbent on the international community as a whole to participate in the protection of the cultural and natural heritage of outstanding universal value, by the granting of collective assistance which, although not taking the place of action by the State concerned, will serve as an effective complement thereto,(CPCNH)

Considering that it is essential for this purpose to adopt new provisions in the form of a convention establishing an effective system of collective protection of the cultural and natural heritage of outstanding universal value, organized on a permanent basis and in accordance with modern scientific methods, (CPCNH)

1. Definitions of the Cultural and the Natural Heritage

Article 1

For the purposes of this Convention, the following shall be considered as "cultural heritage" monument: architectural works, works of monumental sculpture and paintings, elements or structures of an archaeological nature, inscriptions, cave dwellings and combinations of features, which are of outstanding universal value from the point of view of history, art or science: (CPCNH)

groups of buildings: groups of separate or connected buildings which, because of their architecture, their homogeneity or their place in the landscape, are of outstanding universal value from the point of view of history, art or science;

sites: works of man or the combined works of nature and of man, and areas including archaeological sites which are of outstanding universal value from the historical, aesthetic, ethnological or anthropological points of view.

(CPCNH)

Article 2

For the purposes of this Convention, the following shall be considered as "natural heritage": natural features consisting of physical and biological formations or groups of such formations, which are of outstanding universal value from the aesthetic or scientific point of view; geological and physiographical formations and precisely delineated areas which constitute the habitat of threatened species of animals and plants of outstanding universal value from the point of view of science or conservation; natural sites or precisely delineated areas of outstanding universal value from the point of view of science, conservation or natural beauty (CPCNH)

Article 3

It is for each State Party to this Convention to identify and delineate the different properties situated on its territory mentioned in Articles 1 and 2 above (CPCNH)

II National Protection and International Protection of the Cultural and Natural Heritage

Article 4

Each state Party to this Convention recognizes that the duty of ensuring the identifications, protection, conservation, presentation and transmission to future generations of the cultural and natural heritage referred to in Article 1 and 2 and situated on its territory, belongs primarily to that State. It will do all it can to this end, to the utmost of its resources and where appropriate with any international assistance and co-operation, in particular, financial, artistic, scientific and technical, which it may be able to obtain. (CPCNH)

Article 5

To ensure that effective and active measures are taken for the protection, conservation and presentation of the cultural and natural heritage situated on

its territory, each State Party to this Convention shall endeavour, in so far as possible, and as appropriate for each country:

- a) to adopt a general policy which aims to give the cultural and natural heritage a function in the life of the community and to integrate the protection of that heritage into comprehensive planning programmes; (CPCNH)
- b) to set up within its territories, where such services do not exist, one or more services for the protection, conservation and presentation of cultural and natural heritage with an appropriate staff and possessing the means to discharge their functions: (CPCNH)
- c) to develop scientific and technical studies and research and to work out such operating methods as will make the State capable of counteracting the dangers that threaten its cultural or natural heritage; and (CPCNH)
- d) to take the appropriate legal, scientific, technical, administrative and financial measures necessary for the identification, protection, conservation, presentation and rehabilitation of this heritage; and (CPCNH)
- e) to foster the establishment or development of national or regional centres for training in the protection, conservation and presentation of the cultural and natural heritage and to encourage scientific research in this field. (CPCNH)

Article 6

1. Whilst fully respecting the sovereignty of the States on whose territory the cultural and natural heritage mentioned in Articles 1 and 2 is situated, and without prejudice to property rights provided by national legislation, the States Parties to this Convention recognize that such heritage constitutes a world heritage for whose protection it is the duty of the international community as a whole to co-operate. (CPCNH)

2. The States parties undertake, in accordance with the provisions of this Convention, to give their help in the identification, protection, conservation and preservation of the cultural and natural heritage referred to in paragraphs 2 and 4 of Article 11 if the States on whose territory it is situated so request (CPCNH)

3. each State Party to this convention undertakes not to take any deliberate measures which might damage directly or indirectly the cultural and natural heritage referred to in Articles 1 and 2 situated on the territory of other States parties to this Convention (CPCNH)

Article 7

For the purpose of this Convention, international protection of the world cultural and natural heritage shall be understood to mean the establishment of a system of international co-operation and assistance designed to support States Parties to the Convention in their efforts to conserve and identify that heritage. (CPCNH)

III Intergovernmental Committee for the Protection of the World Cultural and Natural Heritage

1. An intergovernmental Committee for the Protection of the Cultural and Natural Heritage of Outstanding Universal Value, called "the World Heritage Committee", is hereby established within UNESCO. It shall be composed of 15 States Parties to the Convention, elected; by States Parties to the Convention meeting in general assembly during the ordinary session of the General Conference of the UNESCO. the number of States members of the Committee shall be increased to 21 s from the date of the ordinary session of

the General Conference following the entry into force of this Convention for at least 40 states. (CPCNH)

2. Election of members of the Committee shall ensure an equitable representation of the different regions and cultures of the world. (CPCNH)

Article 11

1. Every State party to this Convention shall, in so far as possible, submit to the World Heritage Committee an inventory of property forming part of the cultural and natural heritage, situated in its territory and suitable for inclusion in the list provided for in paragraph 2 of this Article. This inventory, which shall not be considered exhaustive, shall include documentation about the location of the property in question and its significance. (CPCNH)

3. The inclusion of a property in the World Heritage List requires the consent of the State concerned. The inclusion of a property situated in a territory sovereignty or jurisdiction over which is claimed by more than one State shall in no way prejudice the rights of the parties to the dispute. (CPCNH)

4. The Committee shall establish, keep up to date and publish, whenever circumstances shall so require, under the title of "List of World Heritage in Danger", a list of the property appearing in the World Heritage list for the conservation of which major operations are necessary and for which assistance has been requested under this Convention. This list shall contain an estimate of the cost of such operations. The list may include only such property forming part of the cultural and natural heritage is threatened by serious and specific dangers, such as the threat of disappearance caused by accelerated deterioration, large-scale public or private projects or rapid urban or tourist development projects; destruction caused by changes in the use or ownership of the land; major alternations due to unknown causes; abandonment for any reason whatsoever; the outbreak or the threat of an armed conflict; calamities and cataclysms; serious fires, earthquakes, landslides; volcanic eruptions; changes in water level, floods, and tidal waves. The Committee may at any time, in case of urgent need, make a new entry in the List of World Heritage in Danger and publicize such an entry immediately. (CPCNH)

UN RESOLUTION 37/7 (1982)

THE WORLD CHARTER OF NATURE

The General Assembly,

Reaffirming the fundamental purposes of the United Nations, in particular the maintenance of international peace and security, the development of friendly relations among nations and the achievement of international co-operation in solving international problems of an economic, social, cultural, technical, intellectual or humanitarian character,

(WCN)

Aware that:

(a) {Mankind} is part of nature and life depends on the uninterrupted functioning of natural systems which ensure the supply of energy and nutrients (WCN)

(b) Civilization is rooted in nature, which has shaped human culture and influences all artistic and scientific achievement, and living in harmony with

nature gives man the best opportunities for the development of his creativity, and for rest and recreation, (WCN)

Convinced that:

(a) Every form of life is unique, warranting respect regardless of its worth to man, and to accord other organisms such recognition's, man must be guided by a moral code of action,

(b) Man can alter nature and exhaust natural resources by his action or its consequences and, therefore, must fully recognize the urgency of maintaining the stability and quality of nature and of conserving natural resources, (WCN)

Persuaded that:

(a) Lasting benefits from nature depend upon the maintenance of essential ecological processes and life support systems, and upon the diversity of life forms, which are jeopardized through excessive exploitation and habitat destruction by man (WCN)

(b) The degradation of natural systems owing to excessive consumption and misuse of natural resources as well as to failure to establish an appropriate economic order among peoples and among States, leads to the breakdown of the economic, social and political framework of civilization, (WCN)

(c) Competition for scarce resources creates conflicts, whereas the conservation of nature and natural resources contributes to justice and the maintenance of peace and cannot be achieved until mankind learns to live in peace and to forsake war and armaments, (WCN)

Reaffirming that man must acquire the knowledge to maintain and enhance his ability to use natural resources in a manner which ensures the preservation of the species and ecosystems for the benefit of present and future generations, (WCN)

Firmly convinced of the need for appropriate measures, at the national and international, individual and collective, and private and public levels, to protect nature and promote international co-operation in this field. (WCN)

Adopts, to these ends, the present World Charter for Nature, which proclaims the following principles of conservation by which all human conduct affecting nature is to be guided and judged. (WCN)

1. General Principles

1. Nature shall be respected and its essential processes shall not be impaired (WCN)

2. The genetic viability on the earth shall not be compromised: the population levels of all life forms, wild and domesticated, must be at least sufficient for their survival, and to this end necessary habitats shall be safeguarded (WCN)

3. all areas of the earth, both land and sea, shall be subject to these principles of conservation; special protection shall be given to unique areas, to representative samples of all the different types of ecosystems and to the habitats of rare or endangered species. (WCN)

4. Ecosystems and organisms, as well as the land, marine and atmospheric resources that are utilized by man, shall be managed to achieve and maintain optimum sustainable productivity, but not in such a way as to endanger the integrity of those other ecosystems or species with which they coexist. (WCN)

5. Nature shall be secured against degradation caused by warfare or other hostile activities. (WCN)

II Functions

6. In the decision-making process it shall be recognized that man's needs can be met only by ensuring the proper functioning of natural systems and by respecting the principles set forth in the present Charter. (WCN)

7 In the planning and implementation of social and economic development activities, due account shall be taken of the fact that the conservation of nature is an integral part of those activities. (WCN)

8. In formulating long-term plans for economic development, population growth and the improvement of standards of living, due account shall be taken of the long-term capacity of natural systems to ensure the subsistence and settlement of the populations concerned, recognizing that this capacity may be enhanced through science and technology. (WCN)

9. The allocation of areas of the earth to various uses shall be planned and due account shall be taken of the physical constraints, the biological productivity and diversity and the natural beauty of the areas concerned. (WCN)

10. Natural resources shall not be wasted, but used with a restraint appropriate to the principles set forth in the present Charter, in accordance with the following rules: (WCN)

(a) Living resources shall not be utilized in excess of their natural capacity for regeneration; (WCN)

(b) The productivity of soils shall be maintained or enhanced through measures which safeguard their long-term fertility and the process of organic decomposition and prevent erosion and all other forms of degradation; (WCN)

(c) Resources, including water, which are not consumed as they are used shall be reused or recycled; (WCN)

(d) Non-renewable resources which are consumed as they are used shall be exploited with restraint, taking into account their abundance, the rational possibilities of converting them for consumption, and the compatibility of their exploitation with functioning of natural systems. (WCN)

11. Activities which might have an impact on nature shall be controlled, and the best available technologies that minimize significant risks to nature or other adverse effects shall be used; in particular, (WCN)

(a) activities which are likely to cause irreversible damage to nature shall be avoided; (WCN)

(b) Activities which are likely to pose a significant risk to nature shall be preceded by an exhaustive examination; their proponents shall demonstrate that expected benefits outweigh potential damage to nature, and where potential adverse effect are not fully understood, the activities should not proceed; (WCN)

(c) Activities which may disturb nature shall be preceded by assessment of their consequences, and environmental impact studies of development projects shall be conducted sufficiently in advance, and if they are to be undertaken, such activities shall be planned and carried out so as to minimize potential adverse effects; (WCN)

(d) Agriculture, grazing forestry and fisheries practices shall be adapted to the natural characteristics and constraints of given areas; (WCN)

(e) Areas degraded by human activities shall be rehabilitated for purposes in accord with their natural potential and compatible with the well-being of affected populations (WCN)

12. Discharge of pollutants into natural systems shall be avoided and: (WCN)

(a) Where this is not feasible, such pollutants shall be treated at the source, using the best practicable means available; (WCN)

(b) special precautions shall be taken to prevent discharge of radioactive or toxic wastes (WCN)

13. Measures intended to prevent, control or limit natural disasters, infestations and diseases shall be specifically directed to the causes of these scourges and shall avoid adverse side-effects on nature. (WCN)

III Implementation

14. The principles set forth in the present Charter shall be reflected in the law and practice of each State, as well as at that international level. (WCN)

15. Knowledge of nature shall be broadly disseminated by all possible means, particularly by ecological education as an integral part of general education. (WCN)

16. All planning shall include, among its essential elements, the formulation of strategies for the conservation of nature, the establishment of inventories of ecosystems and assessments of the effects on nature of proposed policies and activities; all of these elements shall be disclosed to the public by appropriate means in time to permit effective consultation and participation. (WCN)

17. Funds, programmes and administrative structures necessary to achieve the objective of the conservation of nature shall be provided. (WCN)

18. constant efforts shall be made to increase knowledge of nature by scientific research and to disseminate such knowledge unimpeded by restrictions of any kind. (WCN)

19. The status of natural processes, ecosystems and species shall be closely monitored to enable early detection of degradation or threat, ensure timely intervention and facilitate the evaluation of conservation policies and methods. (WCN)

20. Military activities damaging to nature shall be avoided (WCN)

21. States and, to the extent they are able, other public authorities, international organizations, individuals, groups and corporations shall: (WCN)

(a) Co-operate in the task of conserving nature through common activities and other relevant actions, including information exchange and consultations; (WCN)

(b) Establish standards for products and manufacturing processes that may have adverse effects on nature, as well as agreed methodologies for assessing these effects; (WCN)

(c) Implement the applicable international legal provisions for the conservation of nature and the protection of the environment; (WCN)

(d) Ensure that activities within their jurisdiction or control do not cause damage to the natural systems located within other States or in the areas beyond the limit of national jurisdiction; (WCN)

(e) Safeguard and conserve nature in areas beyond national jurisdiction. (WCN)

22. Taking fully into account the sovereignty of States over their natural resources, each State shall give effect to the provisions of the present Charter through its competent organs and in co-operation with other States. (WCN)

23. All persons, in accordance with their national legislation, shall have the opportunity to participate, individually or with others, in the formulation of decisions of direct concern to their environment, and shall have access to means of redress when their environment has suffered damage or degradation. (WCN)

24. Each person has a duty to act in accordance with the provisions of the present Charter; acting individually, in association with others or through participation in the political process, each person shall strive to ensure that the objectives and requirements of the present Charter are met. (WCN)

ASEAN AGREEMENT ON THE CONSERVATION OF NATURE AND NATURAL RESOURCES (KUALA LUMPUR, 1985) (Indonesia, Negara Brunei Darussalam, Malaysia, Philippine, Singapore and Thailand. (ASEAN) (ACNNR)

excerpts from Agreement

...

Conscious also that the interrelationship between conservation and socio-economic development implies both that conservation is necessary to ensure sustainability of development, and that socio-economic development is necessary to the achievement of conservation on a lasting basis; (ACNNR)

Recognizing the interdependence of living resources, between them and with other natural resource, within ecosystems of which they are part; (ACNNR)

Wishing to undertake individual and joint action for the conservation and management of their living resources and the other natural elements on which they depend; (ACNNR)

Recognizing that international co-operation is essential to attain many of these goals (ACNNR)

; Convinced that an essential means to achieve such concerted action is the conclusion and implementation of an Agreement;

Chapter 1

Conservation and Development

Article 1

Fundamental Principle

1. The contracting Parties, within the framework of their respective national laws, undertake to adopt singly, or where necessary and appropriate thought concerted action, the measures necessary to maintain essential ecological processes and life-support systems, to preserve genetic diversity, and to ensure the sustainable utilization of harvested natural resources under their jurisdiction in accordance with scientific principles and with a view to attaining the goal of sustainable development. (ACNNR)

2. To this end they shall develop national conservation strategies, and shall co-ordinate such strategies within the framework of a conservation strategies, and shall co-ordinate such strategies within the framework of a conservation strategy for the Region. (ACNNR)

Article 2

Development Planning

1. The Contracting Parties shall take all necessary measures, within the framework of their respective national laws, to ensure that conservation and management of natural resources are treated as an integral part of development planning at all stages and at all levels. (ACNNR)

2) to that effect that shall, in the formulation of all development plans, give as full considerations to ecological factors as to economic and social ones. (ACNNR)

3) The contracting Parties shall, where necessary, take appropriate action with a view to conserving and managing natural resources of significant importance for two or several Contracting Parties (ACNNR)

chapter II

Conservation of Species and Ecosystems

Article 3

Species — genetic diversity

1. The Contracting Parties shall, wherever possible, maintain maximum genetic diversity by taking action aimed at ensuring the survival and promoting the conservation of all species under their jurisdiction and control (ACNNR)

2. to that end, they shall adopt appropriate measures to conserve animal and plant species whether terrestrial, marine and freshwater, and more specifically (ACNNR)

a) conserve natural, terrestrial, freshwater and coastal or marine habitats; (ACNNR)

b) ensure sustainable use of harvested species; (ACNNR)

c) protect endangered species; (ACNNR)

d) conserve endemic species; and (ACNNR)

e) take all measures in their power to prevent the extinction of any species or subspecies. (ACNNR)

3. In order to fulfill the aims of the preceding paragraph of this Article the Contracting Parties shall, in particular endeavour to

a) create and maintain protected areas; (ACNNR)

b) regulate the taking of species and prohibit unselective taking methods; (ACNNR)

c) regulate and, where necessary, prohibit the introduction of exotic species; (ACNNR)

d) promote and establish gene banks and other documented collections of animal and plant genetic resources (ACNNR)

Article 4

Species — sustainable use

The Contracting Parties shall pay special attention to harvested species, and, to that effect, shall endeavour to (ACNNR)

1) develop, adopt and implement management plans for those species, based on scientific studies and aiming at (ACNNR)

a) preventing decrease in the size of any harvested population to levels below those which ensure its stable recruitment and the stable recruitment of those species which are dependent upon, or related to them; (ACNNR)

- b) maintaining the ecological relationship between harvested, dependent and related populations of living resources of the ecosystem considered; (ACNNR)
 - c) restoring depleted populations to at least the levels referred to in subparagraph (1) of this paragraph; (ACNNR)
 - d) preventing changes or minimizing risk of changes in the ecosystem considered which are not reversible over a reasonable period of time. (ACNNR)
2. Take the appropriate and necessary legislative and administrative measures on harvesting activities in the light of their national interest whereby (ACNNR)
- c) all indiscriminate means of taking and the use of all means capable of causing local extinction of, or serious disturbance to, populations of a species or related species are prohibited (ACNNR)
 - d) such activities are prohibited or strictly regulated at certain periods, seasons or places of importance in the life cycle of the species; (ACNNR)
 - e) such activities may be regulated more strictly, temporarily or locally in order to assist restoration of population levels or counterbalance any threat caused by special circumstances; (ACNNR)
 - f) special measures, such as restocking, are provided for whenever the conservation status of a species so warrants; (ACNNR)

Article 5

Species — endangered and endemic

Article 6

Vegetation Cover and Forest Resources

1. The Contracting Parties shall, in view of the role of vegetation and forest cover in the functioning of natural ecosystems, take all necessary measures to ensure the conservation of the vegetation cover and in particular of the forest cover on lands under their jurisdiction.
- b) regulate mining and mineral exploration operations with a view to minimizing (ACNNR) disturbance of vegetation and to requiring the rehabilitation of vegetation after such operations; (ACNNR)
 - c) set aside areas as forest reserve, Inter alia, with a view to conserve the natural forest genetic resources; (ACNNR)
 - d) in reforestation and afforestation planning avoid as far as possible monoculture causing ecological imbalance; (ACNNR)
 - e) designate areas whose primary function shall be the maintenance of soil quality in the catchment considered and the regulation of the quantity and quality of the water delivered from it; (ACNNR)
 - f) ensure, to the maximum extent possible the conservation of their natural forests, particularly mangroves with a view, inter alia, to maintaining maximum forest species diversity; (ACNNR)
 - g) develop their forestry management plans on the basis of ecological principles with a view to maintaining potential for optimum sustained yield and avoiding depletion of the resource capital. (ACNNR)

Article 7

Soil

1. The Contracting Parties shall, in view of the role in the functioning of natural ecosystems, take measures, wherever possible, towards soil conservation, improvement and rehabilitation; they shall, in particular, endeavour to take steps to prevent soil erosion and other forms of degradation, and promote measures which safeguard the processes of organic decomposition and thereby in continuing fertility (ACNNR)

2. To that effect, they shall, in particular, endeavour to

- a) establish land use policies aimed at avoiding losses of vegetation cover, substantial soil losses, and damages to the structure of the soil; (ACNNR)
- b) take all necessary measures to control erosion, especially as it may affect coastal or freshwater ecosystems, lead to siltation of downstream areas such as lakes or vulnerable ecosystems such as coral reefs, or damage critical habitats, in particular that of endangered or endemic species; ... (ACNNR)

Article 8

Water

1. The Contracting Parties shall, in view of the role of water in the functioning of natural ecosystems, take all appropriate measures towards the conservation of their underground and surface water resources. (ACNNR)

2. They shall to that effect, in particular, endeavour to

- a) undertake and promote the necessary hydrological research especially with a view to ascertaining the characteristics of each watershed; (ACNNR)
- b) regulate and control water utilization with a view to achieving sufficient and continuous supply of water for Inter alia, the maintenance of natural life supporting systems and aquatic fauna and flora; (ACNNR)
- c) when planning and carrying out water resource development projects take fully into account possible effects of such projects on natural processes or on other renewable natural resources and prevent or minimize such effects. (ACNNR)

Article 9

Air

The Contracting Parties shall, in view of the role of air in the functioning of natural ecosystems, endeavour to take all appropriate measures towards air quality management compatible with sustainable development. (ACNNR)

Chapter III

Conservation of Ecological Processes

Article 10

The Contracting Parties, with a view to maintaining the proper functioning of ecological processes, undertake, wherever possible, to prevent, reduce and control degradation of the natural environment and, to this end, shall endeavour to undertake, in addition to specific measures referred to in the following article; (ACNNR)

- a) to promote environmentally sound agricultural practice by, inter alia, controlling the application of pesticides, fertilizers and other chemical products for agricultural use, and by ensuring that agricultural development schemes, in particular for wetland drainage or forest clearance pay due regard to the

- need to protect critical habitats as well as endangered and economically important species; (ACNNR)
- b) to promote pollution control and the development of environmentally sound industrial process and products; (ACNNR)
- d) as far as possible to consider the originator of the activity which may lead to environmental degradation responsible for its prevention, reduction and control as well as, wherever possible, for rehabilitation and remedial measures required; (ACNNR)
- e) to take into consideration, when authorizing activities likely to affect the natural environment, the foreseeable interactions between the new activities proposed and those already taking place in the same area, and the result of such interactions on the air, waters, and soils of the area; (ACNNR)
- f) to pay particular attention to the regulation of activities which may have adverse effects on processes which are ecologically essential or on areas which are particularly important or sensitive from an ecological point of view, such as the breeding and feeding grounds of harvested species. (ACNNR)

Article 11

The contracting Parties, recognizing the adverse effect that polluting discharges or emissions may have on natural processes and the functioning of natural ecosystems as well as on each of the individual ecosystem components, especially animal and plants species, shall endeavour to prevent, reduce and control such discharges, emissions or applications, in particular by control such discharges, emissions or application, in particular by (ACNNR)

a) submitting activities likely to cause pollution of the air, soil, freshwater, or the marine environment, to controls which shall take into consideration both the cumulative effects of the pollutants concerned and the self-purification aptitude of the recipient natural environment; (ACNNR)

b) making such controls conditional on, inter alia appropriate treatment of polluting emissions; and (ACNNR)

c) establishing national environmental quality monitoring programmes particular attention being paid to the effects of pollution on natural ecosystems, and co-operation in such programmes for the Region as a whole. (ACNNR)

Chapter IV

1. The Contracting Parties shall wherever possible in the implementation of their development planning, give particular attention to the national allocation of land usage. They shall endeavour to take the necessary measures to ensure the integration of natural resource conservation into the land use planning process and shall, in the preparation and implementation of specific land use plans at all levels, give as full consideration as possible to ecological factors as to economic and social ones, in order to achieve optimum sustainable land use; they undertake to base their land use plans as far as possible on the ecological capacity of the land. (ACNNR)
3. They shall, where appropriate, coordinate their land use planning with a view to conserving and managing natural resources of significant importance for two or several Contracting Parties. (ACNNR)

Article 13

Protected Areas

1. The Contracting Parties shall, as appropriate, establish, in areas under their jurisdiction, terrestrial, freshwater, coastal or marine protection areas for the purpose of safeguarding

- the ecological and biological processes essential to the functioning of the ecosystems of the Region; (ACNNR)
- representative samples of all types of ecosystems of the Region; (ACNNR)
- satisfactory population levels for the largest possible number of species of fauna and flora belonging to those ecosystems; (ACNNR)
- areas of particular importance because of their scientific, educational, aesthetic, or cultural interest; and taking into account their importance in particular as: (ACNNR)
 - the natural habitat of species of fauna and flora, particularly rare or endangered or endemic species; (ACNNR)
 - zones necessary for the maintenance of exploitable stock of economically important species; (ACNNR)
 - pools of genetic material and safe refuges for species, especially endangered ones; (ACNNR)
 - sites of ecological, aesthetic or cultural interest; (ACNNR)
 - reference sources for scientific research; (ACNNR)
 - areas for environmental education (ACNNR)

They shall, in particular, take all measures possible in their power to preserve those areas which are of an exceptional character and are peculiar to their country or the Region as well as those which constitute the critical habitats of endangered or rare species, of species that are endemic to a small area and of species that migrate between countries of Contracting Parties. (ACNNR)

2. Protected areas established pursuant to this Agreement shall be regulated and managed in such a way as to further the objectives for the purpose of which they have been created. Contracting Parties shall, wherever possible, prohibit within such protected areas activities which are inconsistent with such objectives. (ACNNR)

3. Protected areas shall include

a) National Parks (ACNNR)

- i. This expression denotes natural areas that are sufficiently large to allow for ecological self-regulation of one or several ecosystems, and which have not been substantially altered by human occupation or exploitation (ACNNR)
- ii National Parks shall be placed under public control, their boundaries shall not be altered nor shall any portion of any National Park be alienated except by the highest competent authority. (ACNNR)
- iii. National Parks shall be dedicated to conservation and to scientific, educational and recreational uses and the common welfare of people. (ACNNR)

b) Reserves

- i) This expression denotes areas set aside for the purpose of preserving a specific ecosystem, the critical habitat of certain species of fauna or flora, a water catchment area or for any other specific purpose relating to the

conservation of natural resources or objects or areas of scientific, aesthetic, cultural, education or recreational interest. (ACNNR)

iii Reserves shall be dedicated to the purposes for which they have been created and, in the light of the national interests of the Contracting Parties, any activity inconsistent with such purposes shall be prohibited. (ACNNR)

4. Contracting Parties shall, in respect of any protected area established pursuant to this Agreement (ACNNR)

a) prepare a management plan and manage the area on the basis on this plan; (ACNNR)

b) establish, wherever appropriate, terrestrial or aquatic buffer zones that shall be located around protected areas and which, in the case of marine areas, may include coastal land areas or watersheds of rivers flowing into the protected area; in such buffer zones all activities that may have harmful consequences on the ecosystems that such areas purport to protect shall be prohibited or regulated and activities which are consistent with the purpose of the protected area shall be promoted. (ACNNR)

5. Contracting Parties shall, in respect of any protected area established pursuant to this agreement, endeavour to (ACNNR)

a) prohibit the introduction of exotic animal or plant species; (ACNNR)

b) prohibit the use or release of toxic substances or pollutant which could cause disturbance or damage to protected ecosystems or to the species they contain; (ACNNR)

c) to the maximum extent possible, prohibit or control any activity exercised outside protected areas when such an activity is likely to cause disturbance or damage to the ecosystems or species that such protected areas purport to protect (ACNNR)

6. Contracting Parties shall co-operate in the development of principles, objectives, criteria and guidelines for the selection, establishment and management of protected areas in the Region with a view to establishing a co-ordinated network of protected areas throughout the Region, giving particular attention to those of regional importance. An Appendix containing such principles, objectives, criteria and guidelines shall be drawn up in the light of the best scientific evidence as adapted to the conservation requirements of the Region and shall be adopted by a meeting of Contracting Parties. (ACNNR)

In addition to the establishment of the protected areas referred to in paragraph 3 of this Article, Contracting Parties shall promote, through the adoption of appropriate measures, the conservation of natural areas by private owners, community or local authorities. (ACNNR)

Article 14

Impact Assessment

1. The Contracting Parties undertake that proposals for any activity which may significantly affect the natural environment shall as far as possible be subjected to an assessment of their consequences before they are adopted, and they shall take into consideration the results of this assessment in their decision-making process. (ACNNR)

2. In those cases where any such activities are undertaken, the Contracting Parties shall plan and carry them out so as to overcome or minimize any

assessed adverse effects and shall monitor such effects with a view to taking remedial action as appropriate. (ACNNR)

Chapter 5

National Supporting Measures

Article 15

Scientific Research

Article 16

Education, Information, and Participation of the Public, Training

1. the Contracting Parties shall endeavour to promote adequate coverage of conservation and management of natural resources in education programmes at all levels (ACNNR)

2. They shall circulate as widely as possible information on the significance of conservation measures and their relationship with sustainable development objectives and shall, as far as possible, organize participation of the public in the planning and implementation of conservation measures. ... (ACNNR)

Article 17

Administrative Machinery Chapter VI

Article 18

International Co-operation

Co-operative Activities

Article 19

Shared Resources

c) as far as possible, make environmental assessments prior to engaging in activities with respect of shared natural resources which may create a risk of significantly affecting the environment of another sharing Contracting Party or the sharing Contracting Parties;

d) notify in advance the other sharing Contracting Party or the other sharing Contracting Parties of pertinent details of plans to initiate, or make a change in, the conservation or utilization of the resource which can reasonably be expected to affect significantly the environment in the territory of the other Contracting Party or Contracting Parties; (ACNNR)

...

Article 20

Trans frontier Environmental Effects

1. Contracting Parties have in accordance with generally accepted principles of international law the responsibility of ensuring that activities under their jurisdiction or control do not cause damage to the environment or the natural resources under the jurisdiction of other Contracting Parties or of areas beyond the limits of national jurisdiction. (ACNNR)

2. In order to fulfill this responsibility, Contracting Parties shall avoid to the maximum extent possible and reduce to the minimum extent possible adverse environmental effects of activities under their jurisdiction or control, including effects on natural resources, beyond the limits of their national jurisdiction. (ACNNR)

3. To that effect, they shall endeavour

a) to make environmental impact assessment before engaging in any activity that may create a risk of significantly affecting the environment or the natural

resources of another Contracting Party or the environment or natural resources beyond jurisdiction; (ACNNR)

4. Contracting Parties shall, in particular, endeavour to refrain from actions which might directly or indirectly adversely affect wildlife habitats situated beyond the limits of national jurisdiction, especially habitats of species listed in Appendix 1 or habitats included in protected areas. (ACNNR)

Chapter VII

International Supporting Measures

Article 21

Meeting of the Contracting Parties

Article 22-35 Administration of Agreement

As we, in BC Parks and BC Forest Service begin to work on implementing our components of B.C.'s protected areas under the aegis of the Commission on Resources and Environment, we will be mindful of this Declaration [the Caracas Declaration: Parks Protected Areas and the Human Future] and its implications. Our objective will be to have a system of protected areas which we are proud to present to the world.

Through this declaration the Provincial government has recognized that

- nature has intrinsic worth and warrants respect regardless of its usefulness to humanity
- this natural wealth is being eroded at an unprecedented rate, because of the rapid growth in human numbers, the uneven and often excessive consumption of natural resources, mistaken and socially harmful styles of development, global pollution and defective economic regimes, so that the future of humanity is now threatened;
- many people must modify their styles of living and the world community must adopt new and equitable styles of development, based on the care and sustainable use of the environment, and the safeguarding of global life-supporting systems (CD)

ACCORDINGLY, and bearing in mind the message of *Caring for the Earth: A strategy for Sustainable Living*, *The Global Biodiversity Strategy*, launched at this Congress, and the earlier messages of the World Conservation Strategy, the World Charter for Nature and the World Commission on Environment and Development, WE, the

The U

3.2. Conserving Biodiversity

The congress urgently requested that all countries urgently undertake surveys to identify additional sites of critical importance for conservation of biological diversity, and wherever possible, accord total protection to them. Harvesting

should be relocated from primary to secondary forests and tree plantations in previously deforested areas; or - where this is not possible - sustainable forest harvesting systems which favour natural species diversity should be developed and introduced. p 8

3.3. Conservation on a regional scale

Protected areas have sometimes been seen as islands of nature and tranquility, surrounded by incompatible land uses. But the congress made it clear that such an "island mentality" is fatal in the long run. The congress recognized that it is unlikely that protected areas will be able to conserve biodiversity if they are surrounded by degraded habitats that limit gene-flow alter nutrient and water cycles and produce regional and global climate change that may lead to the final disappearance of these "island parks." Protected areas, therefore need to be part of broader regional approaches to land management. The term bioregion was used to describe extensive areas of land and water which include protected areas and surrounding lands, preferably including complete watersheds, where all agencies and interested parties have agreed to collaborative management.

recommendation 3

Global efforts to conserve biological diversity.

"The loss of biodiversity has reached crisis proportion and if present trends continue up to 25 % of the world's species may be sentenced to extinction or suffer severe genetic depletion in the next several decades, accompanied by equally significant and alarming degradation of habitats and ecosystems. This loss of biological diversity is impoverishing the world of its genetic resources, its species, habitats and ecosystems.

All species deserve respect, regardless of their usefulness to humanity. This Principle was endorsed by the UN Assembly when it adopted the World Charter for nature in 1982. The loss of the living richness of the planet is dangerous, because of the environmental systems of the world support all life, and we do not know which are the key components in maintaining their essential functions.

the It World Congress on national Parks and Protected Areas recommends that:

- a) governments make the protection of biological diversity, including species and habitat richness, representativeness and scarcity, a fundamental principle for the identification, establishment, management and public enjoyment of national parks and other protected areas;
- b) all countries urgently undertake surveys to identify additional sites of critical importance for conservation of biological diversity and wherever possible, accord total protection to them Harvesting should be relocated from primary to secondary forests and tree plantations in previous deforested areas; or — where this is not possible — sustainable forest harvesting systems which favour natural species diversity should be developed and introduced: p. 30

Recommendation 4:
Entitled legal regimes for protected areas.

Protected areas require a mutually reinforcing system of international and national environmental law for their establishment, maintenance and management. International treaties establish a harmonized set of obligations with regard to areas within national jurisdictions and activities having effect beyond national jurisdictional boundaries. These obligations must be reflected in national legislation; otherwise, the treaties cannot be implemented. In turn, innovative national legislation provides a basis and impetus for further international law. The dynamic interaction between the two levels is thus conducive to further progress. p. 31

() **THAT** in Dec 26, 1993 I circulated a piece criticizing Premier Mike Harcourt's proposal for the Keyano Completion Project

EXHIBIT

1993 DEC 26 to the Editor

Premier Harcourt's Kemano Completion Farical Review: mitigation rather than precaution

The Canadian government has refused to undertake an environmental assessment review of the Kemano Completion Project , even though the Canadian government has made an international commitment "to ensure that decisions [about projects] are preceded by environmental impact assessments" and "to take into account the costs of any ecological consequences (Agenda 21,7.42). Canadian Law has also committed the Canadian government "to carry out an environmental assessment review to determine if the potentially adverse environmental effect that may be caused by a proposal are significant (S.12, EARP).

The Canadian government has also refused to assess the environmental and cultural impacts of the Kemano Completion project on native communities, even though the Canadian government has made an international commitment to indigenous people " to recognize that the lands of indigenous people and their communities should be protected from activities that are environmentally unsound or that the indigenous people concerned consider to be socially and culturally inappropriate" {Agenda 21, 16.3 a (ii)}.

On January 19,1993, Premier Harcourt issued a press release " Premier Announces Review of Kemano Completion Project." Premier Harcourt's statement was misleading because he did not make a distinction between a "precautionary" and a "mitigative" review. A precautionary review is one that attempts to prevent environmental degradation and cultural inappropriateness of a project by examining the potential environmental and cultural impacts of a project to determine whether the project should be allowed to proceed; the outcome of a precautionary review could be a decision to prevent the project from proceeding. A mitigative review, however, is one that attempts to lessen the environmental degradation and cultural inappropriateness of a project which has already been permitted to proceed;

the outcome of a mitigative review would not be a decision to prevent the project from proceeding.

The terms of reference of the proposed B.C. government's public review of Kemano Completion Project are *not* to determine whether the project should proceed but to assess the options for mitigating impacts associated with the Project." There is a significant distinction between undertaking to carry out an environmental assessment review of the Kemano Completion Project to determine if the project should proceed, and undertaking a "public review" of the impact of the Kemano Completion project after the decision has been made to allow the project to proceed.

The Cheslatta Carrier nation, displaced by the Kemano I Project, is advocating a review that, if carried out, would probably fully justify immediate mitigation of the impacts of the Kemano I project, and justify the prevention of the Kemano Completion Project. In their proposed review, the terms of reference should include but not be limited to the following:

- a thorough investigation into all environmental, economic, social and cultural impacts of Kemano 1, and prescribe immediate mitigation;
- a thorough review of the terms, conditions and circumstances surrounding the granting of Alcan's 1950 Nechako Water licence including a thorough review of the 1949 water licence 'hearings' held at Wistaria and Victoria
- a thorough review of the 1987 Nechako settlement Agreement, including into terms and conditions and 'mitigative' measures, and the circumstances that led to this settlement
- a full disclosure of all federal and provincial documents and involvement relating to the Kemano projects;
- the commissioning of an independent cost/benefit analysis of the Kemano projects;
- the commissioning of an independent environmental impact assessment of Kemano 2;
- a throughout investigation into possible violations of the Federal Fisheries Act and the provincial Water Act;
- a thorough investigation into power sale contracts between Alcan and B.C. Hydro;
- an investigation into whether Alcan is a 'public utility';
- a thorough investigation into the impact of the reduced water flows on the Nechako River on the concentration of municipal agricultural and industrial effluent;
- a thorough investigation into the past and present management of the Nechako Watershed;
- a thorough investigation of Environcon Ltd and Triton Environmental Consultants Ltd. (April 1993, Cheslatta Nation)

If the proposed Cheslatta review were carried out it could result in the restoration of the environmental degradation of Kemano I, and in the redress for the cultural impacts of Kemano 1. Their review could also result in the prevention of the Kemano Completion Project. As pointed out by the Cheslatta band the cost of compensation for any loss that Alcan may have incurred for its preparatory work for Kemano Completion will be far less than the cost of past (Kemano I) and future (Kemano Completion Projects) environmental degradation and cultural displacement. Any public review that does not fully investigate the impact of Kemano I, and does not have within

the terms of reference the possibility of preventing the Kemano Completion Project from proceeding is making a mockery of the precautionary principle and of the public process.

Joan Russow
ERA Ecological Rights Association

The Canadian and B.C. governments are prepared to permit and condone activities by Alcan that are deemed, by the affected native communities, to be both environmentally unsound and culturally inappropriate.

“...follows a decision to allow a project to proceed, and thus is limited to attempting to determine not whether the project should be allowed to proceed but rather the best way of adjusting to the inevitable environmental degradation occurring as a result of allowing the project to proceed.

Prevention-to-avoid-subsequent-measures-to-rehabilitate principle

A preventive approach, where appropriate, is crucial to the avoiding of costly subsequent measures to rehabilitate, treat and develop new water supplies.

“(Agenda 21, 18.45)

Assessment-of-direct-and-indirect-costs principle

“ Human health and environmental quality are undergoing continuous degradation by the increasing amount of hazardous wastes being produced. there are increasing direct and indirect costs to society and to individual citizens in connection with the generation, handling and disposal of such wastes. “ (Agenda 21, 20.9)

“Unsustainable patterns of production and consumption are increasing the quantities and variety of environmentally persistent wastes at unprecedented rates. The trend could significantly increase the quantities of wastes produced by the end of the century and increase quantities four to fivefold by the year 2025”. (Agenda 21, 21.7)

“Many of these problems have arisen from a development model that is environmental destructive and from a lack of protection. Ecological and human health effects are the measurable consequences... although the means to monitor them are inadequate or non-existent in many countries. There is a widespread lack of perception of the linkages between the development, management use and treatment of water resources and aquatic ecosystems.” (Agenda 21, 18.45)

“...to promote patterns of consumption and production that reduce environmental stress and will meet the basic needs of humanity” (Agenda 21, 4.7. a)

"Governments at the appropriate level, with the assistance of international and regional organizations, academic and scientific institutions and the pharmaceutical industry, should taking into account appropriate safety and ethical considerations” (Agenda 21, 16.14)

" Apply preventive, precautionary and anticipatory approaches so as to avoid degradation of the main environment, as well as to reduce the risk of long-term or irreversible adverse effects upon it”; (Agenda 21, 17.23 a)

" a precautionary and anticipatory rather than a reactive approach is necessary to prevent the degradation of the marine environment.

Anticipatory-and-life-cycle-approach principle

"Consider adopting policies based on accepted producer liability principles, where appropriate, as well as precautionary, anticipatory and life-cycle

approaches to chemical management, covering manufacturing, trade, transport, use and disposal ”
(Agenda 21, 19.50 a)

Concept-of-environmental-care principle...

“Empower community groups, non-governmental organizations and individuals to assume the authority and responsibility for managing and enhancing their immediate environment through participatory tools, techniques and approaches embodied in the concept of environmental care. ”
(Agenda 21, 7.21. g)

Lead-to-be-taken-by-government-to-establish environmental assessment principle

“Governments should take the lead in establishing and strengthening, as appropriate, national procedures for environmental impact assessment, taking into account the cradle-to-grave approach to the management of hazardous wastes, in order to identify options for minimizing the generation of hazardous wastes, through safer handling, storage, disposal and destruction” (Agenda 21, 20.20 e)

Environmental-impact-assessment principle

" Introduce appropriate environmental impact assessment procedures for proposed projects likely to have significant impacts upon biological diversity... and encourage the assessment of the impacts of relevant policies and programmes on biological diversity” (Agenda 21, 15.5 k)

Root-cause-change principle

" Environmentally sound waste management must go beyond the mere safe disposal or recovery of wastes that are generated and seek to address the root cause of the problem by attempting to change unsustainable patterns of production and consumption.” (Agenda 21,21.4)

The Kemano Farcical Review: reaction rather than precaution

Public environmental reviews can be precautionary (anticipatory) or reactive. A precautionary environmental assessment review is one that attempts to prevent environmental degradation by examining the environmental implications of a project before allowing the project to proceed. The outcome of a precautionary environmental assessment review could be a decision would to not permit the project to proceed. A reactive environmental assessment review, however, is one that follows a decision to allow a project to proceed, and thus is limited to attempting to determine not whether the project should be allow to proceed but rather the best way of adjusting to the inevitable environmental degradation occurring as a result of allowing the project to proceed. There is a significant distinction between undertaking to carry out an environmental Assessment review of the Kemano 11 project to determine if the project should proceed; and undertaking a "public review" of the impact of the Kemano Completion Project after the decision has been made to allow the project to proceed.

The Canadian government has refused to undertake a review of the Kemano Completion project, even though the Canadian government has made an international commitment to

"ensure that relevant decisions are preceded by environmental impact assessments and also take into account the costs of any ecological consequences (Agenda 21,7.42), and national commitments to "carry out environmental assessment review to determine if the potentially adverse environmental effect that may be caused by the proposal are significant (Section 12, Environmental Assessment Review Program- EARP), and to "take both prevent[at]ive and remedial measures in protecting the environment, "(section 2,Canadian Environmental Protection Act, 1988d).

The British Columbia government is now undertaking to carry out a "reactive" not a "precautionary" review of the Kemano completion project: a "public review of the Kemano Completion Project." The terms of reference of this public review are not to determine whether the project should proceed but to assess the options for addressing impacts associated with the Project." The government through its Cabinet Planning Secretariat has been contacting groups to invite "qualified applicants" to participate in the public review of the Kemano Completion Project.

In the terms of reference for this review, the British Columbia government "may review issues related to ...aboriginal issues." In 1992, the Canadian and B.C. governments made an international commitment to the indigenous people

" To recognize that the lands of indigenous people and their communities should be protected from activities that are environmentally unsound or that the indigenous people concerned consider to be socially and culturally inappropriate" (Agenda 21, 16.3 a (ii))

Yet in the Kemano Completion project both the Canadian and B.C. governments are prepared to permit and condone Alcan's activities that are environmentally unsound and that are deemed by the affected native communities to be both environmentally unsound and culturally inappropriate.

To fulfill this international commitment to indigenous people there must be a precautionary not just a reactive review.

The Cheslata Carrier nation, displaced by the Kemano I project is calling for the "Scope of an Environmental Review" to include but not to be limited to the following:

- a thorough investigation into all environmental, economic, social and cultural impacts of Kemano 1, and prescribe immediate mitigation;
- a thorough review of the terms, conditions and circumstances surrounding the granting of Alcan's 1950 Nechako Water licence including a thorough review of the 1949 water licence 'hearings' held at Wistaria and Victoria
- a thorough review of the 1987 Nechako settlement Agreement, including into terms and conditions and 'mitigative' measures, and the circumstances that led to this settlement
- a full disclosure of all federal and provincial documents and involvement relating to the Kemano projects;
- the commissioning of an independent cost/benefit analysis of the Kemano projects;
- the commissioning of an independent environmental impact assessment of Kemano 2;
- a throughout investigation into possible violations of the Federal Fisheries Act and the provincial Water Act;

- a thorough investigation into power sale contracts between Alcan and B.C. Hydro;
- an investigation into whether Alcan is a 'public utility';
- a thorough investigation into the impact of the reduced water flows on the Nechako River on the concentration of municipal agricultural and industrial effluent;
- a thorough investigation into the past and present management of the Nechako Watershed;
- a thorough investigation of Environcon Ltd and Triton Environmental Consultants Ltd. (April 1993, Cheslatta Nation)

If the proposed Cheslatta Environmental review were carried out it could result in the restoration of the environmental impacts of Kemano 1 and the prevention of the Kemano completion project. As pointed out by the Cheslatta band the cost of compensation for any loss that Alcan may have incurred for its preparatory work for Kemano completion project will be far less than the future environmental and cultural costs. Any review that does not fully investigate the impact of Kemano I, and does not have within the terms of reference the possibility of not permitting the project from proceeding is delusion of public process.

completion project. or mitigative. Preventive environmental reviews

An environmental assessment of the project has not been carried out in defiance of international, national and provincial law. In international law Canada has made a commitment to; in national law Canada has made a commitment to

Both the Canadian and B.C. governments made a commitment at UNCED to Environmental assessment review:

“Nationally Canada has made a commitment or section 13. notwithstanding the determination concerning a proposal made if public concern about the proposal is such that a public review is desirable, the initiating department shall refer the proposal to the Ministry for public review by a panel.” (EARP Guidelines)

“The duty of the Federal Government is that it shall (a) take both preventive and remedial measures in protecting the environment”, (section 2, Canadian Environmental Protection Act, 1988d).

The Canadian Government and the B.C. Government have in defiance of international, national and provincial commitments permitted the Kemano II project to proceed. To appease the public they set up what they refer to as the "public review of the Kemano Completion project." The terms of reference of this public review have already been established, and those that want to apply for funding have to indicate "how their objective related to the Terms of Reference"

At a time when international documents are calling for "precaution," anticipatory measures," "cradle to grave approach" and "culture of safety," Canada and B.C. allow a questionable project to proceed and wait until the potential damage occurs and then doing nothing more than undertaking remedial measures after the fact. If there "public review" determines that there will be harm to

At a time when international community is calling for a full life cycle analysis of substances and activities, Canada and B.C. is allowing ALCAN to proceed with the completion without having carried out an environmental assessment of Kemano I. In the B.C. Environment report dated February 12, 1993, Alcan was on the list for the sixth time for continuing to discharge high levels of fluorides and cyanides into the Kitimat Arm.

The public review envisioned by the government is one that must woo Alcan to participate. In a letter, dated March 4, 1993, the Vice President for British Columbia Alcan wrote that

"Alcan has advised the Provincial Government that it requires clarification of the Government's intentions with respect to the performance of its obligations under the settlement Agreement dated September 14, 1987 between Alcan, Canada and the Province before Alcan will voluntarily participate in, or cooperate with, any public review of the project. Those assurances have not yet been provided. In the absence of these assurances, Alcan will not provide the information you requested nor will it participate in whatever process you decide to initiate. If Alcan's position changes by reason of having received appropriate assurances from the Government, I will let you know"

What might these assurances be, Does this sound like a company that will submit itself to a full environmental assessment review.

On October 30, 1991, in passing orders in council which permitted the continuation of nuclear warship visits, the federal government bypassed the following requirements for an environmental assessment:

Section 12 every initiating department shall screen or assess each proposal for which it is the decision-making authority to determine if ... e) the potentially adverse environmental effect that may be caused by the proposal are significant. (EARP Guidelines)

Section 33. 1 of the Fisheries Act states the following:

"Every person who carries on or proposes to carry on any work or undertaking that results or is likely to result in

a) the deposit of a deleterious substance in water frequented by fish or in any place under any conditions where that deleterious substance or any other deleterious substance that results from the deposit of that deleterious substance may enter any such water, or

b) the alteration, disruption or destruction of fish habitat

shall on the request of the Minister... (a) provide the Minister with such plans, specifications, studies, procedures, schedules, analyses, samples or other information relating to the work or undertaking and with such analyses, samples, evaluations, studies or other information relating to the water, place or fish habitat that is or is likely to be affected by the work or undertaking as will enable the Minister to determine

c) whether there is or is likely to be a deposit of a deleterious substance by reason...d) whether the work or undertaking results or is likely to result in any alternation, disruption or destruction of fish habitat.”(Federal Fisheries, 1977, C. 35)

d) “The duty of the Federal Government is that it shall (a) take both preventative and remedial measures in protecting the environment,” (section 2, Canadian Environmental Protection Act, 1988, C 22).

In section 5 Department of the Environment Act

The Minister in exercising his powers and carrying out his duties and functions under section 4 shall...

5(ii) to ensure that new federal projects, programs and activities are assessed early in the planning process for potential adverse effects on the quality of the natural environment and that a further review is carried out of those projects, programs, and activities that are found to have probable significant adverse effects and the results thereof taken into account, and
.....

UNCED Documents Sections from Agenda 21

“Indigenous people and their communities have an historical relationship with their lands and are generally descendants of the original inhabitants of such lands. In the context of this chapter the term "lands" is understood to include the environment of the areas which the people concerned traditionally occupy. Indigenous people and their communities represent a significant percentage of the global population. They have developed over many generations a holistic traditional scientific knowledge of their lands, natural resources and environment. Indigenous people and their communities shall enjoy the full measure of human rights and fundamental freedoms without hindrance or discrimination. Their ability to participate fully in sustainable development practices on their lands has tended to be limited as a result of factors of an economic, social and historical nature. In view of the interrelationship between the natural environment and its sustainable development and the cultural, social, economic and physical well-being of indigenous people, national and international efforts to implement environmentally sound and sustainable development should recognize, accommodate, promote and strengthen the role of indigenous people and their communities.” (Agenda 21, 16.1)

In full partnership with indigenous people and their communities, Governments and, where appropriate, intergovernmental organizations should aim at fulfilling the following objectives: (Agenda 21, 16.3)

(a) Establishment of a process to empower indigenous people and their communities through measures that include:

- (i) Adoption or strengthening of appropriate policies and/or legal instruments at the national level;

To the editor

The public should be presented with the real alternatives

Often intact ecosystems that have been deserving of preservation or sensitive environmental areas that are worthy of protection have been irreversibly destroyed because it was deemed necessary for governments to pay compensation. In the past, compensation has been assessed purely from an economic basis without taking into consideration the true environmental costs. In order to assess the environmental costs of the destruction of significant ecosystems and sensitive environmental areas one may need to examine the nature and extent of accumulated anthropogenic activity over time. Over the years governments have entered into contracts, such as tree farm licensees, or industrial development permits, and as a result of either non-existent environmental protection or non-compliance/enforcement of current statutes and regulations, irreversible environmental damage has occurred.

In the past environmental damage was considered to be "collateral damage," a natural, inevitable and acceptable outcome of industrial growth. Now, there is the current acknowledgement by all levels of government of the importance of addressing environmental degradation. The Federal Government has made an international commitment at Rio to comply with the following principles which require 1. the carrying out of environmental impact assessment; 2. protecting of indigenous people from environmentally unsound, or socially or culturally inappropriate; 3. introducing the polluter-pay principle; 4. the undertaking of the life cycle analysis.

"Ensure that relevant decisions are preceded by environmental impact assessments and also take into account the costs of any ecological consequences" (Agenda 21,7.42)

"Introduce appropriate environmental impact assessment procedures for proposed projects likely to have significant impacts upon biological diversity... and encourage the assessment of the impacts of relevant policies and programmes on biological diversity" (Agenda 21, 15.5 k)

"Recognition that the lands of indigenous people and their communities should be protected from activities that are environmentally unsound or that the indigenous people concerned consider to be socially and culturally inappropriate; recommendations" (Agenda 21, 16.3 ii)

Governments should include in national planning and legislation an integrated approach to environmental protection, driven by prevention and source reduction criteria, taking into account the 'polluter pays' principle... (Agenda 21,20.20 b)

"...consider adopting policies based on accepted producer liability principles, where appropriate, as well as precautionary, anticipatory and life-cycle

approaches to chemical management, covering manufacturing, trade, transport, use and disposal" (Agenda 21, 19.50 a)

If Canada were to comply with these principles, Canada would require an environmental impact assessment of industries and industrial practices that could have an impact on the environment, or on the conservation of biodiversity; the cessation of any activity that could have the above impacts on the indigenous community; the revealing of the full environmental impacts of a project, and the assessment of the full environmental costs so as to require the polluter to pay. Compliance with this principle could bring about the environmental assessment of industrial activities such as construction of dams for the generating of electricity.

The Federal government has the new Environmental Assessment Review Act in place, and the fisheries act is still in place; the British Columbia government is formulating its new Environmental assessment Act. Yet for some reason the Alcan's Kemano project is able to proceed without an environmental assessment review, either from the Federal or the Provincial government.

It appears that Murray Rankin, the government lawyer was requested to write a report outlining the government's legal alternatives

Prime Minister in his speech... reported on the two alternatives presented in the report These alternatives appear to be:

1. to continue with the project and carry out an environmental assessment review on the damage that will continue to occur to the ecosystem and to the communities
2. to cancel the project, and pay 100 million to Alcan for compensation

There was however, a third alternative that was suggested in Murray Rankin's report and that was to go back to the original agreement

This third alternative was not neither recommended by the lawyer, nor reported as being a possibility by Harcourt. It was feared that there could be international economic repercussions for contract

The government by selecting the first alternative is making the traditional "compensation-avoidance" based decision rather than a principled decision. If the government chose option 2, the government after carrying out a true environmental assessment not just of what potential environmental damage could be caused in the future if the project proceeded, but of the cost of the environmental damage that has already ensured because of the practices of extracting aluminum; then the government would realize that the environmental cost of the environmental degradation and human displacement caused by the Alcan's production over the years would far outweigh any compensation claimed by the company. If the government opted for the third alternative, then although, often the companies that have contributed in the past to the destruction of significant ecosystems may not be the current holders of the specific tree farm licence in the area containing the significant ecosystem, most of the companies are still functioning in British Columbia. This investigation of the environmental costs would involve the

whole province so that there would need to be a global assessment of environmental costs incurred by the companies, not a valley-to-valley assessment.

Both the Federal and Provincial government by continuing with the Kemano project without carrying out an environmental assessment review, and by not acknowledging the true environmental costs of the degradation caused by Alcan, by ignoring the harm that has occurred and continues to occur to the native people, and by failing to reveal the full life cycle impact on the environment of the production of aluminum.

“As stewards of a vast and beautiful land, and as a people intimately connected to the environment, Canadians are aware of their environmental responsibilities.” (Canada’s National Report, Preface)

And further the section on the "quality of life", the Canadian government stated

“As a small population with a large land mass, Canadians have access to relatively unspoiled wilderness areas rich in wildlife ... Canada has an international reputation as a beautiful, safe and mostly unspoiled country.” (Canada's National Report, p.49)

If we continue to give the impression to the global community that we are concerned about the environment, then we should immediately act to live up to our international commitments whether or not they are or are not yet legally binding.

PRINCIPLES DRAWN FROM INTERNATIONAL DOCUMENTS

1. Prior-assessment-in-decision-making-principle

“Ensure that relevant decisions are preceded by environmental impact assessments and also take into account the costs of any ecological consequences” (Agenda 21,7.42)

2. Positive-duty-to protect-indigenous lands principle

“Recognition that the lands of indigenous people and their communities should be protected from activities that are environmentally unsound or that the indigenous people concerned consider to be socially and culturally inappropriate; recommendations” (Agenda 21, 16.3 ii)

3. Precautionary principle

"Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation." (Rio Declaration, 1992).

"If Canada were to comply with this principle, then all threats of serious irreversible damage would cease or be mitigated. Compliance with this principle could mean that Canada shall cease logging in catchment areas from where communities derive their water. No longer would representatives from resource ministries be able to claim, "there is no scientific certainty that logging will cause harm, therefore we can log the catchment area."
(Paraphrase of remark by Cuthbert from the Ministry of Forests)

4. Recognition of non-damaging use value principle

"The implications of the harvesting of forest resources for the other values of the forest should be taken fully into consideration in the development of forest policies. It is also possible to increase the value of forests through non-damaging uses such as ecotourism and the managed supply of genetic materials. Concerted action is needed in order to increase people's perception of the value of forests and of the benefits they provide." (Agenda 21, 11.22)

If Canada were to comply with this principle, it would give serious consideration to the economic value of non-damaging use prior to destroying this significant alternative. Compliance with this principle could mean that the courts could look unfavorably on those who claim that "irreparable harm " could be construed as loss of "damaging-use" jobs. Damaging use could then be perceived as bringing about not only irreparable harm but also a " loss of ecologically sound employment"

5. Preventive, precautionary and anticipatory approach principle

"...apply preventive, precautionary and anticipatory approaches so as to avoid degradation of the main environment, as well as to reduce the risk of long-term or irreversible adverse effects upon it;" (Agenda 21, 17.23 a)

If Canada were to comply with these principles, then serious consideration would be given to avoid environmental degradation.

6. Preventive-to avoid costly corrective measures principle

"A preventive approach, where appropriate, is crucial to the avoiding of costly subsequent measures to rehabilitate treat and develop new water supplies." (Agenda 21, 18.45)

If Canada were to comply with this principle, then all real environmental costs would be assessed before a project, product or activities were authorized

7. Cradle to grave approach monitoring principle

“Governments, in collaboration with industry and appropriate international organizations, should develop procedures for monitoring the application of the cradle to grave approach, including environmental audits” (Agenda 21, 20.20 e)

If Canada were to comply with this principle, then a real environmental audit taking into consideration the environmental impacts at all stages of the production, circulation and disposal of the products (cradle to grave) would be done of industries whose actions could have potentially significant environmental impacts. This principle involves the recognition that governments have the responsibility for monitoring through the cradle to grave approach

8. “Positive-duty-or-responsibility principle

the responsibility to conserve their biodiversity and use their biological resources sustainably, and to ensure that activities within their jurisdiction or control do not cause damage to the biological diversity of other states or of areas beyond the limits of national jurisdiction. ” (Agenda 21, 15.3)

If Canada were to comply with this principal Canada could fulfill this responsibility by seriously considering the conversion of activities that destroy biodiversity. Instead of condemning practices that the international community would condemn as being harmful to biodiversity such as clear-cut logging, broadcast burn, pesticide use, and plantations, Canada has not only granted injunctions against those who protest Canada's failure to fulfill its international responsibility. but also, has condemned and imprisoned those who defy the injunction. Canada through its omitting to condemn practices that destroy biodiversity is seriously jeopardizing its ability to comply with its legal commitment to the biodiversity convention, once it is ratified. Canada through its omitting to condemn the industry's redefinition of "sustainability," "biodiversity," and "old growth" (see publications by Forest Industry) is allowing the perpetuation of those practices that could lead to the elimination of significant ecosystems required for the preservation of biodiversity.

9. Polluter pay principle

“Governments should include in national planning and legislation an integrated approach to environmental protection, driven by prevention and source reduction criteria, taking into account the 'polluter pays' principle, and adopt programmes for hazardous waste reduction, including targets and adequate environmental control” (Agenda 21,20.20 b)

If Canada were to comply with this principle, then Industry would be called upon immediately to pay for the cost of environmental clean-up. Compliance with this principle could require that the past and present pollution costs would have to be considered in the assessment of compensation in cases where industry has been closed down or displaced for environmental reasons. Also,

more serious consideration might be given to conversion to non-damaging uses that would not entail subsequent environmental costs.

10 Prevention-through-effective-enforcement principle

“Effective prevention requires action through effective monitoring and the enforcement and imposition of appropriate penalties” (Agenda 21, 20.20)

If Canada were to comply with this principle, then Canada could either increase the budget for monitoring violations of existing international and national legislation. or could save monitoring and enforcement costs by insisting of ecologically sound initial practices. Compliance with this principle could result in i.e. strict enforcement of section 33 of the Fisheries Act. or in the ceasing of the perpetuation of "rectification of error syndrome", i.e., the initial harmful practice, which requires subsequent potentially harmful practices.

11. Not-transferring-environmentally-harmful-activities or substances principle

“States should effectively cooperate to discourage or prevent the relocation and transfer to other states of any activities and substances that cause severe environmental degradation or are found to be harmful to human health” (Principle 14, Rio Declaration)

If Canada were to implement this principle, the government would prevent the transfer by industry of any activities or substances that had been deemed unsafe in Canada. or unsafe in any country that has higher standards than those in Canada. Compliance with this principle could involve a full life cycle analysis of the environmental and health implications of the product or activity. Also, compliance with this principle could cause the transfer of health products and pesticides (those banned or restricted in Canada or in any other country) as well as the transfer of. uranium, ecologically unsound logging practices ...to cease.

12. Anticipatory and life-cycle-approach principle

"Consider adopting policies based on accepted producer liability principles, where appropriate, as well as precautionary, anticipatory and life-cycle approaches to chemical management, covering manufacturing, trade, transport, use and disposal” (Agenda 21, 19.50 a)

If Canada were to comply with this principle, the government would reveal the true-life cycle of each potentially harmful product or activity, so that the full environmental impact [or harm to human health, principle non-transferring...] of the product or activity could be understood. Compliance with this principle, could result in the full environmental impact of uranium mining; civil nuclear, current forest practices, resources extraction, pesticide use being done.

13. Environmental-impact-assessment principle

“Introduce appropriate environmental impact assessment procedures for proposed projects likely to have significant impacts upon biological diversity... and encourage the assessment of the impacts of relevant policies and programmes on biological diversity” (Agenda 21, 15.5 k)

If Canada were to comply with this principle, Canada would require an environmental impact assessment of industries and industrial practices that could have an impact on the conservation of biodiversity. Compliance with this principle could bring about the environmental assessment of forest practices (the provincial government has not agreed to extend environmental assessment to forest practices)

14. Promotion of arms-length-research principle

“Governments and institutions, in collaboration where necessary with appropriate international agencies and organizations, Universities and non-governmental organizations should undertake assessments and systematic observations of forests and related programmes and processes with a view to their continuous improvement.” (Agenda 21, 11.34)

If Canada were to implement this principle, Universities would refuse research funding from major industries that contribute to environmental degradation because often this research funding has led either to selection of areas of research, nature of research, and final acceptance of research. Forest companies would no longer have controlling influence into research conducted in faculties of Forestry.

15. Limit access-of-industry-to-environmental-decision-making principle

In chapter 36 of Agenda 21, a very important distinction is made between promoting "education," promoting "public awareness," and promoting "training." It appears to be clear in Agenda 21 that non-governmental organizations, community-based groups, women's groups and aboriginal groups are called upon to assist educational authorities in reorienting education. The role of industry is ascertained to be limited to specific areas of business and industrial and training programs.

" Educational authorities, with appropriate assistance of non-governmental organizations, including women's and indigenous peoples' organizations should promote all kinds of adult education programmes for continuing education in environment and development, basing activities around elementary/secondary schools and local problems. The authorities and industry should encourage business, industrial and agricultural schools to include such topics in their curricula. The corporate sector could include sustainable development in their education and training programmes. " (Agenda 21, section 36.5 l)

In the section of Agenda 21 that addresses the "promoting of public awareness " industry is included not as the dispenser of "education" but as the recipient of needed education.

"Countries and regional organizations should be encouraged, as appropriate, to provide public environmental and development information services for raising the awareness of all groups, the private sector and particularly decision makers." (Agenda 21, section 36.10 c)

In the section of Agenda 21, that addresses the "promoting of training, an important role for industry is envisioned.

"To strengthen national capacities, in training, to enable governments, employers and workers to meet their environmental and development objectives and to facilitate the transfer and assimilation of new environmentally sound, socially acceptable and appropriate technology and know -how" (Agenda 21, 36.13 c)

If Canada were to implement this principle, the government would not include representatives from industry on Round Tables that are to determine the philosophical underpinnings of education. or Government would not prepare environmental material with an industry bias for the educational system ("All things Considered"). Canada could, however, encourage industry to be involved in job conversion to ecologically sound and socially acceptable practices.

Promotion of alternative models of consumption to meet basic needs of humanity principle

"...to promote patterns of consumption and production that reduce environmental stress and will meet the basic needs of humanity" (Agenda 21, 4.7.a)

If Canada were to implement this principle, the government, institutions, industry, and individuals would cease promoting the traditional model of overconsumption. Compliance with this principle would mean that loss of jobs in consumptive areas could not be an excuse perpetuation the over-consumption model.

"Ecological and human health effects measurable consequences of environmentally destructive model principle

Many of these problems have arisen from a development model that is environmental destructive and from a lack of protection. Ecological and human health effects are the measurable consequences... although the means to monitor them are inadequate or non-existent in many countries. There is a widespread lack of perception of the linkages between the development, management use and treatment of water resources and aquatic ecosystems." (Agenda 21, 18.45)

“Prohibition of harmful substances principle

Considering the prohibition of those [harmful pesticides, fertilizers] found to be environmentally unsound” (Agenda 21, 17.28. i)

“Replacement-of-safe-alternative principle

Governments should intensify research and development activities on cost-effective alternatives for processes and substances that currently result in the generation of hazardous wastes that pose particular problems for environmentally sound disposal or treatment, the possibility of ultimate phase-out of those substances that present an unreasonable or otherwise unmanageable risk and are toxic, persistent and bio-accumulative to be considered as soon as practicable. *Emphasis should be given to alternatives that could be economically accessible to developing countries*” (Agenda 21, 20.13. c)

Promotion of phase-out-of-risk research principle

“ States, with the cooperation of international organizations *where appropriate*, should encourage industry to promote and undertake research into the phase-out of the processes that pose the greatest environmental risk based on hazardous wastes generated.” (Agenda 21, 20.18 b)

Foresight principle

“Each country should develop the knowledge and practical skills to foresee and identify environmental health hazards, and the capacity to reduce the risks. Basic capacity requirements must include knowledge about environmental health problems and awareness on the part of leaders, citizens and specialists...” (Agenda 21, 6.46 d)

Culture of safety Principle

“This principle involves the commitment to act to prevent rather than to [correct]

“To promote a 'culture of safety' in all countries, especially those that are disaster-prone, the following activities should be carried out” (Agenda 21, 7.60)

Responsible-care-principle

“Industry should be encouraged to develop application of a 'responsible care' approach by producers and manufacturers towards chemical products, taking into account the total life cycle of such products” (Agenda 21, 19.51 b.)

Responsible-care-linked-to-life-cycle principle

This principle involves the recognition that responsible care is dependent upon revealing of life cycle of products

“Industry should be encouraged to develop application of a 'responsible care' approach by producers and manufacturers towards chemical products, taking into account the total life cycle of such products” (Agenda 21, 19.51 b.)

Concept of environmental care principle...

“Empower community groups, non-governmental organizations and individuals to assume the authority and responsibility for managing and enhancing their immediate environment through participatory tools, techniques and approaches embodied in the concept of environmental care.” (Agenda 21, 7.21. g)

“Cradle to grave approach impact assessment principle
Governments should take the lead in establishing and strengthening, as appropriate, national procedures for environmental impact assessment, taking into account the cradle-to-grave approach to the management of hazardous wastes, in order to identify options for minimizing the generation of hazardous wastes, through safer handling, storage, disposal and destruction” (Agenda 21, 20.20 e)

“Entire-life-cycle risk reduction principle
This principle involves the recognition that only through examining the full life cycle of a product can the risk be reduced
"Risk reduction involves broad-based approaches to reducing the risks of toxic chemicals, taking into account the entire life cycle of the chemicals".
(Agenda 21,19.45,)

Prior assessment of potential adverse impacts principle
" Ensure prior assessment of activities that may have significant adverse impacts upon the marine environment; "(Agenda 21,17.23 b)

Prior-assessment-in-decision-making-principle
“Ensure that relevant decisions are preceded by environmental impact assessments and also take into account the costs of any ecological consequences” (Agenda 21,7.42)

Standards-no-less-than country of origin principle
(" Wherever they operate, transnational corporations and other large-scale enterprises should be encouraged to introduce policies and make commitments to adopt standards of operation with reference to hazardous waste generation and disposal that are equivalent to or no less stringent than standards in the country of origin, and Governments are invited to make efforts to establish regulations requiring environmentally sound management of hazardous wastes.” (Agenda 21,20.30)

“Minimize or avoid environmental damage principle
Adopt policies that minimize if not altogether avoid environmental damage, whenever possible” (Agenda 21, 7.42 a)

Substitution of less harmful principle
“...there are often alternatives to toxic chemicals currently in use. Thus, risk reduction can sometimes be achieved by using other chemicals or even non-chemical technologies. The classic example of risk reduction is the substitution of harmless or less harmful substances for harmful ones.
establishment of pollution prevention procedures and setting standards for chemicals in each environmental medium, including food and water, and in

consumer goods, constitute another example of risk reduction” (Agenda 21,19.45)

Positive-mandate-to- conserve principle

" Establishing, expanding and managing, as appropriate to each national context, protected area systems, which includes systems of conservation units for their environmental, social and spiritual functions and values, including conservation of forests in representative ecological systems and landscapes, primary old-growth forests, conservation and management of wildlife, nomination of world Heritage Sites under the World Heritage Conventions, as appropriate, conservation of genetic resources, involving in situ and ex situ measures and undertaking supportive measures to ensure sustainable utilization of biological resources and conservation of biological diversity and the traditional forest habitats of indigenous people, forest dwellers and local communities;" (Agenda 21, 11.15 b)

Positive-mandate-to-be-consistent with requirements of international law principle

" Governments... and consistent with the requirements of international law should, as appropriate Identify and evaluate the potential economic and social implications and benefits of the conservation and sustainable use of terrestrial and aquatic species in each country, building upon the results of country studies” (Agenda 21,15.6.)

Positive-long-term-research-into-biodiversity- in ecosystems principle

" Long-term research into the importance of biodiversity for the functioning of ecosystems and the role of ecosystems in producing good, environmental services and other values supporting sustainable development with particular reference to the biology and reproductive capacities of key terrestrial and aquatic species, including native, cultivated and cultured species; ? observation and inventory techniques; ecological conditions necessary for biodiversity conservation and continued evolution; and social behaviour and nutrition habits dependent on natural ecosystems, where women play key roles. The work should be undertaken with the widest possible participation, especially of indigenous people and their communities, including women. ” (Agenda 21, 15.5 f,)

Promotion of environmentally sound technology research principle

"Promoting research and development in environmentally sound technologies” (Agenda 21, 4.18 b)

Assignment of responsibility principle

“Noting that the largest share of historical and current global emissions of greenhouse gases has originated in developed countries, that per capita emissions in developing countries are still relatively low and that the share of global emissions originating in developing countries will grow to meet their social and development needs,” (United Nations Framework Convention on Climate Change, 1992)

() **THAT** in Dec 1993, after establishing a group called the International Law and Obligations Institute, we issued a report card on British Columbia government's compliance with international law.

DEC 1993 PRELIMINARY B.C. Government Report Card:

Compliance with international obligations: prepared by the International Law and Obligations Institute (ILOI) for circulation. The ILOI is preparing a series of reports related to different international obligations;

The B.C. government has initiated a series of processes which have been purported to bring about compliance with international obligations. However, while deliberation proceeds under these processes, activities which are in violation of international obligations, also proceeds. International obligations are either not being fulfilled, or if fulfilled, only minimally. This is a report card which evaluates the B.C. government's compliance with its international obligations under the Convention on Biological Diversity which was signed (June 13, 1992) and ratified (December 4, 1992) by Canada, and which is now in force (December, 29, 1993).

Report card: on B.C. compliance to the Convention on Biological Diversity:

1. Demonstration of the importance of Biological Diversity through actions

D

"...the importance of biological diversity for evolution and for maintaining life sustaining systems of the biosphere," (Preamble of the Convention on Biological Diversity)

the conservation of biological diversity is a common concern of humankind,

The B.C. government in many of its publications suggests that it 'recognizes' the importance of biodiversity, and it "affirms that Biological diversity is a common concern of humankind." Yet, through the government's continued condoning of ecologically unsound practices, the government has not demonstrated its real commitment to biological diversity.

2. Invoking of "the precautionary principle"

F

...where there is a threat of significant reduction or loss of biological diversity, lack of full scientific certainty should not be used as a reason for postponing measures to avoid or minimize such a threat (Convention on Biological Diversity, Preamble)

The B.C. government does not have to wait until there is "scientific certainty" that clear-cut logging and other ecologically unsound practices "contribute to the reduction and loss of biodiversity." In this province the government should have acted to "avoid and minimize such as threat' by banning clear-cut logging.

3. Application of the "environmental impact assessment" principle **F**

"Environmental Impact Assessment of projects that are likely to have significant adverse effects on Biological Diversity." (Convention on Biological Diversity Article 14a)

The B.C. government has failed to carry out an environmental impact assessment of projects such as "timber extraction" licencing, which undoubtedly have significant adverse effect on biological diversity. In the Biodiversity Chapter of Agenda 21, the global community recognized "the loss of the world biological diversity, mainly from habitat destruction, over-harvesting, pollution." The B.C. Government avoided calling for an environmental impact assessment on the Kemano Completion Project, which is arguably the most significant industrial development in B.C. during the past 30 years.

4. Identification of processes and categories of significant adverse impacts **F**

Identify processes and categories of activities which have or are likely to have significant adverse impacts on the conservation and sustainable use of biological diversity ... (7 c)

B.C. government has failed to carry out independent arm's length research to identify processes that could have significant adverse impacts on conservation. The provincial government has undertaken a massive highways project without concern for the project's impacts on biodiversity. If the processes had been identified, it is unlikely that clear-cut logging, the Alcan Completion Project, or the highways project would have been approved.

5. Sufficiently identification of components of biodiversity **F**

Identify components of biological diversity important for its conservation and sustainable use 7 (a)

The B.C. government failed, prior to signing the Convention on Biological Diversity, to sufficiently identify components of biological diversity, and in the interim between the signing and coming into force has permitted projects such as timber extraction to occur in areas of potentially significant biological diversity

7. Recognition that there is an urgent need for scientific information about Biodiversity **C**

Aware of the general lack of information and knowledge regarding biological diversity and of the urgent need to develop scientific, technical and

institutional capacities to provide the basic understanding upon which to plan and implement appropriate measures,

for setting up scientific panel on biodiversity **A**

for limiting scientific panel to single region **D**

for continuing to permit the loss of biodiversity before it has been identified and studied **F**

8 Failure to adhere to the objective of the convention: "the conservation of biological diversity." (Article 1) **F**

failure to anticipate, prevent and attack the causes of significant reduction or loss of biological diversity by preventing ecologically unsound timber extraction practices.....**D**

9. Failure to act with foresight for the benefit of future generations **F**

Determined to conserve and sustainably use biological diversity for the benefit of present and future generations, (Preamble Convention on Biological Diversity)

10. failure to establish a system of protected areas **D**
Establish a system of protected areas or areas where special measures need to be taken to conserve biological diversity; (8a)

to protect ecosystems (8d) **D**
to promote the protection of natural habitats (8d) **D**
to promote the maintenance of viable populations (8d) **D**

11. Failure to promote environmentally sound and sustainable development **D**
environmentally sound and sustainable development in areas adjacent to protected areas with a view to furthering protection of these areas; (8e)

In the Carmanah Valley, the B.C. government has protected the lower part, but it may permit the logging of the upper part in a way that may jeopardize the protection of the lower park. This approach seems to be the government's 'balanced' approach to biodiversity.

12. Failure to rehabilitate and restore degraded ecosystems and promote the recovery of threatened species

Failure to rehabilitate and restore degraded ecosystems and promote the recovery of threatened species, *inter alia*, through the development and implementation of plans or other management strategies; 8f

tree farm "restoration" **F**
some restoration work promising **C**

13. Failure to develop or maintain necessary legislation and/or other regulatory provisions for the protection of threatened species and populations 8 **F**

1993 Background to British Columbia's obligations under the treaty

1. B.C. has failed to carry out an environmental impact assessment of proposed projects that are likely to have significant adverse effects

- Since the signing of the Convention, B.C. has refused to carry out an environmental impact assessment of forest practices that could have impact on biodiversity. In the Convention B.C. was required to do the following:

Introduce appropriate procedures requiring environmental impact assessment of its proposed projects that are likely to have significant adverse effects on biological diversity with a view to avoiding or minimizing such effects and, where appropriate, allow for public participation in such procedures; (Article 14 a)

2. B.C. has failed to invoke the precautionary principle and call for the banning of clear-cut logging and other ecologically unsound practices that destroy biodiversity

- Canada has undertaken international obligations related to biodiversity; and
- 'Biodiversity is defined in the Convention as

the variability among living organisms from all sources...and the ecological complexes of which they are part; this includes diversity within species, between species and of ecosystems."

- 'Ecosystem' is defined as

a dynamic complex of plant, animal and micro-organism communities and their non-living environment interacting as a functional unit.

- There is sufficient evidence that clear-cut logging destroys biodiversity as defined above,

- The practice of clear-cut logging destroys the prospect of forest regeneration and promotes erosion and permanent loss of forest and habitat

- One of the obligations of the Convention on Biological Diversity is to invoke the Precautionary Principle related to biodiversity:

...where there is a threat of significant reduction or loss of biological diversity, lack of full scientific certainty should not be used as a reason for postponing measures to avoid or minimize such a threat (Convention on Biological Diversity)

B.C. does not have to wait until there is "scientific certainty" that clear-cut logging and other ecologically unsound practices "contribute to the reduction and loss of biodiversity for British Columbia to "avoid and minimize such as threat" by banning clear-cut logging.

3. British Columbia had not sufficiently identified biodiversity at the time of signing the Convention, and British Columbia has continued to permit practices that contribute to the loss of biodiversity

- Under the Convention the parties are required "to identify biodiversity"

Identify components of biological diversity important for its conservation ...(Article 7, a)

4. To Protect Biodiversity

Canada's obligations under the Convention of Treaties

Under the Convention of Treaties, Canada is obliged to undertake the following obligations when it signs a Convention.

1. In Article 18

UN Convention for the Protection of Cultural and Natural Heritage and agreed to live up to the provisions of the treaty, and British Columbia is bound by the obligations under the Biodiversity Convention Treaty

Russow notes that both the Biodiversity Convention and the Framework convention on Climate Change have been violated through the continued clearcutting of Clayoquot sound"

The Friends of Clayoquot are supporting this application and will hold a press conference, to launch the "injunction appeal" on the grounds of non-compliance with international law.

Whereas Canada has signed (June 5,1992) and ratified (December, 1992) the Biodiversity Convention Treaty and agreed to live up to the provisions of the treaty, and British Columbia is bound by the obligations under the Biodiversity Convention Treaty

Whereas "clearcutting and other 'corporate" forest practices are a significant threat to biodiversity and definitely contravene Canada's and B.C.'s international (global) obligations

Be it resolved that the B.C. government immediately stop permitting the cutting of Ancient Forests on publicly owned land in order to preserve the ecological integrity of our future Ancient Growth Eco- Systems, and thus fulfill its obligations to identify, to prevent the reduction and to conserve biodiversity under the Biodiversity Convention Treaty

() **THAT** in June 1993, I carried out a comparative analysis between obligations incurred under the Framework Convention on Climate Change, and under Chapter 9, Changing Atmosphere (Agenda 21) UNCED, and other relevant chapters

EXHIBIT:

CLIMATE CHANGE CONVENTION AND AGENDA 21 REPORT

The Climate Change Convention was signed (June, 1992) and ratified (December, 4, 1992), by Canada; It came into force on December 29, 1993. It is a legally binding document.

The Atmosphere Chapter of the consensus document Agenda 21 was adopted by the UN member states present at UNCED

Bold 12 point Atmosphere section in Agenda 21

Bold 14 point. Climate Change Convention

Compiled by Joan Russow
Sessional Lecturer
Global Issues in Sustainability
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• RECOGNITION OF THE URGENCY OF CLIMATE CHANGE

- **Concern about climate change and climate variability, air pollution and ozone depletion has created new demands for scientific, economic and social information to reduce the remaining uncertainties in these fields. Better understanding and prediction of the various properties of the atmosphere and of the affected ecosystems, as well as health impacts and their interactions with socio-economic factors, are needed. (9.6)**

- **Acknowledging that change in the Earth's climate and its adverse effects are a common concern of humankind,**
- **Concerned that human activities have been substantially increasing the atmospheric concentrations of greenhouse gases, that these increases enhance the natural greenhouse effect, and that this will result on average in an additional warming of the Earth's surface and**

atmosphere and may adversely affect natural ecosystems and humankind,

- Noting that the largest share of historical and current global emissions of greenhouse gases has originated in developed countries, that per capita emissions in developing countries are still relatively low and that the share of global emissions originating in developing countries will grow to meet their social and development needs,

SETTING OF STANDARDS

- **Recognizing** that States should enact effective environmental legislation, that environmental standards, management objectives and priorities should reflect the environmental and developmental context to which they apply, and that standards applied by some countries may be inappropriate and of unwarranted economic and social cost to other countries, in particular developing countries,

LIMITATION OF ANTHROPOGENIC EMISSIONS

- Each of these Parties shall adopt national policies and take corresponding measures on the mitigation of climate change, by limiting its anthropogenic emissions of greenhouse gases and protecting and enhancing its greenhouse gas sinks and reservoirs.

MITIGATION OF CLIMATE CHANGE

- Each of these Parties shall adopt national policies and take corresponding measures on the mitigation of climate change, by limiting its anthropogenic emissions of greenhouse gases and protecting and enhancing its greenhouse gas sinks and reservoirs.
- To develop strategies aimed at mitigating the adverse effects of ultraviolet radiation reaching the Earth's surface as a consequence of depletion and modification of the stratospheric ozone layer. (b)

DISCOURAGING POLLUTING PRACTICES

- Implement policies and programmes that will discourage inappropriate and polluting land-use practices and promote sustainable utilization of terrestrial and marine resources; (b)

EFFICIENCY ENERGY USE

- The need to control atmospheric emissions of greenhouse and other gases and substances will increasingly need to be based on efficiency in energy production, transmission, distribution and consumption, and on growing reliance on environmentally sound energy systems, particularly new and renewable sources of energy./1/ All energy sources will need to be used in ways that respect the atmosphere, human health, and the environment as a whole. (9.9)
- Promote efficient use of materials and resources, taking into account the life cycles of products, in order to realize the economic and

environmental benefits of using resources more efficiently and producing less wastes; (e.)

IMPROVED PRODUCTIVITY
ADVOCATING THE USE OF "RENEWABLE"

- **New and renewable energy sources are solar thermal, solar photovoltaic, wind, hydro, biomass, geothermal, ocean, animal and human power, as referred to in the reports of the Committee on the Development and Utilization of New and Renewable Sources of Energy, prepared specifically for the Conference (see A/CONF.151/PC/119 and A/AC.218/1992/5).**
- **Energy is essential to economic and social development and improved quality of life. Much of the world's energy, however, is currently produced and consumed in ways that could not be sustained if technology were to remain constant and if overall quantities were to increase substantially. The need to control atmospheric emissions of greenhouse and other gases and substances will increasingly need to be based on efficiency in energy production, transmission, distribution and consumption, and on growing reliance on environmentally sound energy systems, particularly new and renewable sources of energy./1/ All energy sources will need to be used in ways that respect the atmosphere, human health, and the environment as a whole. (9.9.)**
- **The basic and ultimate objective of this programme area is to reduce adverse effects on the atmosphere from the energy sector by promoting policies or programmes, as appropriate, to increase the contribution of environmentally safe and sound and cost effective energy systems, particularly new and renewable ones, through less polluting and more efficient energy production, transmission, distribution and use. This objective should reflect the need for equity, adequate energy supplies and increasing energy consumption in developing countries, and the need to take into consideration the situations of countries that are highly dependent on income generated from the production, processing and export, and/or consumption of fossil fuels and associated energy-intensive products and/or the use of fossil fuels for which countries have serious difficulties in switching to alternatives, and of countries highly vulnerable to adverse effects of climate change. (9.11.)**
- **Promote the research, development, transfer and use of technologies and practices for environmentally sound energy systems, including new and renewable energy systems, with particular attention to developing countries; (9.12. d)**
- **Review current energy supply mixes to determine how the contribution of environmentally sound energy systems as a whole, particularly new and renewable energy systems, could be increased in an economically efficient manner, taking into account respective countries' unique social, physical, economic and political characteristics, and examining and implementing, where appropriate, measures to overcome any barriers to their development and use (9.12. f)**

- **Coordinate energy plans regionally and sub regionally, where applicable, and study the feasibility of efficient distribution of environmentally sound energy from new and renewable energy sources; (9.12 g)**
- **Support the promotion of less polluting and more efficient technologies and processes in industries, taking into account area-specific accessible potentials for energy, particularly safe and renewable sources of energy, with a view to limiting industrial pollution and adverse impacts on the atmosphere.(9.18. f)**
Not in Convention on Climate Change

ADVOCATING SOLAR ENERGY

- **New and renewable energy sources are solar thermal, solar photovoltaic, wind, hydro, biomass, geothermal, ocean, animal and human power, as referred to in the reports of the Committee on the Development and Utilization of New and Renewable Sources of Energy, prepared specifically for the Conference (see A/CONF.151/PC/119 and A/AC.218/1992/5).**
No reference to "solar" in Climate Change Convention

REQUIREMENT FOR ENVIRONMENTAL ASSESSMENT

- **Promote the development at the national level of appropriate methodologies for making integrated energy, environment and economic policy decisions for sustainable development, inter alia through environmental impact assessments; (9.12. b)**
- **Develop, improve and apply environmental impact assessments to foster sustainable industrial development; (9.18. d)**
- **Participate actively in the continuous assessment of scientific information and the health and environmental effects, as well as of the technological/economic implications of stratospheric ozone depletion; and consider further actions that prove warranted and feasible on the basis of these assessments; (9.24. c)**
- **The 1979 Economic Commission for Europe Convention on Long-range Trans-boundary Air Pollution, and its protocols, have established a regional regime in Europe and North America, based on a review process and cooperative programmes for systematic observation of air pollution, assessment and information exchange. These programmes need to be continued and enhanced, and their experience needs to be shared with other regions of the world. (9.26)**
- **Take climate change considerations into account, to the extent feasible, in their relevant social, economic and environmental policies and actions, and employ appropriate methods, for example impact assessments, formulated and determined nationally, with a view to minimizing adverse effects *on the economy*, on public health and on the quality of the environment, of projects or measures undertaken by them to prevent mitigate or adapt to climate change; (1 f)**
- **The Conference of the Parties shall, at its first session, review the adequacy of sub-paragraphs (a) and (b) above. Such review shall be carried out in the light of the best available scientific information and**

assessment on climate change and its impacts, as well as relevant technical, social and economic information. (2 d)

ADVERSE IMPACT ON THE ENVIRONMENT

- **Coordinate energy plans regionally and sub regionally, where applicable, and study the feasibility of efficient distribution of environmentally sound energy from new and renewable energy sources;**
- g.
- **Develop or enhance, as appropriate, mechanisms to integrate transport planning strategies and urban and regional settlement planning strategies, with a view to reducing the environmental impacts of transport;9.15 e.**

ADVERSE ENVIRONMENTAL EFFECTS

- **The basic objective of this programme area is to develop and promote cost-effective policies or programmes, as appropriate, to limit, reduce or control, as appropriate, harmful emissions into the atmosphere and other adverse environmental effects of the transport sector, taking into account development priorities as well as the specific local and national circumstances and safety aspects.9.14.**
- **Participate actively in the continuous assessment of scientific information and the health and environmental effects, as well as of the technological/economic implications of stratospheric ozone depletion; and consider further actions that prove warranted and feasible on the basis of these assessments; 9.24 c**
- Cooperate on regional, multilateral and bilateral bases to assess trans-boundary air pollution, and elaborate and implement programmes identifying specific actions to reduce atmospheric emissions and to address their environmental, economic, social and other effects.9.28. d**

DETRIMENTAL ENVIRONMENTAL IMPACTS

- **Trans-boundary air pollution has adverse health impacts on humans and other detrimental environmental impacts, such as tree and forest loss and the acidification of water bodies. The geographical distribution of atmospheric pollution monitoring networks is uneven, with the developing countries severely underrepresented. The lack of reliable emissions data outside Europe and North America is a major constraint to measuring trans-boundary air pollution. There is also insufficient information on the environmental and health effects of air pollution in other regions.9.25.**

SINKS

- **Land-use and resource policies will both affect and be affected by changes in the atmosphere. Certain practices related to terrestrial and marine resources and land use can decrease greenhouse gas sinks and increase atmospheric emissions. 9.19.**
- **The conservation, sustainable management and enhancement, where appropriate, of all sinks for greenhouse gases;**
- d. **Promote sustainable management and cooperation in the conservation and enhancement, as appropriate, of sinks and reservoirs**

of greenhouse gases, including biomass, forests and oceans, as well as other terrestrial, coastal and marine ecosystems.

- Aware of the role and importance in terrestrial and marine ecosystems of sinks and reservoirs of greenhouse gases,
- "Sink" means any process, activity or mechanism which removes a greenhouse gas, an aerosol or a precursor of a greenhouse gas from the atmosphere. 8
- To achieve this, such policies and measures should take into account different socio-economic contexts, be comprehensive, cover all relevant sources, sinks and reservoirs of greenhouse gases and adaptation, and comprise all economic sectors. Efforts to address climate change may be carried out cooperatively by interested Parties. 3
- Develop, periodically update, publish and make available to the Conference of the Parties, in accordance with Article 12, national inventories of anthropogenic emissions by sources and removals by sinks of all greenhouse gases not controlled by the Montreal Protocol, using comparable methodologies to be agreed upon by the Conference of the Parties; 4. (a)

Formulate, implement, publish and regularly update national and, where appropriate, regional programmes containing measures to mitigate climate change by addressing anthropogenic emissions by sources and removals by sinks of all greenhouse gases not controlled by the Montreal Protocol, and measures to facilitate adequate adaptation to climate change; 4.b •

- Promote sustainable management, and promote and cooperate in the conservation and enhancement, as appropriate, of sinks and reservoirs of all greenhouse gases not controlled by the Montreal Protocol, including biomass, forests and oceans as well as other terrestrial, coastal and marine ecosystems;
- The developed country Parties and other Parties included in annex I commit themselves specifically as provided for in the following: 2

- Each of these Parties shall adopt national policies and take corresponding measures on the mitigation of climate change, by limiting its anthropogenic emissions of greenhouse gases and protecting and enhancing its greenhouse gas sinks and reservoirs.

- In order to promote progress to this end, each of these Parties shall communicate, within six months of the entry into force of the Convention for it and periodically thereafter, and in accordance with Article 12, detailed information on its policies and measures referred to in sub-paragraph (a) above, as well as on its resulting projected anthropogenic emissions by sources and removals by sinks of greenhouse gases not controlled by the Montreal Protocol for the period referred to in sub-paragraph (a), with the aim of returning individually or jointly to their 1990 levels these anthropogenic emissions of carbon dioxide and other greenhouse gases not controlled by the Montreal Protocol. This information will be reviewed by the Conference of the Parties, at its first session and periodically thereafter, in accordance with Article 7;

- Calculations of emissions by sources and removals by sinks of greenhouse gases for the purposes of sub-paragraph (b) above should take into account the best available scientific knowledge, including of

the effective capacity of sinks and the respective contributions of such gases to climate change. The Conference of the Parties shall consider and agree on methodologies for these calculations at its first session and review them regularly thereafter; (c)

- **In accordance with Article 4, paragraph 1, each Party shall communicate to the Conference of the Parties, through the secretariat, the following elements of information:**

A national inventory of anthropogenic emissions by sources and removals by sinks of all greenhouse gases not controlled by the Montreal Protocol, to the extent its capacities permit, using comparable methodologies to be promoted and agreed upon by the Conference of the Parties;(12 .1. a)

DOCUMENTING SOURCES AND SINKS

- **Develop, periodically update, publish and make available to the Conference of the Parties, in accordance with Article 12, national inventories of anthropogenic emissions by sources and removals by sinks of all greenhouse gases not controlled by the Montreal Protocol, using comparable methodologies to be agreed upon by the Conference of the Parties; 4. (a)**

PRECAUTIONARY PRINCIPLE

- **The Parties should take precautionary measures to anticipate, prevent or minimize the causes of climate change and mitigate its adverse effects. Where there are threats of serious or irreversible damage, lack of full scientific certainty should not be used as a reason for postponing such measures, taking into account that policies and measures to deal with climate change should be cost-effective so as to ensure global benefits at the lowest possible cost. 3.**

PRODUCT LABELING

PRESERVATION

THE TERM PRESERVATION IS NOT USED IN ANY OF THE FOUR DOCUMENTS

INTERGENERATIONAL PROTECTION

- **The Parties should protect the climate system for the benefit of present and future generations of humankind, on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities. Accordingly, the developed country Parties should take the lead in combating climate change and the adverse effects thereof. 1**

DETERMINED TO PROTECT

- **Determined to protect the climate system for present and future generations,**

CONSERVATION

- **The conservation, sustainable management and enhancement, where appropriate, of all sinks for greenhouse gases; 9.20 ii.**
- **The conservation and sustainable use of natural and environmental resources; iii.**
- **Promote sustainable management and cooperation in the conservation and enhancement, as appropriate, of sinks and reservoirs of greenhouse gases, including biomass, forests and oceans, as well as other terrestrial, coastal and marine ecosystems. 9.20. d.**
- **Promote sustainable management, and promote and cooperate in the conservation and enhancement, as appropriate, of sinks and reservoirs of all greenhouse gases not controlled by the Montreal Protocol, including biomass, forests and oceans as well as other terrestrial, coastal and marine ecosystems; 4. (d)**
- **Promote sustainable management, and promote and cooperate in the conservation and enhancement, as appropriate, of sinks and reservoirs of all greenhouse gases not controlled by the Montreal Protocol, including biomass, forests and oceans as well as other terrestrial, coastal and marine ecosystems; 4. (d)**

ECOLOGY

- **To ensure that actual and potential atmospheric changes and their socio-economic and ecological impacts are fully taken into account in planning and implementing policies and programmes concerning terrestrial and marine resources utilization and land-use practices. 9.20 (b)**

ECOSYSTEM

- **Concern about climate change and climate variability, air pollution and ozone depletion has created new demands for scientific, economic and social information to reduce the remaining uncertainties in these fields. Better understanding and prediction of the various properties of the atmosphere and of the affected ecosystems, as well as health impacts and their interactions with socio-economic factors, are needed. 9.6.**
- **Promote research related to the natural processes affecting and being affected by the atmosphere, as well as the critical linkages between sustainable development and atmospheric changes, including impacts on human health, ecosystems, economic sectors, and society. 9.8.a.**
- **Cooperate in research to develop methodologies and identify threshold levels of atmospheric pollutants, as well as atmospheric levels of greenhouse gas concentrations, which would cause dangerous anthropogenic interference with the climate system and the environment**

as a whole, and the associated rates of change that would not allow ecosystems to adapt naturally. 9.8. d.

- Land-use and resource policies will both affect and be affected by changes in the atmosphere. Certain practices related to terrestrial and marine resources and land use can decrease greenhouse gas sinks and increase atmospheric emissions. The loss of biological diversity may reduce the resilience of ecosystems to climatic variations and air pollution damage. Atmospheric changes can have important impacts on forests, biodiversity, and freshwater and marine ecosystems, as well as on economic activities, such as agriculture. Policy objectives in different sectors may often diverge and will need to be handled in an integrated manner. 9.19.

- Concerned that human activities have been substantially increasing the atmospheric concentrations of greenhouse gases, that these increases enhance the natural greenhouse effect, and that this will result on average in an additional warming of the Earth's surface and atmosphere and may adversely affect natural ecosystems and humankind,

- Aware of the role and importance in terrestrial and marine ecosystems of sinks and reservoirs of greenhouse gases,

- Recognizing further that low-lying and other small island countries, countries with low-lying coastal, arid and semi-arid areas or areas liable to floods, drought and desertification, and developing countries with fragile mountainous ecosystems are particularly vulnerable to the adverse effects of climate change,

- "Adverse effects of climate change" means changes in the physical environment or biota resulting from climate change which have significant deleterious effects on the composition, resilience or productivity of natural and managed ecosystems or on the operation of socio-economic systems or on human health and welfare. 1

ENVIRONMENT

- the establishment and improvement of capabilities to predict such changes and fluctuations and to assess the resulting environmental and socio-economic impacts; 9.8. ii.

ENVIRONMENTALLY SOUND

- Energy is essential to economic and social development and improved quality of life. Much of the world's energy, however, is currently produced and consumed in ways that could not be sustained if technology were to remain constant and if overall quantities were to increase substantially. The need to control atmospheric emissions of greenhouse and other gases and substances will increasingly need to be based on efficiency in energy production, transmission, distribution and consumption, and on growing reliance on environmentally sound energy systems, particularly new and renewable sources of energy./1/ All energy sources will need to be used in ways that respect the atmosphere, human health, and the environment as a whole. 9.9.

- The existing constraints to increasing the environmentally sound energy supplies required for pursuing the path towards sustainable development, particularly in developing countries, need to be removed.

9.10.

- The basic and ultimate objective of this programme area is to reduce adverse effects on the atmosphere from the energy sector by promoting policies or programmes, as appropriate, to increase the contribution of environmentally safe and sound and cost effective energy systems, particularly new and renewable ones, through less polluting and more efficient energy production, transmission, distribution and use.

9.11.

- Cooperate in identifying and developing economically viable, and environmentally sound energy sources to promote the availability of increased energy supplies to support sustainable development efforts, in particular in developing countries;

9.12 a.

- Promote the research, development, transfer and use of technologies and practices for environmentally sound energy systems, including new and renewable energy systems, with particular attention to developing countries; (9.12. d.)

- Review current energy supply mixes to determine how the contribution of environmentally sound energy systems as a whole, particularly new and renewable energy systems, could be increased in an economically efficient manner, taking into account respective countries' unique social, physical, economic and political characteristics, and examining and implementing, where appropriate, measures to overcome any barriers to their development and use; 9.12.f.

- Coordinate energy plans regionally and sub regionally, where applicable, and study the feasibility of efficient distribution of environmentally sound energy from new and renewable energy sources;

g.

- Encourage education and awareness-raising programmes at the local, national, sub-regional and regional levels concerning energy efficiency and environmentally sound energy systems; k.

- Develop and promote, as appropriate, cost effective, more efficient, less polluting and safer transport systems, particularly integrated rural and urban mass transit, as well as environmentally sound road networks, taking into account the needs for sustainable social, economic and development priorities, particularly in developing countries; 9.15.a.

- The basic objective of this programme area is to encourage industrial development in ways that minimize adverse impacts on the atmosphere by, *inter alia*, increasing efficiency in the production and consumption by industry of all resources and materials, by improving pollution-abatement technologies, and by developing new environmentally sound technologies.

9.17.

- To develop and apply pollution control and measurement technologies for stationary and mobile sources of air pollution and to develop alternative environmentally sound technologies;

9.27. a.

- The developed country Parties and other developed Parties included in annex II shall take all practicable steps to promote, facilitate and finance, as appropriate, the transfer of, or access to, environmentally sound technologies and know-how to other Parties, particularly developing country Parties, to enable them to implement the provisions of the Convention. In this process, the developed country Parties shall support the development and enhancement of endogenous capacities and technologies of developing country Parties. Other Parties and organizations in a position to do so may also assist in facilitating the transfer of such technologies.⁵

ENVIRONMENT PRIORITIES

- In accordance with national socio-economic development and environment priorities, evaluate and, as appropriate, promote cost effective policies or programmes, including administrative, social and economic measures, in order to minimize industrial pollution and adverse impacts on the atmosphere; 9.18 a.
- In accordance with national socio-economic development and environment priorities, evaluate and, as appropriate, promote cost effective policies or programmes, including administrative, social and economic measures, in order to encourage environmentally sound land-use practices. a.

TRANSBOUNDARY EFFECTS

- to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction,

ENVIRONMENTALLY EFFECTIVE

- Recognizing that steps required to understand and address climate change will be environmentally, socially and economically most effective if they are based on relevant scientific, technical and economic considerations and continually re-evaluated in the light of new findings in these areas,

ENVIRONMENT POLICIES

- Recalling also that States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental and developmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the

environment of other States or of areas beyond the limits of national jurisdiction,

- **Take climate change considerations into account, to the extent feasible, in their relevant social, economic and environmental policies and actions, and employ appropriate methods, for example impact assessments, formulated and determined nationally, with a view to minimizing adverse effects *on the economy*, on public health and on the quality of the environment, of projects or measures undertaken by them to prevent mitigate or adapt to climate change;(f)**

ENVIRONMENTAL CONTEXT

Recognizing that States should enact effective environmental legislation, that environmental standards, management objectives and priorities should reflect the environmental and developmental context to which they apply, and that standards applied by some countries may be inappropriate and of unwarranted economic and social cost to other countries, in particular developing countries,

TRANSFER OF TECHNOLOGY

AVOIDANCE OF IMPACTS ON ECONOMIC DEVELOPMENT

- **Affirming that responses to climate change should be coordinated with social and economic development in an integrated manner with a view to avoiding adverse impacts on the latter, taking into full account the legitimate priority needs of developing countries for the achievement of sustained economic growth and the eradication of poverty,**

Recognizing that all countries, especially developing countries, need access to resources required to achieve sustainable social and economic development and that, in order for developing countries to progress towards that goal, their energy consumption will need to grow taking into account the possibilities for achieving greater energy efficiency and for controlling greenhouse gas emissions in general, including through the application of new technologies on terms which make such an application economically and socially beneficial,

DISSEMINATION OF INFORMATION

Promote and cooperate in scientific, technological, technical, socio-economic and other research, systematic observation and development of data archives related to the climate system and intended to further the understanding and to reduce or eliminate the remaining uncertainties regarding the causes, effects, magnitude and timing of climate change and the economic and social consequences of various response strategies; (g)

EDUCATION AND PUBLIC AWARENESS

- **Promote and cooperate in education, training and public awareness related to climate change and encourage the widest participation in this process, including that of non-governmental organizations; and (i)**

TRIPLE-SPEAK AWARD

- **Recognizing also the need for developed countries to take immediate action in a flexible manner on the basis of clear priorities, as a first step towards comprehensive response strategies at the global, national and, where agreed, regional levels that take into account all greenhouse gases, with due consideration of their relative contributions to the enhancement of the greenhouse effect,**

Report: Complementary Report June 26, 1993

In order to promote progress to this end, each of these Parties shall communicate, within six months of the entry into force of the Convention for it and periodically thereafter, and in accordance with Article 12, detailed information on its policies and measures referred to in sub-paragraph (a) above, as well as on its resulting projected anthropogenic emissions by sources and removals by sinks of greenhouse gases not controlled by the Montreal Protocol for the period referred to in sub-paragraph (a), with the aim of returning individually or jointly to their 1990 levels these anthropogenic emissions of carbon dioxide and other greenhouse gases not controlled by the Montreal Protocol. This information will be reviewed by the Conference of the Parties, at its first session and periodically thereafter, in accordance with Article 7;

STABILIZATION OF CO₂

EMISSION REDUCTION GOALS

REDUCING EMISSIONS

CARBON EMISSION BUDGET

CARBON TAXES

CONVERSION TO LESS CO₂ FUELS

REDIRECTION OF R & D TO ENERGY EFFICIENT

• REDIRECTION OF R & D TO RENEWABLE

• PHASE-OUT OF PRODUCTION

ELIMINATION OF EMISSIONS

TRANSFER TO NON-GREENHOUSE BASED TECHNOLOGIES

ENDING DEFORESTATION

•BACKGROUND ON EVIDENCE OF B. C. STATED COMMITMENT TO THE BIODIVERSITY CONVENTION

Prior to August, 1992, the Hon. Moe Sihota , the then Minister Responsible for Constitutional Affairs communicated to the Hon Barbara McDougall, Minister of State for External Affairs for Canada B.C.'s support for the Convention on Biological Diversity. ("UNCED Follow-up: Endorsement of International Conventions on Climate Change and Biological Diversity" November 4, 1992)

GIVEN that following the Tri-council Meeting in September 21, 1992, the Hon. John Cashore communicated to the Hon. Barbara Mc Dougall, Minister of State for External Affairs, B.C. 's support for the ratification of the Convention by the end of 1992 ("UNCED Follow-up: Endorsement of International Conventions on Climate Change and Biological Diversity" November 4, 1992)

AWARE that "Canada's position on the two conventions was developed from an intensive series of consultations with key stakeholder groups in Canada including provincial and territorial Ministries of Environment, Energy and forests. ("UNCED Follow-up: Endorsement of International Conventions on Climate Change and Biological Diversity" November 4, 1992)

NOTING that the government of Canada, on behalf of the citizens of Canada, has signed the Convention on Biological Diversity in June 1992, and ratified the Convention in December 1992. Prior to signing and ratifying the Convention the federal government consulted with the provinces to ensure that the necessary legislation was in place to ensure compliance with obligations under the Convention. The convention came into force, December 1993.

UNDERSTANDING that the requirement that "Canada will not normally become party to an international agreement until necessary legislation has been enacted in the provinces" (Communique, External Affairs, 1982), and

CONCURRING that Canada, explicitly or by necessary implication undertook to fulfill this requirement, as it relates to the object and purpose enshrined in the Biodiversity Convention which it signed (June, 1992) and ratified (Dec, 1992) and

RECOGNIZING that Canada has signed and ratified Article 18 of the Vienna Convention Treaty which stipulates that there is an "obligation not to defeat the object and purpose of a treaty prior to the entry into force"

Article 27 Internal law and observance of treaties

A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty. This rule is without prejudice to article 46

Article 29 territorial scope of treaties

Unless a different intention appears for the treaty or is otherwise established, a treaty is binding upon each party in respect of its entire territory.

• INTERPRETATION OF THE CONVENTION

GIVEN that under Interpretation of Treaties Article 31 Vienna Convention of Treaties

a treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.

CONCURRING that provisions in the Biodiversity Convention have direct application to practices and activities throughout British Columbia; practices and activities that have continued since the signing of the Biodiversity Convention

The International Affairs Caucus of the British Columbia Environmental Network understands that from the ordinary meaning of the Convention the following practices and activities occurring in British Columbia are not in compliance with legal obligations undertaken by British Columbia under the Convention on Biological Diversity

- Understanding there is sufficient scientific evidence that policies and practices of corporate logging, such as clearcutting and other ecologically unsound practices, pose significant threats to biological diversity, and
- Noting that the Biodiversity Convention Treaty calls upon states to invoke the precautionary principle, which reads

Where there is a threat of significant reduction or loss of biological diversity, lack of full scientific certainty should not be used as a reason for postponing measures to avoid or minimize such a threat.

Whereas the biodiversity in original growth forests has not been identify as required under the Biodiversity Convention Treaty,

Whereas British Columbia has failed to carry out an environmental impact assessment of projects that are likely to have significant adverse effects on biological diversity

BE IT RESOLVED THAT FOR BRITISH COLUMBIA TO COMPLY WITH THE BIODIVERSITY CONVENTION TREATY THAT ALL LOGGING CEASE IN OLD GROWTH TEMPERATE RAINFORESTS, AND THAT CLEARCUTTING AND ECOLOGICALLY UNSOUND PRACTICES BE TERMINATED IMMEDIATELY, AND THAT BRITISH COLUMBIA TAKE STEPS TO TRANSITION INTO A JOB-BASED, FIBRE-BASED ECONOMY.

on the following grounds:

1. that Judge Drake failed to consider two of the three grounds for rescinding the injunction
2. Judge Drake failed to recognize that one of the arguments relating to international agreements did refer to a Convention that has been signed and ratified in Canada
3. that Judge Drake's decision was dependent on the leave to appeal in Vancouver

The leave to appeal was served on John Hunter, on October 21, 1993
John Hunter then filed a "Notice of Appearance" on November 8, 1993
John Hunter subsequently wrote to me suggesting that I attempt to appear at the same time as the other injunction appeals will be heard January 19-21
I responded to John Hunter, that, at that time I would be in Buenos Aires, serving on an international commission on education and communication.
On December 31, I was informed that it would be possible to appear through a lawyer

On January 4 I have submitted the leave to appeal book and the factor

It is my understanding that the appropriate time to hear the appeal, if granted, would be at the same time as the other appeals.

() **THAT** in August 23, 1993 I submitted a proposal for nominating a world heritage site to the World Heritage Committee:

EXHIBIT

Sunday, August 22, 1993

CANADA FAILS TO FULFILL ITS INTERNATIONAL DUTY TO DESIGNATE
OLD GROWTH SITE AS BEING ONE OF OUTSTANDING
INTERNATIONAL WORTH

When I was in Paris in June, I attended the meeting of the Heritage Committee, of the Convention of the Preservation of Cultural and Natural Heritage. (1972)

For some time, I have been concerned with the way Canada, especially B.C., has been remiss in not fulfilling its duty under the Convention for the Preservation for Cultural and Natural Heritage, to identify sites of potential international worth. At the meeting of the Heritage Committee, I raised the question of the apparent discrepancy between the strong preservation intention expressed in the preamble:

"Considering that in view of the magnitude and gravity of the new dangers threatening them, it is incumbent on the international community as a whole to participate in the protection of the cultural and natural heritage of outstanding universal value... (Convention for the Protection of the World cultural and Natural Heritage, preamble, 1972)

and article 11 which places the obligation to identify significant sites on the State. I also mentioned that I believed that the Convention appeared to have presumed that states would have wanted to have sites designated as being of outstanding universal value; the drafters of the Convention did not envision the case that is occurring in Canada where the state, for essentially commercial reasons, fails to fulfill its duty to identify sites of potential universal value.

At that meeting of the Heritage Committee, it was indicated that States had been requested to submit a list of potential future sites to the Committee. I asked the official Canadian Observer, to let me see the list of sites proposed by Canada. I noticed that there was no significant network of temperate rainforests proposed for preservation.

The omission of a significant network of preserved temperate rainforests was particularly disturbing in the light of the fact that the Observer from Australia had a forty-page document supporting a request from the Australian government to preserve a network of temperate rainforests in Australia.

It would appear that international intervention without the consent of the state is permitted, however, in cases of World Heritage Sites in Danger when the state fails to protect sites that have already been designated. In Article 11.4 of the United Nations Convention for Protection of the World Cultural and Natural Heritage, there is, however, a specific intervention which enables the committee to carry out the following action:

The committee may at any time, in case of urgent need, make a new entry in the list of World Heritage in Danger and publicize such entry immediately

(United Nations Convention for the Preservation of Cultural and Natural Heritage, article 11, 4)

This clause appears to be ambiguous, and given the statement referred to above from the preamble, could be interpreted as meaning without the permission of the State.

Enclosed please find a copy of the proposal that I submitted to the President of the Heritage Committee.

Joan Russow
ERA Ecological Rights Association

1230 St Patrick St.
Victoria, B.C. V8S 4Y4
Canada PH 604-598-2740

FAX 604-385-0068

Dr Bernd von Dorset
Director of the World Heritage Centre
UNESCO
7 place de Fontenoy
75352, Paris 07 SP, France

July 13, 1993

() THAT In 1993 I wrote to Dr. Von Droste

Dear Dr. Von Droste

I would like to apologize for my unofficial intrusion at the meeting of the World Heritage Committee.

I would, however, like to raise a series of points related to the United Nations Convention of World Cultural and Natural Heritage, and then make a resolution. Some of these points arose because of a rereading of the Convention, the criteria for nomination and the regulations for operation.

The points are outlined in the enclosed proclamation which has been prepared for signatures, and then submission to the provincial and federal governments.

Yours sincerely,

Joan Russow
ERA Ecological Rights Association

The "unofficial Canadian observer" at the June World Heritage Committee meeting in June.

PROCLAMATION SENT TO THE PRESIDENT OF THE WORLD HERITAGE COMMITTEE

UNESCO

"Considering that in view of the magnitude and gravity of the new dangers threatening them, it is incumbent on the international community as a whole to participate in the protection of the cultural and natural heritage of outstanding universal value... (Convention for the Protection of the World cultural and Natural Heritage, preamble, 1972)

WE REQUEST

THAT THE WORLD HERITAGE COMMITTEE COMPLY WITH THE URGENT NEED TO MAKE A NEW ENTRY IN THE LIST OF WORLD HERITAGE IN DANGER (ARTICLE 11, 4):

THE PRESERVATION ON VANCOUVER ISLAND, BRITISH COLUMBIA OF
A WORLD COMPOSITE NATURAL AND CULTURAL HERITAGE SITE

CONTAINING THE FOLLOWING COMPONENT SITES:

1. CLAYOQUOT SOUND,
2. INTACT WATERSHEDS CONTAINING SIGNIFICANT STANDS OF UNFRAGMENTED OLD GROWTH (SUCH AS THE WALBRAN, THE UPPER CARMANAH),
3. ASSOCIATED CULTURAL HERITAGE OF INDIGENOUS PEOPLES

AND THE FOLLOWING PATHWAYS

1. NATURAL CONSERVATION CORRIDORS
2. CULTURAL PATHWAYS OF INDIGENOUS PEOPLES

REASONS FOR PROPOSED INCLUSION

1. FULFILLMENT OF WORLD HERITAGE CRITERIA

GIVEN THAT this composite natural and cultural site fulfills criteria for both natural and cultural heritage

Natural heritage criteria (ii), (iii) and (iv) of the criteria for inclusion in the World Heritage list.

(ii) be outstanding examples representing significant ongoing geological processes... biological evolution and man [human] interaction with his [its] natural environment; as distinct from the periods of the Earth's development, this focuses upon ongoing processes in the development of communities of plants and animals, landforms and marine areas and fresh water bodies;
(iii) contain superlative natural phenomena formations or features for ... outstanding examples of the most important ecosystems, areas of exceptional natural beauty or exceptional combinations of natural and cultural elements;
(iv) containing the most important and significant natural habitats where threatened species of animals or plants of outstanding universal value from the point of view of science or conservation still survive

and criteria (i), (ii) (v) and (vi) for the inclusion in cultural property

(i) represent a unique artistic achievement, a masterpiece of the creative genius;
(ii) have exerted great influence, over a span of time or within a cultural area of the world, on developments in architecture, monumental arts or town planning and landscaping;
(V) an outstanding example of a traditional human settlement which is representative of a culture and which has become vulnerable under the impact of irreversible change;
(vi) be directly or tangibly associated with events or with ideas or beliefs of outstanding universal significance

2. FULFILLMENT OF CRITERIA OF URGENCY TO BE INCLUDED AS A NEW WORLD HERITAGE ENTRY

Given In Article 11.4 of the United Nations Convention for Protection of the World Cultural and Natural Heritage, there is a specific intervention which enables the committee to carry out the following action:

The committee may at any time, in case of urgent need, make a new entry in the list of World Heritage in Danger and publicize such entry immediately (United Nations Convention for the Preservation of Cultural and Natural Heritage, article 11, 4)

3 FULFILLMENT OF GOAL OF CONVENTION TO BRING TOGETHER NATURAL AND CULTURAL HERITAGE

Given, the in its publication Nature and Resources UNESCO has recognized the significance of linking natural and cultural heritage in the recent formation of the World Heritage Centre

Establishment of World Heritage Centre in 1992, to bring together what had been separate secretariats for natural and cultural heritage. .. to provide new impetus to heritage conservation at the interface of culture and nature .

4. FULFILLMENT OF NATURAL AND CULTURAL COMMITMENTS IN UNCED

Given that the global community has made commitment to preserving natural and cultural heritage through various documents from UNCED

4.1. AGENDA 21: BIODIVERSITY CHAPTER (CHAPTER 15)

the responsibility to conserve their biodiversity and use their biological resources sustainably, and to ensure that activities within their jurisdiction or control do not cause damage to the biological diversity of other states or of areas beyond the limits of national jurisdiction. " (15.3 Biodiversity)

" Despite mounting efforts over the past 20 years, the loss of the world' biological diversity, mainly from habitat destruction, over-harvesting, pollution and the inappropriate introduction of foreign plants and animals has continued. 15.3 Biodiversity

use of biological resources. (15.8 e. biodiversity)

Strengthen support for international and regional instruments, programmes and action plans concerned with the conservation of biological diversity and the sustainable use of biological resources. (15.8 f Biodiversity)

" take effective economic, social and other appropriate incentive measures to encourage the conservation of biological diversity and the sustainable use of biological resources, including the promotion of sustainable production systems such as traditional methods of agriculture, agroforestry, forestry, range and wildlife management, which use, maintain or increase biodiversity 15.5 Biodiversity

" Long-term research into the importance of biodiversity for the functioning of ecosystems and the role of ecosystems in producing good, environmental services and other values supporting sustainable development with particular reference to the biology and reproductive capacities of key terrestrial and aquatic species, including native, cultivated and cultured species; ? observation and inventory techniques; ecological conditions necessary for biodiversity conservation and continued evolution; and social behaviour and nutrition habits dependent on natural ecosystems, where women play key roles. The work should be undertaken with the widest possible participation, especially of indigenous people and their communities, including women. (15.5 f, Biological diversity)

" Take action where necessary for the conservation of biological diversity through the in situ conservation of ecosystems and natural habitats, as well as primitive cultivars and their wild relatives, and the maintenance and recover of viable populations of species in their natural surrounding ...(15.6 g. Biodiversity)

Governments... consistent with the requirements of international law should, as appropriate collect, assess and make available relevant and reliable information in a timely manner and in a form suitable for decision-making at all levels, with the full support and participation of local and indigenous people and their communities. (15.6 f Biodiversity)

" Introduce appropriate environmental impact assessment procedures for proposed projects likely to have significant impacts upon biological diversity... and encourage the assessment of the impacts of relevant policies and programmes on biological diversity (Agenda 21, 15.5 k)

4.2. CHAPTER 27, AGENDA 21 COMMITMENTS TO INDIGENOUS PEOPLE

Indigenous people and their communities have an historical relationship with their lands and are generally descendants of the original inhabitants of such lands. In the context of this chapter the term "lands" is understood to include the environment of the areas which the people concerned traditionally occupy. Indigenous people and their communities represent a significant percentage of the global population. They have developed over many generations a holistic traditional scientific knowledge of their lands, natural resources and environment. Indigenous people and their communities shall enjoy the full measure of human rights and fundamental freedoms without hindrance or discrimination. Their ability to participate fully in sustainable development practices on their lands has tended to be limited as a result of factors of an economic, social and historical nature. In view of the interrelationship between the natural environment and its sustainable development and the cultural, social, economic and physical well-being of indigenous people, national and international efforts to implement environmentally sound and sustainable development should recognize, accommodate, promote and strengthen the role of indigenous people and their communities. (Agenda 21, 16.1)

In full partnership with indigenous people and their communities, Governments and, where appropriate, intergovernmental organizations should aim at fulfilling the following objectives: (Agenda 21, 16.3)

(a) Establishment of a process to empower indigenous people and their communities through measures that include:

- (ii) Recognition that the lands of indigenous people and their communities should be protected from activities that are environmentally unsound or that the indigenous people concerned consider to be socially and culturally inappropriate;

5. FULFILLMENT OF SIGNIFICANT INTERFACE CULTURE AND NATURE THROUGH ETHNOBOTANY

Aboriginal people of the region are closely tied to the ecosystems of the coast and the forest, of and their knowledge of ecosystems is very detailed and profound. Without the preservation of the life forms their knowledge will be lost (Dr. N. Turner, Ethnobotanist)

RESOLUTION

Indigenous people and their communities have an historical relationship with their lands and are generally descendants of the original inhabitants of such lands. In the context of this chapter the term "lands" is understood to include the environment of the areas which the people concerned traditionally occupy. Indigenous people and their communities represent a significant percentage of the global population. They have developed over many generations a holistic traditional scientific knowledge of their lands, natural resources and environment. Indigenous people and their communities shall enjoy the full measure of human rights and fundamental freedoms without hindrance or discrimination. Their ability to participate fully in sustainable development practices on their lands has tended to be limited as a result of factors of an economic, social and historical nature. In view of the interrelationship between the natural environment and its sustainable development and the cultural, social, economic and physical well-being of indigenous people, national and international efforts to implement environmentally sound and sustainable development should recognize, accommodate, promote and strengthen the role of indigenous people and their communities. (Agenda 21, 16.1)

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In the UNESCO publication, *Nature & Resources*, it is indicated that international designation without prior state designation is within the intention of the original Convention:

Among other steps, the World Heritage Committee intends to amend its Operational Guidelines to allow a site to be included on the List of World Heritage in Danger without a preliminary request from the State concerned, a possibility that is not ruled out by the Convention and was actually envisaged by its authors. (3)

This statement is ambiguous because it does not say whether the "site" must or must not already be on the List of World heritage sites.

It would appear that this prerogative of the committee falls outside the Guidelines for inclusion (i) the property under consideration is on the World Heritage List. (operational Guidelines for the United Nations Convention for Protection of the World Cultural and Natural Heritage, March 17, 1992)
For years Canada has signed international agreements and undertaken obligations, and for years Canada has deluded the global community about its concern for the environment.

Canada has made international commitments, and the public can impute an intention to fulfill these obligations, and before making these commitments Canada should have been able to ensure the international community that it had the ability to comply with its obligations.

C. GLOBALLY ADOPTED OBLIGATIONS

1. FAILURE TO ABIDE BY RECOMMENDATIONS FROM CARACAS CONGRESS

D. INTERNATIONAL OBLIGATIONS AND THE CLAYOQUOT INJUNCTION

In September I tried to set aside the injunction because I thought that the granting of the injunction was a flagrant abuse of the justice system. here, those who were calling for Canada to enforce its own statutory laws and abide by its international obligations were been condemned as criminals.

In the application to grant the injunction and to extend the injunction, there was a failure to inform the Judge that Canada has not lived up to its international commitment to preserve a significant area of international worth: a network of intact old growth watershed, conservation corridors including Clayoquot sound (this type of extensive preservation has currently been carried out in Australia, and Australia has applied to have this network of temperate rainforests designated as an international heritage site at the recent meeting in 1993 of the World Heritage Committee at UNESCO)

1. Under the Convention of Treaties Canada is also bound to not invoke internal law to justify non-performance of treaty obligations

B.C. has invoked internal law by granting an injunction that could contribute to the non performance of international obligations. It is for this reason that the court should seriously reconsider the justifiability of issuing an injunction to permit activities that could be in contravention of international obligations. We bring this request to rescind the injunction primarily because we are concerned that contempt for international, national and provincial environmental law reflected in years of non-compliance by industry, and non-enforcement by government, has resulted in environmental degradation of the forest ecosystems.

() **THAT** in 1993, I followed up my intervention at the World Heritage Committee meeting, with a proposal for a world heritage site, which combines the new mandate of the Committee to link cultural and natural heritage.

EXHIBIT

Sunday, August 22, 1993

Canada Fails to Fulfill its International Duty to Designate Old Growth Site as being one of Outstanding International Worth

When I was in Paris in June, I attended the meeting of the Heritage Committee, of the Convention of the Preservation of Cultural and Natural Heritage. (1972)

For some time, I have been concerned with the way Canada, especially B.C., has been remiss in not fulfilling its duty under the Convention for the Preservation of Cultural and Natural Heritage, to identify sites of potential international worth. At the meeting of the Heritage Committee, I raised the question of the apparent discrepancy between the strong preservation intention expressed in the preamble:

"Considering that in view of the magnitude and gravity of the new dangers threatening them, it is incumbent on the international community as a whole to participate in the protection of the cultural and natural heritage of outstanding universal value... (Convention for the Protection of the World Cultural and Natural Heritage, preamble, 1972)

and article 11 which places the obligation to identify significant sites on the State. I also mentioned that I believed that the Convention appeared to have presumed that states would have wanted to have sites designated as being of outstanding universal value; the drafters of the Convention did not envision the case that is occurring in Canada where the state, for essentially commercial reasons, fails to fulfill its duty to identify sites of potential universal value.

At that meeting of the Heritage Committee, it was indicated that States had been requested to submit a list of potential future sites to the Committee. I asked the official Canadian Observer, to let me see the list of sites proposed by Canada. I noticed that there was no significant network of temperate rainforests proposed for preservation.

The omission of a significant network of preserved temperate rainforests was particularly disturbing in the light of the fact that the Observer from Australia had a forty-page document supporting a request from the Australian government to preserve a network of temperate rainforests in Australia.

It would appear that international intervention without the consent of the state is permitted, however, in cases of World Heritage Sites in Danger when the state fails to protect sites that have already been designated. In Article 11.4 of the United Nations Convention for Protection of the World Cultural and Natural Heritage, there is, however, a specific intervention which enables the committee to carry out the following action:

The committee may at any time, in case of urgent need, make a new entry in the list of World Heritage in Danger and publicize such entry immediately (United Nations Convention for the Preservation of Cultural and Natural Heritage, article 11, 4)

This clause appears to be ambiguous, and given the statement referred to above from the preamble, could be interpreted as meaning without the permission of the State.

Enclosed please find a copy of the proposal that I submitted to the President of the Heritage Committee.

Joan Russow
ERA Ecological Rights Association
1230 St Patrick St.

Victoria, B.C. V8S 4Y4
Canada
PH 604-598-2740
FAX 604-3DrBernd

von Droste
Director of the World Heritage Centre
UNESCO
7 place de Fontenoy
75352, Paris 07 SP, France

July 13, 1993

Dear Dr. Von Droste

I would like to apologize for my unofficial intrusion at the meeting of the World Heritage Committee.

I would, however, like to raise a series of points related to the United Nations Convention of World Cultural and Natural Heritage, and then make a resolution. Some of these points arose because of a rereading of the Convention, the criteria for nomination and the regulations for operation.

The points are outlined in the enclosed proclamation which has been prepared for signatures, and then submission to the provincial and federal governments.

Yours sincerely,

Joan Russow
ERA Ecological Rights Association

The "unofficial Canadian observer" at the June World Heritage Committee meeting in June.

PROCLAMATION SENT TO THE PRESIDENT OF THE WORLD HERITAGE COMMITTEE

UNESCO

"Considering that in view of the magnitude and gravity of the new dangers threatening them, it is incumbent on the international community as a whole to participate in the protection of the cultural and natural heritage of outstanding universal value... (Convention for the Protection of the World cultural and Natural Heritage, preamble, 1972)

WE REQUEST

THAT THE WORLD HERITAGE COMMITTEE COMPLY WITH THE URGENT NEED TO MAKE A NEW ENTRY IN THE LIST OF WORLD HERITAGE IN DANGER (ARTICLE 11, 4):

THE PRESERVATION ON VANCOUVER ISLAND, BRITISH COLUMBIA OF

A WORLD COMPOSITE NATURAL AND CULTURAL HERITAGE SITE

CONTAINING THE FOLLOWING COMPONENT SITES:

1. CLAYOQUOT SOUND,
2. INTACT WATERSHEDS CONTAINING SIGNIFICANT STANDS OF UNFRAGMENTED OLD GROWTH (SUCH AS THE WALBRAN, THE UPPER CARMANAH),
3. ASSOCIATED CULTURAL HERITAGE OF INDIGENOUS PEOPLES

AND THE FOLLOWING PATHWAYS

1. NATURAL CONSERVATION CORRIDORS
2. CULTURAL PATHWAYS OF INDIGENOUS PEOPLES REASONS FOR PROPOSED INCLUSION

1. FULFILLMENT OF WORLD HERITAGE CRITERIA

GIVEN THAT this composite natural and cultural site fulfills criteria for both natural and cultural heritage

Natural heritage criteria (ii), (iii) and (iv) of the criteria for inclusion in the World Heritage list.

(ii) be outstanding examples representing significant ongoing geological processes... biological evolution and man [human] interaction with his [its] natural environment; as distinct from the periods of the Earth's development, this focuses upon ongoing

processes in the development of communities of plants and animals, landforms and marine areas and fresh water bodies;
(iii) contain superlative natural phenomena formations or features for ... outstanding examples of the most important ecosystems, areas of exceptional natural beauty or exceptional combinations of natural and cultural elements;
(iv) containing the most important and significant natural habitats where threatened species of animals or plants of outstanding universal value from the point of view of science or conservation still survive

and criteria (i), (ii) (v) and (vi) for the inclusion in cultural property

(i) represent a unique artistic achievement, a masterpiece of the creative genius;

(ii) have exerted great influence, over a span of time or within a cultural area of the world, on developments in architecture, monumental arts or town planning and landscaping;

(V) an outstanding example of a traditional human settlement which is representative of a culture and which has become vulnerable under the impact of irreversible change;

(vi) be directly or tangibly associated with events or with ideas or beliefs of outstanding universal significance

2. FULFILLMENT OF CRITERIA OF URGENCY TO BE INCLUDED AS A NEW WORLD HERITAGE ENTRY

Given In Article 11.4 of the United Nations Convention for Protection of the World Cultural and Natural Heritage, there is a specific intervention which enables the committee to carry out the following action:

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Given, the in its publication Nature and Resources UNESCO has recognized the significance of linking natural and cultural heritage in the recent formation of the World Heritage Centre

Establishment of World Heritage Centre in 1992, to bring together what had been separate secretariats for natural and cultural heritage. .. to provide new impetus to heritage conservation at the interface of culture and nature .

4. FULFILLMENT OF NATURAL AND CULTURAL COMMITMENTS IN UNCED

Given that the global community has made commitment to preserving natural and cultural heritage through various documents from UNCED

4.1. AGENDA 21: BIODIVERSITY CHAPTER (CHAPTER 15)

the responsibility to conserve their biodiversity and use their biological resources sustainably, and to ensure that activities within their jurisdiction or control do not cause damage to the biological diversity of other states or of areas beyond the limits of national jurisdiction. " (15.3 Biodiversity)

" Despite mounting efforts over the past 20 years, the loss of the world' biological diversity, mainly from habitat destruction, over-harvesting, pollution and the inappropriate introduction of foreign plants and animals has continued." (15.3 Biodiversity)

"use of biological resources." (15.8 e. biodiversity)

Strengthen support for international and regional instruments, programmes and action plans concerned with the conservation of biological diversity and the sustainable use of biological resources." (15.8 f Biodiversity)

" take effective economic, social and other appropriate incentive measures to encourage the conservation of biological diversity and the sustainable use of biological resources, including the promotion of sustainable production systems such as traditional methods of agriculture, agroforestry, forestry, range and wildlife management, which use, maintain or increase biodiversity" (15.5 Biodiversity)

" Long-term research into the importance of biodiversity for the functioning of ecosystems and the role of ecosystems in producing good, environmental services and other values supporting sustainable development with particular reference to the biology and reproductive capacities of key terrestrial and aquatic species, including native, cultivated and cultured species; ? observation and inventory techniques; ecological conditions necessary for biodiversity conservation and continued evolution; and social behaviour and nutrition habits dependent on natural ecosystems, where women play key roles. The work should be undertaken with the widest possible participation, especially of indigenous people and their communities, including women." (15.5 f, Biological diversity)

" Take action where necessary for the conservation of biological diversity through the in situ conservation of ecosystems and natural habitats, as well as primitive cultivars and their wild relatives, and the maintenance and recover of viable populations of species in their natural surrounding ..".(15.6 g. Biodiversity)

“Governments... consistent with the requirements of international law should, as appropriate collect, assess and make available relevant and reliable information in a timely manner and in a form suitable for decision-making at all levels, with the full support and participation of local and indigenous people and their communities. ”(15.6 f Biodiversity)

" Introduce appropriate environmental impact assessment procedures for proposed projects likely to have significant impacts upon biological diversity... and encourage the assessment of the impacts of relevant policies and programmes on biological diversity" (Agenda 21, 15.5 k)

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Aboriginal people of the region are closely tied to the ecosystems of the coast and the forest, of and their knowledge of ecosystems is very detailed and profound. Without the preservation of the life forms their knowledge will be lost (Dr. N. Turner, Ethnobotanist)

RESOLUTION

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1. Under the Convention of Treaties Canada is also bound to not invoke internal law to justify non-performance of treaty obligations

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() THAT on September 17 1993, the date that the Court dismissed my case to set aside the injunction on Clayoquot Sound, I wrote a press release

EXHIBIT:

"1993 Are International laws and obligations, irrelevant in the Clayoquot?"

Joan Russow

"To create an expectation is an empty gesture without a promise to fulfill it. Before creating an expectation, an organization must assure itself of its ability to fulfill the promise it implies" (Introduction, Ombudsman Annual Report, 1991)

On September 15, Betty Klieman and I made an application to rescind the Clayoquot injunction. One of the grounds for the application was that there was a failure to inform the Judge that the granting of the injunction could contribute to non-compliance with international obligations. On September 17 Judge Drake ruled that "International Law not expressed in B.C. law, is irrelevant in this case."

I have currently served MacMillan Bloedel with a leave to appeal this decision.

For years, Canada has been undertaking international obligations, from the "UN Convention on Human and Environment" (UNCHE, Stockholm, 1972); the UN Convention for the Preservation of Cultural and Natural heritage, 1972; the World Charter of Nature, 1982; the Caracas Declaration, 1992, and The UNCED documents (1992).

For years, Canada continually indicated its professed concern for the environment in a way that should entitled Canadians to expect actions that reflect this concern. For example, in the preface of Canada's National Report, which was submitted to the Earth Summit in Rio, the Canadian government gave the impression that Canadians were "stewards" observing their "environmental responsibility."

"as stewards of a vast and beautiful land, and as a people intimately connected to the environment, Canadians are aware of their environmental responsibilities." (Canada's National Report, Preface)

And further in the section on the "wilderness", the Canadian government stated

“As a small population with a large land mass, Canadians have access to relatively unspoiled wilderness areas rich in wildlife ... Canada has an international reputation as a beautiful, safe and mostly unspoiled country.”
(Canada's National Report, p.49)

The Provincial government , as a result of a request to the Ombudsman's office into the nature and extent of B.C.'s compliance with obligations from UNCED.(Gage & Russow), gave the following assurance to the senior investigator of resource issues in the Ombudsman's office:

From these meetings, as well as from additional discussions with senior staff from the Ministry of Forests and the Ministry of Environment, Lands and Parks, we have determined that BC intends to comply with the agreements signed at the UNCED in June 1992.

Canada signed (June, 1992) and ratified (Dec. 1992) the Biodiversity Convention. Although the convention will not be in force until December 29, 1993, Canada under article 18 of the Convention of Treaties is called upon to refrain from any activities that could jeopardize the fulfillment of the obligations under the Convention once the Convention is in force. External Affairs in a communique indicated that the usual protocol with international conventions is that ,prior to signing the convention in areas of Provincial jurisdiction, there is a requirement to ensure that the provinces have enacted the required legislation that will enable Canada to comply with its obligations. In the Biodiversity Convention there is a requirement to "identify biodiversity" and to invoke the precautionary principle which requires that "one does not have to wait until there is scientific certainty that harm will be caused to biodiversity for one to take precautionary measures. These requirements suggest that to comply with the obligations B.C. should either have already enacted legislation that had accomplished the identification of biodiversity or have instituted a moratorium on logging of old growth so as to identify biodiversity before running the risk of losing it.

B.C. has yet to comply with the obligation under the Biodiversity Convention "to carry out an environmental review of anything that could harm biodiversity [i.e.. clear-cut logging]; or under Agenda 21, to assess true environmental costs"; or to evaluate non-destructive use of forests ; or to prevent activities on indigenous lands that could be harmful to the environment or culturally inappropriate...

Similarly, the Ministry of Parks and Environment and Ministry of Forests confirmed their intention to adhere to international obligations in a letter which indicated that under the aegis of CORE,

"we will be mindful of this Declaration [the Caracas Declaration : Parks Protected Areas and the Human Future, 1992] and its implications. Our objective will be to have a system of protected areas which we are proud to present to the world." (March, 1992)

And through this commitment, the Ministries have agreed to the recommendations emanating from the Caracas Congress:

- Conserving Biodiversity

The congress urgently requested that all countries urgently undertake surveys to identify additional sites of critical importance for conservation of biological diversity, and wherever possible, accord total protection to them. Harvesting should be relocated from primary to secondary forests and tree plantations in previously deforested areas; or - where this is not possible - sustainable forest harvesting systems which favour natural species diversity should be developed and introduced. (8)

- Conservation on a regional scale

Protected areas have sometimes been seen as islands of nature and tranquility, surrounded by incompatible land uses. But the congress made it clear that such an "island mentality" is fatal in the long run. The congress recognized that it is unlikely that protected areas will be able to conserve biodiversity if they are surrounded by degraded habitats that limit gene-flow alter nutrient and water cycles and produce regional and global climate change that may lead to the final disappearance of these "island parks."

- Global efforts to conserve biological diversity.

"the loss of biodiversity has reached crisis proportion and if present trends continue up to 25 % of the world's species may be sentenced to extinction or suffer severe genetic depletion in the next several decades, accompanied by equally significant and alarming degradation of habitats and ecosystems. This loss of biological diversity is impoverishing the world of its genetic resources, its species, habitats and ecosystems.

All species deserve respect, regardless of their usefulness to humanity. This Principle was endorsed by the UN Assembly when it adopted the World Charter for nature in 1982. The loss of the living richness of the planet is dangerous , because of the environmental systems of the world support all life, and we do not know which are the key components in maintaining their essential functions.

With statements reflecting both the federal and provincial governments' intention to fulfill international obligations, and with the extensive consultation between Canada and British Columbian governments that occurred prior to the signing of the Biodiversity Convention, can the citizens of British Columbia, not legitimately expect that British Columbia will comply with its international obligations ? Through the common law doctrine the "Doctrine of Legitimate Expectation" the public has a right to be concerned about actions or omissions which indicate non-compliance with these obligations.

"It would appear from the obligations made by Canada and B.C. that the following should occur:

1. Relocation of logging from primary growth to secondary growth (Caracas Congress recommendation)
2. Avoidance of the "island mentality" in preservation (Caracas Congress)
3. Identification of biodiversity (Biodiversity Convention)

4. Invoking of the precautionary principle that we do not have to wait for scientific certainty that harm to biodiversity will occur through clear cut logging for us to ban clear cut logging and other similarly ecologically unsound practices (Biodiversity Convention)
5. Evaluate non-destructive use of the forests, which may be more profitable than destructive uses" (Agenda 21)

If the province were to live up to the legitimate expectations coming from international obligations, then Clayoquot Sound would be preserved.

It is those who act to prevent irreparable ecological harm that are prosecuted by the courts and those who act to contribute to irreparable ecological harm that have been protected by the courts through the granting of injunctions.

Joan Russow, 1230 St. Patrick St. Victoria, V8S 4Y4
604-380-2563. FAX-604- 385-0068

EXHIBIT

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as stewards of a vast and beautiful land, and as a people intimately connected to the environment, Canadians are aware of their environmental responsibilities." (Canada's National Report, Preface)

And further in the section on the "wilderness", the Canadian government stated

"As a small population with a large land mass, Canadians have access to relatively unspoiled wilderness areas rich in wildlife ... Canada has an international reputation as a beautiful, safe and mostly unspoiled country". (Canada's National Report, p.49)

The Provincial government, as a result of a request to the Ombudsman's office into the nature and extent of B.C.'s compliance with obligations from UNCED.(Gage & Russow), gave the following assurance to the senior investigator of resource issues in the Ombudsman's office:

From these meetings, as well as from additional discussions with senior staff from the Ministry of Forests and the Ministry of Environment, Lands and Parks, we have determined that BC intends to comply with the agreements signed at the UNCED in June 1992.

Canada signed (June, 1992) and ratified (Dec. 1992) the Biodiversity Convention. Although the convention will not be in force until December 29, 1993, Canada under article 18 of the Convention of Treaties is called upon to refrain from any activities that could jeopardize the fulfillment of the obligations under the Convention once the Convention is in force. External Affairs in a communique indicated that the usual protocol with international conventions is that, prior to signing the convention in areas of Provincial jurisdiction, there is a requirement to ensure that the provinces have enacted the required legislation that will enable Canada to comply with its obligations. In the Biodiversity Convention there is a requirement to "identify biodiversity" and to invoke the precautionary principle which requires that "one does not have to wait until there is scientific certainty that harm will be caused to biodiversity for one to take precautionary measures. These requirements suggest that to comply with the obligations B.C. should either have already enacted legislation that had accomplished the identification of biodiversity or have instituted a moratorium on logging of old growth so as to identify biodiversity before running the risk of losing it.

B.C. has yet to comply with the obligation under the Biodiversity Convention "to carry out an environmental review of anything that could harm biodiversity [i.e., clear-cut logging]; or under Agenda 21, to assess true environmental costs"; or to evaluate non-destructive use of forests; or to prevent activities on indigenous lands that could be harmful to the environment or culturally inappropriate...

Similarly, the Ministry of Parks and Environment and Ministry of Forests confirmed their intention to adhere to international obligations in a letter which indicated that under the aegis of CORE,

"We will be mindful of this Declaration [the Caracas Declaration : Parks Protected Areas and the Human Future, 1992] and its implications. Our objective will be to have a system of protected areas which we are proud to present to the world. " (March, 1992)

And through this commitment, the Ministries have agreed to the recommendations emanating from the Caracas Congress:

- Conserving Biodiversity

The congress urgently requested that all countries urgently undertake surveys to identify additional sites of critical importance for conservation of biological diversity, and wherever possible, accord total protection to them. Harvesting should be relocated from primary to secondary forests and tree plantations in previously deforested areas; or - where this is not possible - sustainable forest harvesting systems which favour natural species diversity should be developed and introduced. (8)

- Conservation on a regional scale

Protected areas have sometimes been seen as islands of nature and tranquility, surrounded by incompatible land uses. But the congress made it clear that such an "island mentality" is fatal in the long run. The congress recognized that it is unlikely that protected areas will be able to conserve biodiversity if they are surrounded by degraded habitats that limit gene-flow alter nutrient and water cycles and produce regional and global climate change that may lead to the final disappearance of these "island parks."

- Global efforts to conserve biological diversity.

"The loss of biodiversity has reached crisis proportion and if present trends continue up to 25 % of the world's species may be sentenced to extinction or suffer severe genetic depletion in the next several decades, accompanied by equally significant and alarming degradation of habitats and ecosystems. This loss of biological diversity is impoverishing the world of its genetic resources, its species, habitats and ecosystems.

All species deserve respect, regardless of their usefulness to humanity. This Principle was endorsed by the UN Assembly when it adopted the World Charter for nature in 1982. The loss of the living richness of the planet is dangerous , because of the environmental systems of the world support all life, and we do not know which are the key components in maintaining their essential functions.

With statements reflecting both the federal and provincial governments intention to fulfill international obligations, and with the extensive consultation between Canada and British Columbian governments that occurred prior to the signing of the Biodiversity Convention, can the citizens of British Columbia, not legitimately expect that British Columbia will comply with its international obligations? Through the common law doctrine the "Doctrine of Legitimate Expectation" the public has a right to be concerned about actions or omissions which indicate non-compliance with these obligations.

It would appear from the obligations made by Canada and B.C. that the following should occur:

1. Relocation of logging from primary growth to secondary growth (Caracas Congress recommendation)
2. Avoidance of the "island mentality" in preservation (Caracas Congress)
3. Identification of biodiversity (Biodiversity Convention)
4. Invoking of the precautionary principle that we do not have to wait for scientific certainty that harm to biodiversity will occur through clear cut logging for us to ban clear cut logging and other similarly ecologically unsound practices (Biodiversity Convention)
5. Evaluate non-destructive use of the forests, which may be more profitable than destructive uses (Agenda 21)

If the province were to live up to the legitimate expectations coming from international obligations, then Clayoquot Sound would be preserved.

It is those who act to prevent irreparable ecological harm that are prosecuted by the courts and those who act to contribute to irreparable ecological harm that have been protected by the courts through the granting of injunctions.

Joan Russow, 1230 St. Patrick St. Victoria, V8S 4Y4
604-380-2563. FAX-604- 385-0068

() **THAT** I did an analysis of obligations incurred under the Vienna Convention on Ozone Depletion and Under Various Protocols under the Convention

EXHIBIT
1993 October 15

() **THAT, in 1993, I compiled a document related to Ozone and International Resolutions, Obligations and Legally Binding Treaties**

Compiled by Joan Russow
Sessional Lecturer
Global Issues in Sustainability
Environmental Studies
University of Victoria

. Convention for the Protection of the Ozone Layer (1985)
2 Montreal Protocol on Substances that Deplete the Ozone Layer (Sept. 16, 1987) (MPSDOL)

1. Convention for the Protection of the Ozone Layer (Vienna, March 22, 1985) (CPOL)

Excerpts from the Convention

...

Aware of the potentially harmful impact on human health and the environment through modification of the ozone layer (CPOL)

... Mindful of the work and studies proceeding within both international and national organizations and, in particular, of the World Plan of Action on the Ozone Layer of United Nations Environment Programme (UNEP) (CPOL)

Mindful also of the precautionary measures for the protection of the ozone layer which have already been taken at the national and international levels. (CPOL)

Aware that measures to protect the ozone layer from modifications due to human activities require international co-operation and action, and should be based on relevant scientific and technical considerations, (CPOL)

...

Article 2

General Obligations

1. The Parties shall take appropriate measures in accordance with the provisions of this Convention and of those protocols in force to which they are party to protect human health and the environment against adverse effect resulting or likely to result from human activities which modify or are likely to modify the ozone layer. (CPOL)

2. To this end the Parties shall, in accordance with the means at their disposal and their capabilities:

(b) Adopt appropriate legislative or administrative measures and co-operate in harmonizing appropriate policies to control, limit, reduce or prevent human activities under their jurisdiction or control should it be found that these activities have or are likely to have adverse effects resulting from modification or likely modification of the ozone layer;

(c) Co-operate in the formulation of agreed measures, procedures and standards for the implementation of this convention, with a view to the adoption of protocols and annexes;

3. The provisions of this Convention shall in no way affect the right of Parties to adopt, in accordance with international law, domestic measures additional to those referred to in paragraphs 1 and 2 above, nor shall they affect additional domestic measures already taken by a Party, provided that these measures are not incompatible with their obligations under this Convention. (CPOL)

Article 3

Research and systematic observations

1. The Parties undertake, as appropriate, to initiate and co-operate in directly or through competent international bodies, the conduct of research and scientific assessments on:

a) The physical and chemical processes that may affect the ozone layer (CPOL)

b) The human health and other biological effects deriving from any modifications of the ozone layer, particularly those resulting from changes in ultra-violet solar radiation having biological effects (UV-B) (CPOL)

c) Climatic effects deriving from any modifications of the ozone layer; (CPOL)

- d) Effects deriving from any modifications of the ozone layer and any consequent change in UV-B radiation on natural and synthetic materials useful to mankind (CPOL)
- e) Substances, practices, processes and activities that may affect the ozone layer and their cumulative effects (CPOL)
- f) alternative substances and technologies (CPOL)
- g) Related socio-economic matters; (CPOL)

...

Article 6 ss 5

The United Nations, its specialized agencies and the *International Atomic Energy Agency*, as well as any State not party to this Convention, may be represented at meetings of the Conference of the Parties by observers. ... (CPOL)² Montreal Protocol on Substances that Deplete the Ozone Layer (Sept. 16, 1987) (MPSDOL)

excerpts from the protocol

... Mindful of their obligation under that Convention to take appropriate measures to protect human health and the environment against adverse effects resulting or likely to result from human activities which modify or are likely to modify the ozone layer, (MPSDOL)

Recognizing that world-wide emissions of certain substances can significantly deplete and otherwise modify the ozone layer in a manner that is likely to result in adverse effects on human health and the environment, (MPSDOL)

Conscious of the potential climatic effects of emissions of these substances, be based on relevant scientific knowledge, taking into account technical and economic considerations, (MPSDOL)

Determined to protect the ozone layer by taking precautionary measures to control equitably total global emissions of substances that deplete it, with the ultimate objective of their elimination on the basis of developments in scientific knowledge, taking into account technical and economic considerations, (MPSDOL)

Acknowledging that special provision is required to meet the needs of developing countries for these substances, (MPSDOL)

Noting the precautionary measures for controlling emissions of certain chlorofluorocarbons that have already been taken at national and regional levels.,

Considering the importance of promoting international co-operation in the research and development of science and technology relating to the control and reduction of emissions of substances that deplete the ozone layer, bearing in mind in particular the needs of developing countries, (MPSDOL) have agreed as follows:

Article 1

Definitions

Article 2 Control Measures

1. Each Party shall ensure that for the twelve-month period commencing on the first day of the seventh month following the date of the entry into force of this Protocol, and in each twelve-month period thereafter, its calculated level

of consumption of the controlled substances in Group 1 of Annex A does not exceed its calculated level of consumption in 1986. By the end of the same period, each Party producing one or more of these substances shall ensure that its calculated level of production of the substances does not exceed its calculated level of production in 1986, except that such level may have increased by no more than ten per cent based on the 1986 level. Such increase shall be permitted only so as to satisfy the basic domestic needs of the Parties (MPSDOL)

2. Each Party shall ensure that for the twelve-month period commencing on the first day of the thirty-seventh month following the date of the entry into force of this Protocol, and in each twelve-month period thereafter, its calculated level of consumption of the controlled substances listed in Group II of Annex A does not exceed its calculated level of consumption in 1986. Each Party producing one or more of these substances shall ensure that its calculated level of production of the substances does not exceed its calculated level of production in 1986, except that such level may have increased by no more than ten percent based on the 1986. Such increase shall be permitted only so as to satisfy the basic domestic needs of the Parties operating under Article 5 and for the purposes of *industrial rationalization* between Parties. The mechanisms for implementing these measures shall be decided by the Parties at their first meeting following the first scientific review. (MPSDOL)

3. Each Party shall ensure that for the period 1 July 1993 to 30 June 1994 and in each twelve-month period thereafter, its calculated level of consumption of the controlled substances in Group 1 of Annex A does not exceed, annually, eighty per cent of its calculated level of production in 1986. However, in order to satisfy the basic domestic needs of the Parties operating under Article 5 and for the purposes of *industrial rationalization* between Parties, its calculated level of production may exceed that limit by up to ten per cent of its calculated level of production in 1986. (MPSDOL)

4. Each Party shall ensure that the period 1 July 1998 to 30 June 1999, and in each twelve-month period thereafter, its calculated level of consumption of the controlled substances in Group I of Annex A does not exceed, annually, fifty per cent of its calculated level of consumption in 1986. Each Party producing one or more of these substances shall, for the same periods, ensure that its calculated level of production of the substances does not exceed, annually, fifty per cent of its calculated level of production in 1986. However, in order to satisfy the *basic domestic needs* of the Parties operating under Article 5 and for the purposes of *industrial rationalization* between Parties, its calculated level of production may exceed that limit by up to fifteen percent of its calculated level of production in 1986. This paragraph will apply unless the Parties decide otherwise at a meeting by a two-thirds majority of Parties present and voting, representing at least two-thirds of the total calculated level of consumption of these substances of the Parties. This decision shall be considered and made in the light of the assessments referred to in Article 6. (MPSDOL)

5. Any Party whose calculated level of production in 1986 of the controlled substances in Group I of Annex A was less than twenty-five kilotons may, for the purposes of *industrial rationalization*, transfer to or receive from any other Party, production in excess of the limits set out in paragraphs 1, 3 and 4 provided that the total combined calculated levels of production of the Parties concerned does not exceed the production limits set out in this Article. Any transfer of such production shall be notified to the secretariat, no later than the time of the transfer. (MPSDOL)

6. Any Party not operating under Article 5, that has facilities for the production of controlled substances under construction, or contracted for, prior to 16 September 1987, and provided for in national legislation prior to 1 January 1987, *may add the production from such facilities to its 1986 production of such substances for the purposes of determining its calculated level of production for 1986, provided that such facilities are completed by 31 December 1990 and that such production does not raise that Party's annual calculated level of consumption of the controlled substances above 0.5 kilograms per capita.* (MPSDOL)

7. Any transfer of production pursuant to paragraph 5 or any addition of production pursuant to paragraph 6 shall be notified to the secretariat, no later than the time of the transfer or addition. (MPSDOL)

8. (a) Any Parties which are Member States of a regional economic integration organization as defined in Article 1 (6) of the convention may agree that they shall jointly fulfill their obligations respecting consumption under this Article provided that their total combined calculated level of consumption does not exceed the levels required by this Article. (MPSDOL)

10 (a) Based on the assessments made pursuant to Article 6 of this Protocol and in accordance with the procedure set out in Article 9 of the Convention, the Parties may decide: (MPSDOL)

(i) whether any substances, and if so which should be added to or removed from any annex to this Protocol; and (MPSDOL)

(ii) the mechanism, scope and timing of the control measures that should apply to those substances; (MPSDOL)

b) Any such decision shall become effective, provided that it has been accepted by a two-thirds majority vote of the Parties present and voting.

11. Notwithstanding the provisions contained in this Article, parties may take more stringent measures than those required by this Article.

Article 3

Calculation of Control Levels

for the purposes of Articles 2 and 5, each Party shall, for each Group of substances in Annex A, determine its calculated levels of:

a) production by:

(i) multiplying its annual production of each controlled substance by the ozone depleting potential specified in respect of it in Annex A; and

(ii) adding together, for each such Group, the resulting figures;

(b) imports and export, respectively, by following, mutatis mutandis, the procedure set out in sub-paragraph (a); and
(c) consumption by adding together its calculated levels of production and imports and subtracting its calculated level of exports as determined in accordance with subparagraphs (a) and (b). However, beginning on 1 January 1993, any export of controlled substances to non-Parties shall not be subtracted in calculating the consumption level of the exporting Party.
(MPSDOL)

Article 4

Control of Trade with Non-Parties

1. Within one year of the entry into force of this Protocol, each Party *shall ban the import of controlled substances from any State not party to this protocol*
(MPSDOL)

...

Article 5

Special Situation of Developing Countries

1. Any Party that is a developing country and whose annual calculated level of consumption of the controlled substances is less than 0.3 kilograms per capita on the date of the entry into force of the Protocol for it, or any time thereafter within ten years of the date of entry into force of the Protocol shall, in order to meet *its basic domestic needs*, be entitled to *delay its compliance* with the control measures set out in paragraphs 1 to 4 of Article 2 by ten years after that specified in those paragraphs. However, such Party shall not exceed an annual calculated level of consumption of 0.3 kilograms per capita. Any such Party shall be entitled to use either the average of this annual calculated level of consumption of the period 1995 to 1997 inclusive or a calculated level of consumption of 0.3 kilograms per capita, whichever is the lower, as the basis for its compliance with the control measures. (MPSDOL)

2. The Parties undertake to facilitate access to environmentally safe alternative substances and technology for Parties that are developing countries and assist them to make expeditious use of such alternatives.
(MPSDOL)

Article 6

Assessment and Review of Control Measures

Article 7

Reporting of Data

1. Each Party shall provide to the secretariat, within three months of becoming a Party, statistical data on its production, imports and exports of each of the controlled substances for the year 1986, or the best possible estimates of such data where actual data are not available. (MPSDOL)

2. Each Party shall provide statistical data to the secretariat on its annual production (with separate data on amounts destroyed by technologies to be approved by the Parties), imports, and exports to Parties and non-Parties, respectively, of such substances for the year during which it becomes a Party and for each year thereafter. It shall forward the data no later than nine months after the end of the year to which the data relate. (MPSDOL)

Article 8

Non-compliance

the Parties, at their first meeting, shall consider and approve procedures and institutional mechanisms for determining non-compliance with the provisions of this Protocol and for the treatment of Parties found to be in non-compliance. (MPSDOL)

Article 9

Research, Development, Public Awareness and Exchange of Information

1. The Parties shall co-operate, consistent with their national laws, regulations and practices and taking into account in particular the needs of developing countries, in promoting, directly or through competent international bodies, research, development and exchange of information on: (MPSDOL)

2. The Parties, individually, jointly or through competent international bodies, shall co-operate in promoting public awareness of the environmental effects of the emissions of controlled substances and other substances that deplete the ozone layer. (MPSDOL)

3. Within two years of the entry into force of this Protocol and every two years thereafter, each Party shall submit to the secretariat a summary of the activities it has conducted pursuant to this Article. (MPSDOL)

Article 10

Technical assistance

Article 11

Meeting of the Parties

Article 12

Secretariat

Article 13

Financial Provisions

Article 14

Relationship of this Protocol to the Convention

Article 15

Article 16

Entry into Force

1. This Protocol shall enter into force on January 1989...

Article 17-20

Annex A

Controlled Substances

Group	Substance	Ozone Depleting Potential*
Group 1	CFCl ₃ (CFC-11)	1.0
	CF ₂ Cl ₂ (CFC-12)	1.0
	C ₂ F ₃ Cl ₃ (CFC-113)	.8
	C ₂ F ₃ Cl ₃ (CFC-114)	1.0
	C ₂ F ₅ Cl (CFC-115)	.6

Group II	CF ₂ BrCl (halon-1211)	3.0
	C ₂ F ₄ Br ₂ (halon-2402)	to be determined.

In conclusion, it would appear that the precautionary principle applies to both planned and existing activities. It applies to the case of climate change where there is no scientific certainty, as yet, that harm will occur. The "cautionary" principle should apply when there is scientific certainty that harm will occur i.e. in the case of ozone depletion. However there are cases where there is scientific certainty that harm will occur, but the proponents of the activity that could cause the potential harm claim that there is scientific uncertainty i.e. nuclear energy. And even though nuclear energy could fulfill the more stringent condition for the application of the "caution" principle, the precautionary principle is certainly not followed.

3. Resolution for UNCED Path to Brazil Conference

[Whereas climate change and ozone depletion are the most urgent and critical threats to the biosphere and because Brazil' 92 may offer one of the last opportunities for the international community to address these problems in a manner consistent with their magnitude,] [could this be included in notes of resolution 1, because throughout this document there appears to be a recognition that all the global issues are urgent enough to be addressed concurrently??? nuclear, inequity, overconsumption, population, deforestation etc.] (RFB)

Resolution 2

To establish a second global regime similar to the one above and also empowered by an international treaty, committing all countries to agree to banning all further use of CFC and other major Halons, and to halting the production of CFC and other major Halons, to insure that replacements are environmentally and toxicologically benign. Sufficient additional funding should be provided to the Third World countries to enable them to comply. (RFB)

Note 2

The new information on the rate of ozone depletion indicates that even if we could fulfill the goals of the Montreal Accord, we will continue to face increased ozone depletion. Moreover, unanimous consent to the Accord has not yet been achieved and loopholes persist. Nor can we take solace from scientific findings, since the models used have consistently failed to predict the actual rate of depletion. Countries like Sweden have proved that a total ban on CFCs by the year 2000 is feasible, economically and technically. {does this not weaken the resolution} (RFB)

We must extend this ban to all major halogenated methanes. Also CFCs are both the principle ozone-depleting gas and contribute significantly to climate change. There are only some 25 commercial producers in the world so the problem of a complete ban is manageable. The cost of not acting will be far greater than the cost of conversion to _____ substitutes. But we must also make certain that equity considerations are factored into this global account. (RFB)

Nobel Laureate

- to protect and preserve the integrity of the biosphere that sustains all life by establishing adequate global regulations, penalties and enforcement mechanisms to prevent human induced global warming, depletion of the ozone layer, destruction of forests and fisheries, pollution of air and water, irreversible loss of species, and release of hazardous substances into the environment; (NLSU)

Castro

They have poisoned oceans and rivers and contaminated the air; they have weakened and opened holes in the ozone layer and saturated the atmosphere with gases that impair climatic conditions with catastrophic effects that we are beginning to suffer. (CA)

UN framework Convention

Recalling further the Vienna Convention for the Protection of the Ozone Layer, 1985, and the Montreal Protocol on Substances that Deplete the Ozone Layer, 1987, as adjusted and amended on 29 June 1990, (UNFCCC)

9.2. It is recognized that many of the issues discussed in this chapter are also addressed in such international agreements as the 1985 Vienna Convention for the Protection of the Ozone Layer, the 1987 Montreal Protocol on Substances that Deplete the Ozone Layer as amended, the 1992 Framework Convention on Climate Change, and other international, including regional, instruments. In the case of activities covered by such agreements, it is understood that the recommendations contained in this chapter do not oblige any government to take measures which exceed the provisions of these legal instruments. However, within the framework of this chapter, governments are free to carry out additional measures which are consistent with those legal instruments. (POA)

9.5. The present chapter includes the following four programme areas:

a. Addressing the uncertainties: improving the scientific basis for decision-making; b. Promoting sustainable development:

i. Energy development, efficiency and consumption;

ii. Transportation;

iii. Industrial development;

iv. Terrestrial and marine resource development and land use;

c. Preventing stratospheric ozone depletion;

9.6. Concern about climate change and climate variability, air pollution and ozone depletion has created new demands for scientific, economic and social information to reduce the remaining uncertainties in these fields. Better understanding and prediction of the various properties of the atmosphere and of the affected ecosystems, as well as health impacts and their interactions with socio-economic factors, are needed. (POA)

9.13" Protection of the atmosphere can be enhanced ...replacing chlorofluorocarbons and other ozone-depleting substances with appropriate substitutes, as well as by reducing wastes and by-products." (9.13, Atmosphere)

9.16. Industry is essential for the production of goods and services and is a major source of employment and income, and industrial development as such is essential for economic growth. At the same time, industry is a major resource and materials user and consequently industrial activities result in emissions into the atmosphere and the environment as a whole. Protection of the atmosphere can be enhanced, inter alia, by increasing resource and materials efficiency in industry, installing or improving pollution abatement technologies and replacing chlorofluorocarbons (CFCs) and other ozone-depleting

substances with appropriate substitutes, as well as by reducing wastes and by-products. (POA)

" Analysis of recent scientific data has confirmed the growing concern about the continuing depletion of the Earth's stratospheric ozone layer by reactive chlorine and bromine from man-made CFC's, halons and related substances. While the 1985 Vienna Convention for the Protection of the Ozone Layer and the 1987 Montreal Protocol on Substances that Deplete the Ozone Layer (as amended in London in 1990) were important steps in international action, the total chlorine loading of the atmosphere of ozone-depleting substances has continued to rise. This can be changed through compliance with the control measures identified within the Protocol" (9.19 Atmosphere)

9.21. Governments at the appropriate level, with the cooperation of the relevant United Nations bodies and, as appropriate, intergovernmental and non-governmental organizations, and the private sector, should:

a. In accordance with national socio-economic development and environment priorities, evaluate and, as appropriate, promote cost effective policies or programmes, including administrative, social and economic measures, in order to encourage environmentally sound land-use practices.(POA)

b. Implement policies and programmes that will discourage inappropriate and polluting land-use practices and promote sustainable utilization of terrestrial and marine resources; (POA)

c. Consider promoting the development and use of terrestrial and marine resources and land-use practices that will be more resilient to atmospheric changes and fluctuations; (POA)

d. Promote sustainable management and cooperation in the conservation and enhancement, as appropriate, of sinks and reservoirs of greenhouse gases, including biomass, forests and oceans, as well as other terrestrial, coastal and marine ecosystems. (POA)

C. Preventing stratospheric ozone depletion (POA) 9.21.

9.22. Analysis of recent scientific data has confirmed the growing concern about the continuing depletion of the Earth's stratospheric ozone layer by reactive chlorine and bromine from man-made CFCs, halons and related substances. While the 1985 Vienna Convention for the Protection of the Ozone Layer and the 1987 Montreal Protocol on Substances that Deplete the Ozone Layer (as amended in London in 1990) were important steps in international action, the total chlorine loading of the atmosphere of ozone-depleting substances has continued to rise. This can be changed through compliance with the control measures identified within the Protocol. (POA)

Objectives

9.23 a.To realize the objectives defined in the Vienna Convention and the Montreal Protocol and its 1990 amendments, including the consideration in those instruments of the special needs and conditions of the developing countries and the availability to them of alternatives to substances that deplete the ozone layer. Technologies and natural

products that reduce demand for these substances should be encouraged; (POA)

- b. To develop strategies aimed at mitigating the adverse effects of ultraviolet radiation reaching the Earth's surface as a consequence of depletion and modification of the stratospheric ozone layer. (POA)

9.24 a. Ratify, accept or approve the Montreal Protocol and its 1990 amendments; pay their contributions towards the Vienna/Montreal trust funds and the interim multilateral ozone fund promptly; and contribute, as appropriate, towards ongoing efforts under the Montreal Protocol and its implementing mechanisms, including making available substitutes for CFCs and other ozone-depleting substances and facilitating the transfer of the corresponding technologies to developing countries in order to enable them to comply with the obligations of the Protocol; (b. Support further expansion of the Global Ozone Observing System by facilitating - through bilateral and multilateral funding - the establishment and operation of additional systematic observation stations, especially in the tropical belt in the southern hemisphere. (POA)

- c. Participate actively in the continuous assessment of scientific information and the health and environmental effects, as well as of the technological/economic implications of stratospheric ozone depletion; and consider further actions that prove warranted and feasible on the basis of these assessments; (POA)

- d. Based on the results of research on the effects of the additional ultraviolet radiation reaching the Earth's surface, consider taking appropriate remedial measures in the fields of human health, agriculture and marine environment; (POA)

- e. Replace CFCs and other ozone-depleting substances, consistent with the Montreal Protocol, recognizing that a replacement's suitability should be evaluated holistically and not simply based on its contribution to solving one atmospheric or environmental problem. (POA)

The objective of this programme area is to undertake research to determine the effects of increased ultraviolet radiation resulting from stratospheric ozone layer depletion on the Earth's surface, and on plant and animal life in affected regions, as well as its impact on agriculture and to develop, as appropriate, strategies aimed at mitigating its adverse effects. (14.103 Agriculture)

World Scientists Warning to Humanity

The Atmosphere

Stratospheric ozone depletion threatens us with enhanced ultra-violet radiation at the earth's surface, which can be damaging or lethal to many life

forms. Air pollution near ground level and acid precipitation, are already causing widespread injury to humans, forests and crops. (WSWH)

THAT in 1993 I Drafted and circulated a Press advisory (December 1993) Reverse onus principle supports a legislated moratorium on genetically modified organisms (GMOS). Circulated and sent to the Meeting of the Parties, Convention on Biological Diversity

() **THAT** I wrote a paper in November 1993, about BC's obligations under the Convention on Biological Diversity
EXHIBIT

November 1993 Background to British Columbia's obligations under the treaty

1. B.C. has failed to carry out an environmental impact assessment of proposed projects that are likely to have significant adverse effects

- Since the signing of the Convention, B.C. has refused to carry out an environmental impact assessment of forest practices that could have impact on biodiversity. In the Convention B.C. was required to do the following:

Introduce appropriate procedures requiring environmental impact assessment of its proposed projects that are likely to have significant adverse effects on biological diversity with a view to avoiding or minimizing such effects and, where appropriate, allow for public participation in such procedures; (Article 14 a)

2. B.C. has failed to invoke the precautionary principle and call for the banning of clear-cut logging and other ecologically unsound practices that destroy biodiversity

- Canada has undertaken international obligations related to biodiversity; and
- 'Biodiversity is defined in the Convention as

the variability among living organisms from all sources...and the ecological complexes of which they are part; this includes diversity within species, between species and of ecosystems."

- 'Ecosystem' is defined as

a dynamic complex of plant, animal and micro-organism communities and their non-living environment interacting as a functional unit.

- There is sufficient evidence that clear-cut logging destroys biodiversity as defined above,

- The practice of clear-cut logging destroys the prospect of forest regeneration and promotes erosion and permanent loss of forest and habitat

- One of the obligations of the Convention on Biological Diversity is to invoke the Precautionary Principle related to biodiversity:

...where there is a threat of significant reduction or loss of biological diversity, lack of full scientific certainty should not be used as a reason for postponing measures to avoid or minimize such a threat (Convention on Biological Diversity)

B.C. does not have to wait until there is "scientific certainty" that clear-cut logging and other ecologically unsound practices "contribute to the reduction and loss of biodiversity for British Columbia to "avoid and minimize such as threat' by banning clear-cut logging.

3. British Columbia had not sufficiently identified biodiversity at the time of signing the Convention, and British Columbia has continued to permit practices that contribute to the loss of biodiversity

- Under the Convention the parties are required "to identify biodiversity"

Identify components of biological diversity important for its conservation ...
(Article 7, a)

4. To Protect Biodiversity

Canada's obligations under the Convention of Treaties

Under the Convention of Treaties, Canada is obliged to undertake the following obligations when it signs a Convention.

1. In Article 18

UN Convention for the Protection of Cultural and Natural Heritage and agreed to live up to the provisions of the treaty, and British Columbia is bound by the obligations under the Biodiversity Convention Treaty

Russow notes that both the Biodiversity Convention and the Framework convention on Climate Change have been violated through the continued clearcutting of Clayoquot sound"

The Friends of Clayoquot are supporting this application and will hold a press conference, to launch the "injunction appeal" on the grounds of non-compliance with international law.

Whereas Canada has signed (June 5, 1992) and ratified (December, 1992) the Biodiversity Convention Treaty and agreed to live up to the provisions of the treaty, and British Columbia is bound by the obligations under the Biodiversity Convention Treaty

Whereas "clearcutting and other 'corporate' forest practices are a significant threat to biodiversity and definitely contravene Canada's and B.C.'s international (global) obligations

Be it resolved that the B.C. government immediately stop permitting the cutting of Ancient Forests on publicly owned land in order to preserve the ecological integrity of our future Ancient Growth Eco-Systems, and thus fulfill its obligations to identify, to prevent the reduction and to conserve biodiversity under the Biodiversity Convention Treaty

BACKGROUND ON EVIDENCE OF B. C. STATED COMMITMENT TO THE BIODIVERSITY CONVENTION

Prior to August, 1992, the Hon. Moe Sihota, the then Minister Responsible for Constitutional Affairs communicated to the Hon. Barbara McDougall, Minister of State for External Affairs for Canada B.C.'s support for the Convention on Biological Diversity. ("UNCED Follow-up: Endorsement of International Conventions on Climate Change and Biological Diversity," November 4, 1992)

GIVEN that following the Tri-council Meeting in September 21, 1992, the Hon. John Cashore communicated to the Hon. Barbara McDougall, Minister of State for External Affairs, B.C.'s support for the ratification of the Convention by the end of 1992 ("UNCED Follow-up: Endorsement of International Conventions on Climate Change and Biological Diversity" November 4, 1992)

AWARE that "Canada's position on the two conventions was developed from an intensive series of consultations with key stakeholder groups in Canada including provincial and territorial Ministries of Environment, Energy and forests. ("UNCED Follow-up: Endorsement of International Conventions on Climate Change and Biological Diversity," November 4, 1992)

NOTING that the government of Canada, on behalf of the citizens of Canada, has signed the Convention on Biological Diversity in June 1992, and ratified the Convention in December 1992. Prior to signing and ratifying the Convention the federal government consulted with the provinces to ensure that the necessary legislation was in place to ensure compliance with obligations under the Convention. The convention came into force, December 1993.

UNDERSTANDING that the requirement that "Canada will not normally become party to an international agreement until necessary legislation has been enacted in the provinces" (Communique, External Affairs, 1982), and

CONCURRING that Canada, explicitly or by necessary implication undertook to fulfill this requirement, as it relates to the object and purpose enshrined in the Biodiversity Convention which it signed (June, 1992) and ratified (Dec, 1992) and

RECOGNIZING that Canada has signed and ratified Article 18 of the Vienna Convention Treaty which stipulates that there is an "obligation not to defeat the object and purpose of a treaty prior to the entry into force"

Article 27 Internal law and observance of treaties

A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty. This rule is without prejudice to article 46

Article 29 territorial scope of treaties

Unless a different intention appears for the treaty or is otherwise established, a treaty is binding upon each party in respect of its entire territory.

• INTERPRETATION OF THE CONVENTION

GIVEN that under Interpretation of Treaties Article 31 Vienna Convention of Treaties a treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.

CONCURRING that provisions in the Biodiversity Convention have direct application to practices and activities throughout British Columbia; practices and activities that have continued since the signing of the Biodiversity Convention

The International Affairs Caucus of the British Columbia Environmental Network understands that from the ordinary meaning of the Convention the following practices and activities occurring in British Columbia are not in compliance with legal obligations undertaken by British Columbia under the Convention on Biological Diversity

- Understanding there is sufficient scientific evidence that policies and practices of corporate logging, such as clearcutting and other ecologically unsound practices, pose significant threats to biological diversity, and
- Noting that the Biodiversity Convention Treaty calls upon states to invoke the precautionary principle, "which reads

Where there is a threat of significant reduction or loss of biological diversity, lack of full scientific certainty should not be used as a reason for postponing measures to avoid or minimize such a threat.

Whereas the biodiversity in original growth forests has not been identified as required under the Biodiversity Convention Treaty,

Whereas British Columbia has failed to carry out an environmental impact assessment of projects that are likely to have significant adverse effects on biological diversity

BE IT RESOLVED THAT FOR BRITISH COLUMBIA TO COMPLY WITH THE BIODIVERSITY CONVENTION TREATY THAT ALL LOGGING CEASE IN OLD GROWTH TEMPERATE RAINFORESTS, AND THAT CLEARCUTTING AND ECOLOGICALLY UNSOUND PRACTICES BE TERMINATED IMMEDIATELY, AND THAT BRITISH COLUMBIA TAKE STEPS TO TRANSITION INTO A JOB-BASED, FIBRE BASED ECONOMY.

on the following grounds

1. that Judge Drake failed to consider two of the three grounds for rescinding the injunction
2. Judge Drake failed to recognize that one of the arguments relating to international agreements did refer to a Convention that has been signed and ratified in Canada
3. that Judge Drakes decision was dependent on the leave to appeal in Vancouver

The leave to appeal was served on John Hunter, on October 21, 1993

John Hunter then filed a "Notice of Appearance" on November 8, 1993

John Hunter subsequently wrote to me suggesting that I attempt to appear at the same time as the other injunction appeals will be heard January 19-21

I responded to John Hunter, that, at that time I would be in Buenos Aires, serving on an international commission on education and communication.

On December 31, I was informed that it would be possible to appear through a lawyer

On January 4 I have submitted the leave to appeal book and the factum

It is my understanding that the appropriate time to hear the appeal, if granted, would be at the same time as the other appeals.

~1994

() THAT on Dec 10 1994, I responded to the call to NGO's to have input into developing criteria for NGO participation. Since UNCED and increasing number of industry front groups were posing as NGOs.

EXHIBIT

Ian Johnson
GEF Secretariat
FAX 202-522-3240

December 10, 1994

Dear Dr. Johnson,

In the GEF objectives, industry "NGOs are included in this "open transparent consultation policy." That would mean that groups like "share B.C." and the "Canadian Forest Association" etc.—front groups for the forest industry will be included, and quite possibly will be the ones that will dominate the consultation process. If these groups are included, a mockery will be made of NGO involvement. In section 27.3, of Agenda 21, NGOs are described in a way that would exclude industry-front groups:

Non-governmental organizations, including those non-profit organizations representing groups addressed in the present section of Agenda 21, possess well-established and diverse experience, expertise and capacity in fields which will be of particular importance to the implementation and review of environmentally sound and socially responsible sustainable development, as envisaged throughout Agenda 21. The community of non-governmental organizations, therefore, offers a global network that should be tapped, enabled and strengthened in support of efforts to achieve these common goals

It could be argued that the "industry front" groups, though classified under the Society Act as "non-profit", are essentially in intent profit-making organizations because of their role in promoting industry in the guise of public concern. Similarly, it could be argued that their absence of knowledge of "environmentally sound" and "socially responsible" S.D could also exclude them from being justifiably categorized as NGOs within the meaning of section 27. 3.

At UNCED, NGOs were vociferously opposed to the inclusion of these front groups in the category of NGOs. It was also brought to my attention that at the recent Conference of the Parties to the Convention on Biological Diversity, objections were raised by NGOs about the participation of Industry-front groups, as NGOs.

Without a clarification of this distinction between genuinely non-profit NGOs, and industry front groups, the participation of NGOs in the GEF process will be brought into question.

I am a member of the IUCN Commission on Education and Communication, and I recall from the January 1994 Annual General Meeting of the IUCN in Buenos Aires, there was discussion about the IUCN Mission statement where it was decided to include "conserving nature and promoting equitable and ecologically sustainable use." Perhaps by moving away from the term "sustainable development", some of the front groups could be excluded.

I have been in contact with Networks and Associations to determine what criteria have been used for excluding industry-front groups. I think it may be possible to either draw up a set of criteria that would exclude these groups, or have as a basis for participation as an NGO, a form of Covenant or Charter which would draw upon as a minimum principles agreed to internationally through UN resolutions— assembly resolutions and globally adopted agreements, treaties, Conventions; and international customary law. (The ERA Ecological Rights Association has drafted a Charter which draws upon these principles). I participated in the final drafting of the NGO Earth Charter at the Global Forum, and some of the principles from the NGO Earth Charter have been incorporated in the ERA Charter.

I am involved in a Global Compliance Research Project which will be carrying out a content analysis of a wide range of international documents related to human rights, environment, peace, equity and social justice for the UN Conference in Beijing. Additional concepts and principles could emerge from this research and be included in a Charter.

Yours Sincerely,

Joan Russow

() THAT in January 1994 I filed the Leave to appeal

() THAT in 1992 to 1994 , I sought, through the courts to overturn the injunction in Clayoquot Sound; that I argued that the Judge had failed to take into consideration Canada's international obligations and that the BC government was bound by the Convention on Biological Diversity and the Canadian government was in contravention of its obligations because of the actions in BC. I also argued that an injunction is an equitable remedy that moves with time and circumstance, and that the intention of an injunction was to prevent irreparable harm not to prevent those who strive to prevent irreparable harm from preventing harm.

EXHIBIT

APPEAL FROM FILE # C916306

APPEAL NO. VO1984

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PART III. MEMORANDUM OF ARGUMENT:

A. In the hearing of August 26, 1993, there was a failure to bring to the attention of the Honourable Mr. Justice Hall that the granting of the injunction could contribute to non-compliance with international obligations of Canada and its Courts, and that, in the September 15, 1993 application to rescind the injunction, the Honourable Mr. Justice Drake erred in his assessment of the relevance of international law. PP. 13 — 47 (#25 — #122). TAB 3

- Performance of the treaty in good faith by ensuring the necessary conditions are in place for its performance of the treaty (Article 31, Convention of Law of Treaties)
- International customary law affirmation of requirement to enact the necessary legislation
- Affirmation of a requirement to enact necessary legislation prior to signing
- Provisions for implementing legislation when subject under Provincial jurisdiction
- All levels of Canadian governments, whether federal or provincial, and whether legislative, executive or judicial should endeavour in good faith to comply with treaties
- Principles of guidance from relevant cases from High Court of Australia
- Applicability of section in the Convention on the Law of Treaties on not defeating purpose of treaty from moment of signing (Article 18)
- Applicability of the states being bound not to create the impossibility of performance Article 61
- Consideration of legally binding Conventions
- Failure of federal government to ensure that the treaty obligations would be
- Labour Convention case distinguished
- Evidence of consultation with Provinces
- Criteria derived from the Labour Convention Case for what would constitute "Consultation" with province
- Biodiversity and Climate Change issues considered under residuary powers
- Criteria for inclusion under section 91 residuary powers
- Canada has been obliged not to invoke internal law to justify failure to perform international obligations
- Canada has been in non-compliance since June 1992 because B.C. forest practices have been in contravention of provisions in the Conventions, and has defeated the purposes of the Conventions
- B.C. government applying for an injunction and the Courts granting this injunction which had the result of permitting the continuation of practices that are in violation of the Biodiversity and Climate Change Convention, the courts have inadvertently encouraged non-compliance with international law
- Canada is bound throughout its territory [including the provinces and territories]
- Applicability of section in the Convention on the Law of Treaties on internal law not being invoked to justify non-compliance with obligations
- Failing to identify Biodiversity, failure to carry out an environmental assessment, and failure to invoke the precautionary principles and protect carbon sinks

Canada, through B.C. 's not fulfilling its duty to identify, protect and conserve natural heritage of outstanding universal value, such as Coastal temperate rainforest areas like Clayoquot Sound • Canada since 1972 has failed to discharge its obligation to protect the natural heritage of outstanding universal value for future generations • IUCN condemnation of forest practices and lack of adequate preservation of coastal temperate rainforests • Applicability of the Common Law Doctrine of Legitimate Expectations • Expectations related to fulfilling of obligations under globally adopted United Nations Agreements and resolutions • Non-compliance with globally adopted agreements: Caracas Declaration and Agenda 21

B. This case also addresses the contempt for statutory law that has been demonstrated by industry, and in particular MacMillan Bloedel, in its non-compliance with statutory law, and by governments in their failure to enforce statutory law, particularly in relation to tree farm license (in the manner of a profit a prendre property right claimed by MacMillan Bloedel)

PP. 48 — 53 (#123— #136). TAB 4

- B.C. has not only used internal law — the granting of injunctions to justify non compliance to international obligations but has failed to invoke its own internal law to prevent violations of international obligations • MacMillan Bloedel in violation of statutory law • Evidence of violations of forest Act and failure of government and courts to enforce statutory law failure to invoke Sections of the Forest Act
- MacMillan Bloedel was aware of alternative economically viable methods of selection logging which would have enabled Mac Milan Bloedel to have fulfilled its obligations under the Forest Act and thus its obligations under the TFL which they claim bestows a property right • MacMillan Bloedel has been convicted under section 33 of the Federal fisheries Act for depositing deleterious substances which caused destruction to fish Habitat • Evidence of type of violations occurring throughout TFL •

Summary of the findings of the Tripp report which was entitled *The Application and Effectiveness of the Coastal Fisheries forestry guidelines in selected cut blocks on Vancouver Island* • Evidence of violations of the Forest Act, collected by the Valhalla Wilderness Society • Evidence through Forest Watch that MacMillan Bloedel violating Forest Act in Clayoquot • Failure to assess the costs of past ecological damage in assessing compensation for taking areas out of TFL • Non-fulfillment of condition of the granting of the license is that logging has to be "sustained"; evidence from leaked document from Inventory Branch of the Ministry of Forests demonstrating MacMillan Bloedel overestimating inventory by over 40% in Queen Charlottes cut block • Given that MacMillan Bloedel has been in violation over the years of many sections of the Forest Act, Waste Management Act and the Fisheries Act, MacMillan Bloedel has not fulfilled the conditions of the TFL under the Forest Act, and thus the contracting party has failed to perform its part of the contract. In this case it would be inappropriate to recognize that MacMillan Bloedel has a property right in the nature of a "profit a • Evidence the Court would recognize that a right cannot be claimed by one who has not fulfilled the responsibilities contingent upon that right.

C. The appeal will rely upon a realistic and objective evaluation of equity. In particular the use of an equitable remedy such as an injunction to justify non-performance of provincial and federal statutory law and to justify non-performance of international legal obligations, and international customary law.

PP. 54 — 58 (#136— #147). TAB 5

Evidence will be submitted that the injunction is an equitable remedy that has been misapplied in the Clayoquot case. Equity could never countenance the destruction of life rearing capacity and life forms in its trust on a massive scale with no genuine regard for future generations • The remedy [of injunction] of course, is an equitable one. "The exercise of the equitable jurisdiction is not to be restricted by the straitjacket of rigid rules but is to be based on broad principles of justice and convenience, equity regarding the substance and not merely the facade or the shadow. It moves with time and circumstances. (Justice J.A. Norris) • The requirement to preserve our environmental heritage and the requirement to save a representative sample of natural ecosystems for future generations have been recognized and have become part of international customary law • An equitable remedy— an injunction, is being used to prosecute citizens of criminal contempt when the justification for the granting of this equitable remedy is still being questioned by the courts • The "impossibility avoidance" or "the avoidance of a disappearing object principle": (not having object disappear while object is under consideration). This principle is enunciated as follows: claimant will not find at the end of a successful trial that the subject matter is gone • Embodiment of a principle of international customary law which is eloquently stated in the Vienna Convention on the Law of Treaties (Article 18 and 61): a state is obliged to "not defeat the object and purpose of a treaty prior to the entry into force" and not to make performance of the treaty impossible • The granting of the injunction would be in violation of the above principle because proceeding with logging when the logging could and would defeat the purpose of any treaty protecting the "ecological rights" within the public trust would defeat the purpose of the treaty • Implications of the principle ("impossibility avoidance" or "the avoidance of a disappearing object principle") should be considered in relation to the Public Trust Doctrine (Friends Patrai Doctrine) • Requirement to take into account the costs of any ecological consequences is a particularly relevant consideration in assessing "irreparable harm" in injunctions • An advisory opinion from the International Court of Law is going to be sought to determine whether Canada, through the actions of B.C. has been in violation of the Biodiversity Convention since the signing of the Convention in June 1992. Until this case is heard nothing should be done on crown lands which could diminish the value of the public trust rights • Since MacMillan Bloedel has been in violation of statutory law as well as international law it should not be able to benefit from the granting of an equitable remedy such as an injunction • Violations of guarantees in the International Covenant on Civil and Political Rights have occurred in the Clayoquot injunction trials (one Judge in response to a Clayoquot Arrestee's citing of a section from the International Covenant on Civil and Political Rights was "that sounds like some international something or other") • When all domestic remedies fail redress can be sought through the Optional Protocol of the International Covenant on Civil and Political Rights

International legally binding agreements:

Globally adopted Resolutions, Charters and Declarations:

NGO/State Resolutions:

Statutory Law:

Government Documents and Correspondence:

Reports:

Doctrines:

Authors cited:

Cases considered:

Cases referred to:

PART 1 -STATEMENT OF FACTS

1. This is an application for Leave to Appeal Mr. Justice Drake's judgment in which he dismissed the Appellant's application to rescind the injunction that was extended by Mr. Justice Hall.
2. August 26, 1993 Mr. Justice Hall dismissed the two applications and granted the application of MacMillan Bloedel to extend the injunction.
3. September 15, 1993 Dr. Betty Kleiman and Joan Russow made an application to rescind the Clayoquot injunction.
4. September 17, 1993 Mr. Justice Drake dismissed the application.
5. October 21, 1993 Russow served a notice of leave to appeal Mr. Justice Drake's decision on MacMillan Bloedel.
6. November 8, 1993 MacMillan Bloedel filed a "Notice of appearance"
7. December 1993 Russow received correspondence from John Hunter, lawyer for MacMillan Bloedel about participating in the Appeal that would be heard in Vancouver in late January. Russow informed MacMillan Bloedel that she was presenting a paper at the IUCN Annual General Meeting as a member of the IUCN Commission on Education and Communication, and consequently it would be impossible for her to be part of the appeal at that time.
8. Ron Adams, Clerk of the Appeal Court in Victoria, informed Joan Russow that she was under no obligation to appear at that time, and that even, if the injunction were overturned, she could still appeal Judge Drake's decision.
9. Ron Adams, Clerk of the Appeal Court in Victoria also informed Joan Russow that there was no particular time limit for proceeding with the leave to appeal application,

and that only if MacMillan Bloedel sought to set aside the appeal would she be required to proceed expeditiously with the leave to appeal.

10. July 21, 1994 Russow filed a praecipe for a Leave to Appeal hearing and served it on MacMillan Bloedel. The proposed date for the Chambers hearing August 16
11. July 22, 1994 John Hunter sent a FAX in which he stated that he would be away on August 16 and wished to change the date and proposed alternatives later on in August. Joan Russow phoned him and expressed concern about the possibility of MacMillan Bloedel's applying for a new order prior to hearing the arguments presented in the Leave to Appeal, and asked him when MacMillan Bloedel would be proceeding with the application to extend the order. He declined to divulge that information. Russow then suggested that someone should appear in his place. She expressed surprise that he would be contesting the Leave to Appeal application, given that in the September 15 application he had stated that the proper place for the submission to be heard was in the Court of Appeal, and given that at the September 15 application he also stated that the issue of applicability of international law had never been raised:

the central point raised by the applicants as to the international law aspects of this, and the applicants are quite correct that no point was made before Mr. Justice Hall as to the international commitments that may have been made by Canada in Rio de Janeiro, by any council.

(John Hunter, Transcripts of September 15, Application

He said that he would consult with his clients but would probably formally apply for an extension. No formal request for an extension was made.

12. August 5, 1994. MacMillan Bloedel served a Notice of Motion seeking to have the application of Appellant Joan Russow for Leave to Appeal be adjourned generally. (See response by Joan Russow in Affidavit, dated August 10, and sworn August 15, 1994)

In the Notice of Motion John Hunter stated that the injunction as extended by Mr. Justice Hall expires on August 31, 1994. No application to extend the injunction has been filed and I do not currently have instructions to bring such an application. Such an application may be brought, and I am prepared to ensure that Ms. Russow is advised if such an application is brought. On the other hand, such an application may not be brought.

13. August 7, 1994 with the above assurance, Russow canceled a trip so that she would be able to propose to John Hunter that she could accommodate John Hunter's initial request to adjourn the Leave to Appeal to a future date.

14. August 8, 1994 Given that John Hunter had written in his affidavit that he did not have "instructions to bring such an application [an application to extend the injunction], Russow contacted the office of John Hunter and proposed that if he would agree to adjourn the application to set aside the Leave to Appeal generally then she would agree to adjourn her application for a Leave to Appeal to August 23, one of the dates originally requested by John Hunter.

EXHIBIT: A Letter written by Russow to Hunter

14. August 8, 1994 Russow received correspondence from Davis & Company, the firm to which John Hunter belongs:

Mr. Hunter is away from the office until August 22, 1994 and in his absence Mr. Peter Voith is handling this matter, and Mr. Voith, however, is out of the office until August 9, 1994 at which time your fax will be brought to his attention.

EXHIBIT: B Response from Peter Voith

Russow had understood that the reason that Mr. Hunter had wanted to change the date of the hearing was that he believed: it would be of assistance to the judge hearing this application if I were able to participate as counsel for MacMillan Bloedel to advise of any details in this course of proceedings which may not be apparent from this Affidavit" (John Hunter, Affidavit, August 4, 1994).

16. August 9, 1994 10:15 a.m. There was no reply from Mr. Voith, and Russow continued to prepare her affidavit for the August 12th hearing of MacMillan Bloedel's application. Russow phoned at 10:15 on Tuesday morning and was informed by Karen, John Hunter's secretary, that Voith had been there since 9:00 but with clients. Russow received a phone call from Shirley, Mr. Voith's secretary who said that he would be responding to my request later on in the afternoon. When Russow said that it was important for her to know as soon as possible because she had to file not only the Leave to Appeal book but also an affidavit for the August 12 application (both of which Russow would have had to have ready to submit on Wednesday, August 10), Shirley stated that he would be responding within 20 minutes. When Russow repeated "within twenty minutes" Shirley countered with it is his decision and he will respond as soon as possible.

At 11:00, Russow received a FAX indicating that he would be prepared to adjourn the Application to adjourn the Leave to Appeal generally, and would proceed with Russow's Leave to Appeal on August 23, as requested.

EXHIBIT: C Letter agreeing to adjourn Leave to Appeal Application to August 23, 1994

17. August 10 1994 Dr. Betty Kleiman, submitted a letter stating the reasons that she had not been able to be part of the Appeal, and expressed the wish that Merv Wilkinson serve in her place:

EXHIBIT: D Letter from Betty Kleiman. Re: Appeal
PART II - REASONS FOR SEEKING LEAVE TO APPEAL

18. The issues of law that are raised in this application are of great import, and bring into question serious discrepancies between the legal obligations undertaken by Canada internationally, and the discharging of these obligations in Canada, both federally and provincially. This application also raises the issue that a positive duty is placed on states to enact the necessary legislation so as to enable the performance of treaties which have been signed by the Federal government with the endorsement of the government of British Columbia. In addition, this appeal will also raise questions of legal responsibility for non-compliance with and non-enforcement of international and statutory law, and with the implications arising from the non-performance of those legal responsibilities. Serious legal issues about the direction being taken within the administration of the law of equity will also be considered on this appeal. In particular, the issue that an equitable remedy— an injunction, is being wrongfully used to prosecute citizens for criminal contempt.

19. The implications of international law were not considered by either of the applicants, namely Greenpeace Canada and Valerie Langer, who were seeking to rescind the injunction before Mr. Justice Hall, on August 26.

At the September 15 hearing, before Mr. Justice Drake in this matter, John Hunter lawyer, for MacMillan Bloedel, affirmed that Mr. Justice Hall had not considered the international commitments:

Now the last thing I wanted to say, just to address the central point raised by the applicants as to the international law aspects of this, and the applicants are quite correct that no point was made before Mr. Justice Hall as to the international commitments that may have been made by Canada in Rio de Janeiro, by any council. (Transcript of application from September 15, 1993).

20. The international law and other grounds for rescinding the injunction, presented by Dr. Betty Kleiman and Joan Russow in the September 15

submissions, were not more than cursorily considered and were not given a fair hearing.

On September 15, 1993 Dr. Betty Kleiman and Joan Russow made an application to rescind the Clayoquot injunction order dated August 26 and pronounced by Mr. Justice Hall on the following grounds outlined in the oral submission and the exhibits submitted to Judge Drake.

1. Failure to bring to Mr. Justice' Hall's attention that the granting of the injunction could contribute to non-compliance with international obligations
2. Failure to bring to Mr. Justice Hall's attention that the Clayoquot TFL's, are rights in the light of a "profit a prendre", which is a conditional right, and entails a complementary responsibility. Non-compliance with statutory law and previous convictions by the forest company, MacMillan Bloedel, should have been taken into consideration when the equitable remedy of an injunction was granted
3. Failure to bring to the judge's attention that the injunction is an equitable remedy moving with time and circumstances.

On September 17, 1993, Mr. Justice Drake ruled:

Mr. Hunter informs that an application for leave to appeal from the order of Mr. Justice Hall is afoot and is set down for hearing in the Court of Appeal on Tuesday next... In these circumstances, there is no point in dealing with the extensive submission of the applicants, interesting as they were (From p. 2-3 transcript of judgment, September 17).

21. John Hunter also submitted to the judge a copy of an article on international law by L.C. Green in which the 1937 case, Attorney-General for Canada v Attorney-general for Ontario. Supreme Court of Canada A.C. 1937, pp. 326 -354 [Labour Convention Case] was submitted as evidence that B.C. was not bound by international law. There was no opportunity to distinguish this case from the present case because Hunter submitted the written document to the judge without orally introducing the case into his submission. In the appeal, the relationship between the Federal and Provincial governments in response to International legally binding treaties in the Labour Convention case will be distinguished from that in response to the UNCED Conventions. In addition, there was no opportunity to raise the "Franklin Dam" decision from the High Court of Australia (High Court of Australia, Australian Law Reports 1983 PP 625-831). Constitutional law [Australian conservation case] which is particularly relevant to the discussion of the relevance of international law to the "inquiry" into the justification of granting the injunction. The Franklin Dam case deals with the following issues:

Protection of natural and cultural heritage — Prohibition of dam construction authorized by Tasmania Whether with Commonwealth power External affairs power. Whether mere

existence of treaty enough Whether treaty "obligation"
necessary Convention for Protection of the World Cultural and
Natural Heritage (UNESCO).

The Franklin Dam case will be examined in the Appeal.

22. It should be noted as a preliminary comment that in the Hunter's submission to Judge Drake there was a reference to L.C. Green:

MR. HUNTER

And it may be of assistance to your lordship to have an excerpt from Elsie[L.C.] Green's work on International Law, Canadian Perspective, and I want to read a portion of what Professor Green has to say about treaty rights and I don't think there's any suggestion there that there has been a treaty but taking its at its extreme --

COURT: Well, there has to be some statutory recognition before the court.

MR. HUNTER: that is the point. And it starts at the bottom of 288 and goes to 289, but that is the simple point, there has to be statutory recognition and there has not been statutory recognition of anything that went on at Rio. I don't know what went on at Rio, ... and in the absence of legislation international matters are not of any relevance to this application. (Transcripts of submission from John Hunter, September, 15, 1993)

John Hunter mentioned Green and the page numbers 288-289 but did not actually cite from Green. The Judge had been subsequently given the aforementioned pages from Green by Hunter. The actual citation from Green was not in the transcripts. Green stated on pp. 288-289 that:

In Canada treaties are not self-executing and do not constitute part of the law of the land merely by virtue of their conclusion. Treaties require implementing legislation in order to change domestic law. (Canada v. (AG0 Labour Conventions Case. [1937] per Lord Atkin: "Within the British Empire there is a well-established rule that the making of a treaty is an executive act, while the performance of its obligations, if they entail alteration of the existing domestic law requires legislative action. [note this case will be examined further on pages...])

This assertion is, however, substantially altered by two significant further statements by Green:

Canada will not normally become a party to an international agreement which requires implementing legislation until the necessary legislation has been enacted [cite references, including 1982 document circulated by External Affairs "Canadian Reply to Questionnaire on Parliaments and the Treaty-making power"]

The full context of this statement comes from the 1982 "Canadian Reply to Questionnaire on Parliaments and the Treaty-making Power"; it is an External Affairs Department communique which was put together in 1982 to assist the External Affairs Officers in explaining the division of powers and constitutional conventions in Canada in relation to international obligations:

Many international agreements require legislation to make them effective in Canadian domestic law. The legislation may be either federal or provincial or a combination of both in fields of shared jurisdiction. Canada will not normally become a party to an international agreement which requires implementing legislation until the necessary legislation has been enacted.

In concluding this section which was referred to by John Hunter, Green, makes a very significant remark, which suggests that Canada is bound by the treaty prior to the enactment into national law:

the fact that a treaty has been signed and ratified but not yet enacted into national law does not preclude the international liability of the signatory under the treaty.

23. It will be submitted that John Hunter, lawyer for MacMillan Bloedel erred in stating that "nothing that happens in Rio affects the law of British Columbia until the province of British Columbia acting through its legislature determines that it shall affect the laws of British Columbia"(Hunter, Transcript, September 15 p. 22):

In my submission it would have been inappropriate to make such a point because that is not a relevant consideration and the reason it is not relevant consideration is that nothing that happens in Rio affects the law of British Columbia until the province of British Columbia acting through its legislature determines that it shall affect the laws of British Columbia. And it may be of assistance to your lordship to have an excerpt from L.C. Greens work on International Law, Canadian perspective [note in this piece there was reference to the 1937 labour case (Attorney-General for Canada v Attorney-general for Ontario. Supreme Court of Canada A.C. 1937. [Labour Convention Case] pp. 326 -354 and to the External Affairs document "Canadian Reply to Questionnaire on Parliaments and the Treaty-making power"].

24. It will also be submitted that Mr. Justice Drake failed to consider the complexity inherent in the legal issues related to international obligations when he ruled " international agreements and resolutions, these not being expressed in Canadian law are not relevant" (Mr. Justice Drake, Transcript of Judgment, September 17, p. 3).

Mr. Justice Drake in his judgment made the following comment about international agreements and resolutions:

However, I will simply say, as far as their merits are concerned, that the argument relating to international agreements and resolutions, these not being expressed in Canadian law, are not relevant to this inquiry." (Mr. Justice Drake, Transcript of Judgment, September 17, p. 3).

Even though the order of Mr. Justice Hall will be expiring on August 31, 1994, it is important that this leave to appeal his order be granted so that the issues raised in the September 15 application to rescind this injunction could be fairly and judiciously considered and so that the September 17 judgment by Mr. Justice Drake could be reevaluated. If this order, and if the decision by Mr. Justice Drake is not challenged, they will be used in subsequent similar cases, as precedents.

PART III - ARGUMENT

A. In the hearing of August 26, 1993, there was a failure to bring to the attention of the Honourable Mr. Justice Hall that the granting of the injunction could contribute to non-compliance with international obligations of Canada and its Courts, and that, in the September 15, 1993 application to rescind the injunction, the Honourable Mr. Justice Drake erred in his assessment of the relevance of international law.

25. It will be submitted that Canada, as a signatory, is bound to perform any treaty in good faith by ensuring the necessary conditions are in place for the performance of the treaty.

Under the Vienna Convention on the Law of Treaties, adopted in 1969; signed by Canada, acceded to by Canada on 1970, and in force 1980, Canada, as a signatory to this Convention has been obliged to ensure the performance of treaties in the following ways:

- (i) "to establish conditions under which justice and respect for obligations arising from treaties can be maintained" (Preamble)
- (ii) to demonstrate, through the process of ratification (accession) of a Treaty, that the State has "established on the international plane its consent to be bound by a treaty" (Article 2)
- (iii) to observe that "every treaty in force is binding upon the parties to it and must be performed by them in good faith. (Article 26)
- (iv) to interpret a treaty by agreeing that "A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose. (Article 31)

Consequently, Canada, through acceding to and ratifying treaties has undertaken to perform treaties in good faith, has established on the international plane its consent to be bound, and to establish conditions for the maintaining of justice and respect for obligations under treaties.

26 This principle is reinforced throughout international customary law and extended to include the enacting of the legislation and laws necessary to ensure performance of treaty obligations.

The requirement to enact enabling legislation is evident in the International Covenant on Civil and Political Rights. International customary law places a duty on states to adopt such legislative, judicial or other measures as may be necessary to give effect to international treaties.

In the International Covenant on Civil and Political Rights—adopted 1976, signed and acceded to by Canada and in force in 1976, the principle of "duty-to-adopt-legislative ...measures" is enunciated;

Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

The principle is then further elaborated in the UN Resolution 37/7 World Charter of Nature (1982):

The principles set forth in the present Charter shall be reflected in the law and practice of each State, as well as at that international level (Article 14).

27. This principle is further entrenched in External Affairs policy in Canada by the constitutional convention of ensuring that necessary legislation is enacted before signing international treaties.

In an External Affairs document, "Canadian Reply to Questionnaire on Parliaments and the Treaty-making Power", which deals with Canada's responsibility related to international obligations, it is stated that Canada will "not normally become party to an international agreement until the necessary legislation has been enacted by the provinces."

In the "Canadian Reply to Questionnaire on Parliaments and the Treaty-making Power", the following references are made to international law and federal and provincial legislation:

If the existing laws of Canada (including Provincial and Federal Statutes, as well as the general rules of common law and the civil code of the Province of Quebec) do not confer upon the Government of Canada the capacity to discharge the obligations it proposes to undertake in a treaty, then it will be necessary for the appropriate legislative body, federal or provincial, to enact legislation to enable Canada to discharge its treaty obligations.

28. The "Canadian Reply to Questionnaire on Parliaments and the Treaty-making Power" appeared to ensure that the treaty would be performed either by enacting the necessary legislation prior to becoming a party:

Canada will not normally become a party to an international agreement which requires implementing legislation until the necessary legislation has been enacted.

or by passing implementing legislation:

The point we wish to make here is that in Canada implementing legislation is only necessary if the performance of treaty obligations cannot be done under existing law or thorough executive action.

In either case, it would appear that Canada has indicated in this document that the necessary legislation will be in place in order to perform the obligations under the treaty.

In an internationally legally binding document such as the Biodiversity Convention, and the Framework Convention on Climate Change, either the enabling legislation was in place prior to signing the treaties, or Canada is bound to enact legislation to enable Canada to perform its Treaty obligations in such a way as to ensure that it will not defeat the purpose of the treaty. This external affairs convention has to also be considered in conjunction with article 18 of the Vienna Convention on the Law of Treaties. Canada it would appear would not be able to defeat the purpose of the treaty from the moment of signing, and in order to comply with this provision Canada would have to ensure that the necessary legislation would be in place to prevent Canada from defeating the purpose.

29. In the appeal the following questions related to obligations will be examined;

- i. If Canada followed the usual constitutional convention as indicated in the above provision, Canada will not normally become a party until the necessary legislation has been enacted. Thus, we can assume from the federal point of view the Federal government believed that the necessary legislation to ensure that Canada would not defeat the purpose of the Convention on Biological Diversity and of the Climate Change Convention. If prior to the moment of signing these conventions in June 1992 if the Federal government was not certain that the necessary legislation was in place to prevent the defeating of the purpose of the Conventions, then implementing legislation would have to have been in place in June 1992.
- ii. In the appeal it will be contended that the Biodiversity Convention and the Climate Change Convention are relevant to the injunctions given by Canadian courts to lumber companies. Canada, by its own conventions is liable to comply, in its judicial, executive and legislative actions.

30. The principles of ensuring legislation enacted or implementing necessary legislation for performance of treaties are further placed in a provincial context when the matters in the treaty are usually deemed to be within provincial jurisdiction.

The 1982 "Canadian Reply to Questionnaire on Parliaments and the Treaty-making Power" further indicated in reference to the ratification and accession to treaties:

A multilateral treaty dealing with matters within provincial jurisdiction would be signed by Canada only after consultation with the provinces had indicated that they accepted the basic principle and objectives of the treaty. Assurances would be obtained from the provinces that they are in a position, under provincial laws and regulations, to carry out the treaty obligations dealing with matters falling within provincial competence, before action is taken by the Government of Canada to ratify or acceded to such a treaty.

Canada thus only proceeds to ratify a treaty when the provinces have been consulted and the provincial laws and regulations are in place to carry out the treaty obligations.

31. The Applicant, Joan Russow contends that all levels of Canadian governments, whether federal or provincial, and whether legislative, executive or judicial should endeavour in good faith to comply with the Biodiversity Convention, the Framework Convention on Climate Change, and the UN Convention for the Protection of Cultural and Natural Heritage. An injunction is judge-made law. Just as Canadian legislators must ensure that their statutes reflect their international treaty obligations, so must judicially made law, such as injunctions. Arguments must be aired in the Court as to this injunction's contravention of international treaty obligations. The proof readily exists that the Biodiversity Convention and the Framework Convention on Climate Change are violated by the activities of MacMillan Bloedel in Clayoquot Sound. The threat to biodiversity from clearcutting in Clayoquot Sound was clearly recognized and found as fact by the scientific panel appointed by the Harcourt government to review their logging plans for Clayoquot Sound. The panel also recognized that the standards of international law should serve as a minimum (First Report from the Clayoquot Sound Scientific Panel, March 1994).

No branch of government and no other law-making authority has a higher obligation than judges to apply the whole of the law and ensure that their own judge made injunctions are complying with the international obligations of Canada. This examination for compliance with international law was not conducted for the series of injunctions which have been granted to MacMillan and Bloedel in Clayoquot Sound.

32 If the provinces have followed the External Affairs convention then they would have assured the federal government that the necessary legislation either was or would be in place to ensure not only the fulfillment of obligations under the treaty but also the prevention of activities that could defeat the purpose of the treaty. If so, it can be presumed that the provinces will be equally responsible for fulfilling the obligations. The implications of this constitutional convention will be considered further in relation to the subsequent section dealing with the Labour Convention case which examines constitution provisions and treaties.

33. With internationally legally binding document such as the Biodiversity Convention or the Framework Convention on Climate Change it is necessary for the appropriate legislative body, federal or provincial, to enact legislation to enable

Canada to discharge its treaty obligations, and in particular, from the moment of signing the Conventions in June 1992 so that nothing will defeat the purposes of the treaties.

34. It will be argued in appeal that in Canada the existence of a treaty obligation (under the legally binding Conventions on Biological Diversity and Climate Change) is sufficient to give rise to an "external affair." The legal issues to be addressed in this appeal have been eloquently addressed in a series of Commonwealth cases: including the cases from the High Court in Australia where the constitutional division of powers between the Commonwealth (Federal Government) and the State (Province) were examined, and the responsibility of the Commonwealth government to ensure compliance to the international obligations was recognized. The discussion of these cases and the principles that have been used will follow; the discussion will be further extended in the Appeal if in the Leave to Appeal Application on August 23, 1994 the Chambers deems that the principles and decisions, given the similar federal structure of the Australian Constitution, from the High Court of Australia are applicable. The Labour Convention case from Canada was referred to by the dissenting judge in the following case: Commonwealth of Australia and Another v State of Tasmania and Others of (C6 of 1983) High Court of Australia, Australian Law Reports 1983 pp. 625-831 Constitutional law (Franklin Dam Case). Note that in the 1937 Labour Convention Case, the Federal government referred to the Australian Case.

It was held in the Commonwealth of Australia and Another v State of Tasmania and Others of (C6 of 1983) High Court of Australia, Australian Law Reports 1983 pp. 625-831 Constitutional law (Franklin Dam Case): Note that in the 1937 Labour Convention Case, the Federal government referred to the Australian case.

1. Existence of a treaty obligation (as there was under the Convention) was sufficient (though not necessary) to give rise to an external affair; there was no additional, independent requirement that the subject-matter of the treaty be of international concern.

Note: Article 34 UN Convention on the Preservation of Cultural and Natural Heritage the following provisions shall apply to those federal or non-unitary states

- a) with regard to the provisions of this Convention, the implementation of which comes under the legal jurisdiction of the federal or central legislative power, the obligations of the federal or central government shall be the same as for those States Parties which are not federal states.
- b) With regard to the provisions of this convention, the implementation of which comes under the legal jurisdiction of individual constitutional system

The following was also held in the Franklin Dam Case by Mason:

Article 34 of the convention, the Federal clause, does not relieve Australia from performance of its obligations under the convention. Para (a) of the article makes it clear that in the case of a central legislative power possessing legal jurisdiction to implement the provisions of the convention. the state party to the convention has an obligation to implement the provisions of the Convention.

35. The role of the courts to determine particular provisions was also addressed in the Franklin Dam case:

In *Airlines of NSW Pty Ltd v New South Wales (No. 2)* (1965) 113 CLR 54, Barwick CJ said (at 86) that "... where a law is to be justified under the external affairs power by reference to the existence of a treaty or convention, the limits of the exercise of the power will be set by the terms of that treaty or convention, that is to say, the Commonwealth will be limited to making laws to perform the obligations or to secure the benefits which the treaty imposes or confers on Australia. Whilst the choice of the legislative means by which the treaty or convention shall be implemented is for the legislative authority, it is for this court to determine whether particular provisions, when challenged, are appropriate and adapted to that end."

the same view was expressed by Starke, Evatt and McTiernam JJ in *Burgess* (at 658, 688) and Menzies J in *Airlines of NSW (No2)* at 141.

Parliament's power to legislate so as to give effect to a treaty conforms to the approach which this court has adopted in deciding whether legislative controls designed to achieve an end within power are themselves within power. (p696)

36. In the Franklin Dam case it was held that the country has the responsibility of giving effect to the principle of international customary law:

Whether failure on the part of Australia to enact domestic legislation incorporating the rules in the convention ... the Convention did not impose an obligation in specific terms to enact domestic legislation of a particular kind. It may be said that the legislation was valid because it gave effect to the principles of customary international law as declared by the Convention. But if Australia became a party to a convention which enacted a new set of rules in relation to the territorial sea and the contiguous zone, but that convention did not attract sufficient support to constitute its provisions as principles of customary international law. domestic legislation giving effect to it would none the less still constitute a valid exercise of the power. [citing *New South Wales v Commonwealth (the Seas and submerged Lands case)* (1975) 135 CLR 337; 8 ALR

37. In *Commonwealth of Australia and Another v State of Tasmania and Others* (C6 of 1983) High Court of Australia, Australian Law Reports 1983 pp 625-831 the Court decided that all domestic law must conform to the treaty:

The law must conform to the treaty and carry its provisions into effect. The fact that the power may extend to the subject matter of the treaty before it is made or adopted by Australia, because the subject matter has become a matter of international concern to Australia, does not mean that Parliament may depart from the provisions of the treaty after it has been entered into by Australia and enact legislation which goes beyond the treaty or is inconsistent with it.

38. In the Franklin Dam case (1983), the principles established in the *Koaita v Bjelke-Petersen* (1982) 56 ALJR 625: 39 ALR 417 (Koowarta Case), were referred to in the deciding opinion. These principles, cited below in the Australian Commonwealth case, are particularly relevant to the external affairs power of the Federal Government in relation to Provincial Governments:

39. In the Koowarta case the following principle was upheld that becoming a party to a convention entails the undertaking of actions that would discharge obligations under the Convention:

In the *Koowarta v Bjelke-Petersen* (1982) 56 ALJR 625: 39 ALR 417, decided as to the scope of the external affairs power because the correctness of Koowarta was common ground between the parties. There the validity of ss 9 and 12 of the Racial Discrimination Act 1974 (CTH) was upheld as an exercise of the power conferred by s 51 (xxix) of the Constitution on the footing that the enactment of the two sections was a discharge of Australia's obligation under the International Convention on the Elimination of all Forms of Racial Discrimination. By becoming a party to that convention, Australia undertook to prohibit and eliminate racial discrimination in all its forms by appropriate means, including legislation. ...

Effect to an obligation imposed by international convention
section gave effect to an obligation imposed by an international convention

40. In the Koowarta case the following principle was upheld that entering into a genuine treaty, the state assumes international obligations to enact domestic laws:

The Majority opinion was voiced by the following judges:

Stephen J. at 418.

There existed a quite precise treaty obligation on a subject of major importance in international relationships, which called for domestic implementation within Australia

Mason J. at 418

It would seem to follow inevitably from the plenary nature of the external affairs power that it would enable the parliament to legislate not only for the ratification of a treaty but also for its implementation by carrying out any obligation to enact a law that Australia assumed by the treaty

Brennan J. at 418

If Australia in the conduct of its relations with other nations accepted a treaty obligation with respect to an aspect of Australia's internal legal order, the subject of the obligation thereby because (if it was not previously) an external affair, and a law with respect to that subject was a law with respect to external affairs.

41. The Labour Convention case was used by the dissenting judges at 434 but was not considered to be a relevant precedent. Even one of the Judges, Wilson, who alluded to the case stated at p. 480 that "The decision in that case, though not the accuracy of the observation to which I have referred was subjected to a good deal of criticism." The Majority of the Judges in the Koowarta case followed the principles enunciated in the *R v Burgess: Ex parte Henry* (1936) 55 CLR 608.

42. In the Koowarta case the changed role of international agreements was examined.

Stephen at 452 identified the changed role as being "national governments' increased concern regarding domestic observance of internationally agreed norms of conduct":

"So long as treaties departed little from their early nature as compacts between princes, having no concern with domestic affairs, the conflict was muted: but in the century international conventions have come to assume a more extensive role. They prescribe standards of conduct for both governments and individuals having wide application domestically in areas of primarily regional concern, the very areas which, in federations, have tended to be entrusted to the legislative competence of the regional units of governments. This has necessarily exacerbated the problem which federations encounter in the implementation of international treaties while emphasizing the need for regional units in federations to recognize the legitimacy of national governments' increased concern regarding domestic observance of internationally agreed norms of conduct. "

Thus, areas of what are of purely domestic concern are steadily contracting and those of international concern are ever expanding (Stephen at 453).

post war growth in consensual international law (Stephen at 454)

What has occurred is rather a growth in the content of "external affairs." This growth reflects the new global concern for human rights and the international acknowledgment of the need for universally recognized norms of conduct particularly in relation to the suppression of racial discrimination (Stephen at 454)

43. In the Koowarta case there was also the recognition of the importance and binding nature of international customary law:

Stephen at 456:

Even where Australia not a party to the Convention, this would not necessarily exclude the topic as a part of its external affairs. It was contended on behalf of the Commonwealth that, quite apart from the Convention, Australia has an international obligations to suppress all forms of racial discrimination because respect for human dignity and fundamental rights and thus the norm of non-discrimination on the grounds of race, is now part of customary international law, as both created and evidenced by state practices and as expounded by jurists and eminent publicists.

44. In the Koowarta case there was also the enunciation of the principle that if there exists a precise treaty obligation on a subject of major importance there should be domestic implementation.

Stephen at 456:

In the present cases it is not necessary to rely upon this aspect of the external affairs power since there exists a quite precise treaty obligation on a subject of major importance in international relationships, which calls for domestic implementation within Australia.

Mason at 459:

It would seem to follow inevitably from the plenary nature of the power that it would enable the parliament to legislate not only for the ratification of a treaty but also for its implementation by carrying out any obligation to enact a law that Australia assumed by the treaty.

45. In the Appeal the R v Burgess: Ex parte Henry case of 1936 will be examined and compared to the Canadian Labour Convention case of 1937.

Even though judges acknowledged that in Australian Law treaties were not self-executing, they acknowledged the power to the Commonwealth to enact implementing legislation:

Mason 459 recognize that it is a well settled principle of the common law that a treaty not terminating a state of war has no legal effect upon the rights and duties of Australian citizens and is not incorporated into Australian law on its ratification by Australia (Chow Hung Ching v R (1948) not self-executing' ... to achieve this result, the provisions have to be enacted as part of our domestic law, whether by Commonwealth or State statute. Section 51 (xxix, arms the Commonwealth Parliament with a necessary power to bring this about. So much was unanimously decided by the court in R v Burgess: Ex parte Henry (1936) 55 CLR 608.

There the power enabled the Commonwealth Parliament to legislate so as to incorporate into their law the provisions of the Paris Convention for the regulation of aerial navigation.

46. The recognition of the disturbing outcome of the fragmentation of power in relation to international treaties was made in the R. v Burgess case:

Mason at 459 stated:

The consequence of the failure [of the R. v Burgess: Ex parte Henry (1936)] would have been to leave the decision on whether Australia should comply with its international obligations in the hands of the individual States as well as the Commonwealth, for the commonwealth would then lack sufficient legislative power to fully implement the treaty. The ramifications of such a fragmentation of the decision-making process as it affects the assumption and implementation by Australia of its international obligations are altogether too disturbing to contemplate. Such a division of responsibility between the Commonwealth and each of the States would have been a certain recipe for indecision and confusion, seriously weakening Australia's stance and standing in international affairs. Fortunately, the approach in Burgess has since been confirmed by R v Poole; Ex parte Henry (no.2) 1939 61 CLR...

47. The appropriateness of ensuring that state responsibilities will be discharged. was recognized in the Koowarta Case:

Mason at 462. stated:

doubtless the framers of the Constitution did not foresee accurately the extent of the expansion in international and regional co-operation which has occurred since 1900. ...There is no reason at all for thinking that the legislative power conferred by s 51 (xxix) was intended to be less than appropriate and adequate to enable the Commonwealth to discharge Australia's responsibilities in international and regional affairs.

48. It will be contended in the appeal that as in Australia, Canada must be able to commit the whole of Canada to giving effect to obligations:

In the *Koowarta* case, Mason at 463 stated:

Increasing emphasis is given in the United Nations and in regional organizations to the pursuit by international treaties of idealistic and humanitarian goals. It is important that the Commonwealth should retain its full capacity through the external affairs power to represent Australia, to commit it to participation in these developments when appropriate and to give effect to obligations thereby undertaken.

49. In the *Koowarta* case, Mason at 466 and 467 recognized that Australia in common with other nations is bound to enact domestic legislation to enable the implementation of treaties:

Broadly speaking the test which they favoured was whether in substance the legislation carries out or gives effect to the Convention. (At 466)

On the broad view which I take of the power it extends to the implementation of the International Convention on the Elimination of all forms of Racial Discrimination. It is an international treaty to which Australia is a party which binds Australia in common with other nations to enact domestic legislation in pursuit of the common objective of the elimination of all forms of racial discrimination.

But I would go further and say that even on the more cautious expression of the scope of the power by Dixon in *Burgess*, it would extend to the implementation of the convention.

50. In the *Koowarta* case, Mason at 468 affirmed the imposition of and obligation and the consequences of not performing the obligation:

At the level of international law, the means chosen to attain this end was the formulation of the Convention. It imposes on each of the many parties to it an obligation to eliminate racial discrimination in its territory. The failure of a party to fulfill its obligations becomes a matter of international discussion, disapproval, and perhaps action by way of enforcement.

51. In the *Koowarta* case Murphy at 471

discussed "the obligations to take legislative measure...

52. Murphy at 472 dissolved the distinction between internal and external affairs:

Preservation of the world's endangered species, maintenance of universal standards of human rights. are for Australia as well as other nations, internal as well as external affairs.

53. Murphy at 473 also affirmed the entitlement of the people to have legislation enacted that will fulfill obligations under a treaty:

the people of the States are entitled as well as obliged to have the legislative and executive conduct of those affairs which are part of Australia's external affairs carried out by the Parliament and executive Government of Australia.

54. A country could be in breach of an obligation imposed on it, if it failed to enact law. In the Franklin Dam in 1983, issues were raised related to external affairs power. In the appeal this issue will be discussed in relation to the Canadian/B.C / international legal obligations context:

55. In the Vienna Convention on the Law of Treaties which Canada adopted in 1969 there was the affirmation that, in addition to the duty to ensure that the necessary legislation has been enacted prior to signing a treaty, there is an obligation not to defeat the purpose of treaties.

Under Article 18 of the Vienna Convention on the Law of Treaties, Canada is obliged to not defeat purpose and object of international conventions from the moment of signing the treaty or convention.

Canada signed (June 5,1992) and ratified (December, 1992) two legally binding Conventions: The Convention on Biological Diversity and the Framework Convention on Climate Change. Under Article 18 of the Vienna Convention on the Law of Treaties (1969), Canada is obliged to "not defeat the object and purpose of a treaty prior to the entry into force"; this provision in the Vienna Convention on the Law of Treaties would indicate that as of June 1992 Canada was bound not to defeat the purpose and object of both the Convention on Biological Diversity and the Framework Convention on Climate Change.

56. States are also bound not to create a situation which would make it impossible to fulfill the obligations under a treaty.

Canada is bound not to create a situation, such as the reduction and the loss of biodiversity in the coastal temperate rain forest ecosystems, the disappearance of significant carbon sinks, or the fragmentation of sites of outstanding universal value. All these situations would make it impossible to fulfill its obligations under the conventions.

Article 61

Supervening impossibility of performance

1. a party may invoke the impossibility of performing a treaty as a ground for terminating or withdrawing from it if the impossibility results from the permanent disappearance or destruction of an object indispensable for the execution of the treaty.”
2. Impossibility of performance may not be invoked by a party as a ground for terminating, withdrawing from or suspending the operation of a treaty if the impossibility is the result of a breach by that party either of an obligation under the treaty or of any other international obligation owed to any other party to the treaty.

Canada, by not ensuring that the necessary legislation and enforceable law were in place to prevent activities that could defeat the purpose of the Conventions, could permanently "destroy ... an object indispensable ..." such as the biodiversity in significant old growth stands or the carbon sinks of the old growth forest. The reduction and loss of biodiversity, as well as the elimination of carbon sinks of old growth forest could be contributing to a situation that would make it impossible for Canada to fulfill its obligations under the Conventions. By continuing with clear-cut logging and fragmenting currently unfragmented areas, Canada through B.C.'s practices of fragmenting old growth forests may be creating a situation where the object (the pristine old growth forest of outstanding universal value) could fail to fulfill the criteria for being identified as World Heritage Site under the UN Convention for the Protection of Cultural and Natural Heritage (1972).

57. In the appeal the acceptability of Canada's current policy of preserving 12% of the land as parks will be questioned.

Evidence will be submitted that internationally at meetings such as the IUCN Annual General Meeting, the representatives from Parks Canada, including the Assistant Deputy Minister, did not admit that the 12% solution was Canadian Policy.

When it was mentioned in a contact group meeting — a meeting to discuss resolutions, that if we commend B.C., in the resolution, for its current conservation proposals and for the CORE process, that we would be endorsing the "12 % solution." Biologist, Elliot Norse, laughed and stated "Surely no country is still linking conservation to percentages." The representatives from the Canadian government were not prepared to admit at that meeting that the "12 % solution" is Canadian and B.C. government policy.

Also, evidence will be submitted that will demonstrate that the current position of the IUCN on percentages and conservation, is that the linking should be avoided because it has no basis in biology or ecology, and that governments will use it as a minimum, and will justify preserving what has been referred to as "rock and ice" in lieu of significant ecosystems that are under demand from

resources. (Comments made from the floor of the Annual General Meeting when a resolution linking percentages and conservation was being discussed.)

The reason that the position of the IUCN is significant is that the IUCN was the international organization that first linked the two in 1982, and continued to do this even up the Earth Summit. It has only been since the Earth Summit that the IUCN has recognized the way the percentage figures have been used. Groups like "Share B.C" have been using the linking of percentages to conservation to support the claim that "12% and no more." The notion of 12% can be used to legitimize the reduction of significant areas of biodiversity, such as the Clayoquot, and thus contribute to the defeating of the purpose of the Biodiversity Convention.

58. In the appeal, the degree of consultation and the nature of the subject matter of the Attorney-General for Canada v Attorney-general for Ontario Supreme Court of Canada A.C. 1937. (Hereafter referred to as the Labour Convention Case) will be distinguished from the degree of consultation and the nature of the subject matter current matter to be dealt with in the appeal. This Labour Convention case has been purported to be the precedent to support the claim, by provinces, that they are not bound by international Conventions signed by Canada.

It would appear that the Labour Convention case turned on two legal points:

- (i) the fact that the provinces on the matter in that case were not consulted prior to Canada's undertaking obligations under international law; criteria were established for consultation.
- (ii) the designation of "labour" issues as not fulfilling the criteria for invoking Article 91 Constitutional powers

In the Biodiversity Convention and the Framework Convention on Climate Change both sets of criteria were adhered to in a way that would make the decision in the Labour Convention case no longer applicable.

59. It will be submitted that the degree of consultation surrounding the "International Labour Convention" — the subject matter in the Labour Convention case can be distinguished from the degree of consultation surrounding the Biodiversity and Climate Change Conventions and UNCED adopted documents. In the latter there is evidence that B.C. was consulted prior to both the signing and the ratifying of the Biodiversity and Climate Change Conventions, as well as prior to the adoption of Agenda 21.

In the "Canadian Reply to Questionnaire on Parliaments and the Treaty-making Power" there is reference to a constitutional convention to consult provinces prior to signing and ratifying Treaties and Conventions. It would appear that the Labour Convention case could be distinguished on the grounds that there was not consultation with the provinces during the negotiation process of the International Labour Convention. Unlike the Labour Convention, the negotiations surrounding the UNCED conventions, took place

in Canada with the full consultation of the provinces. The provinces were fully consulted before the signing and ratifying of the Biodiversity and Climate Change Conventions. This commitment to consult is expressed as follows in the Canadian Reply to Questionnaire on Parliaments and the Treaty-making Power", 1982:

The practice of the Canadian Government, in cases where the subject matter of an international agreement falls either wholly or partly within provincial jurisdiction is to consult each of the provincial governments. The process of consultation is informal and is usually conducted by letters exchanged between the federal and provincial governments.

A multilateral treaty dealing with matters within provincial jurisdiction would be signed by Canada only after consultation with the provinces had indicated that they accepted the basic principle and objectives of the treaty. Assurances would be obtained from the provinces that they are in a position, under provincial laws and regulations, to carry out the treaty obligations dealing with matters falling within provincial competence, before action is taken by the Government of Canada to ratify or acceded to such a treaty. (Canadian Reply to Questionnaire on Parliaments and the Treaty-making Power", 1982).

60. It should be noted that there appears to be a serious inconsistency within the "Canadian Reply to Questionnaire on Parliaments and the Treaty-making Power" document. On the one hand the document calls for consultation with the provinces prior to signing, along with the assurances that the necessary legislation has already been enacted, and yet the document still considers the applicability of the Labour Convention case which the "Canadian Reply to Questionnaire on Parliaments and the Treaty-making Power" claims has never been overturned.

In the "Canadian Reply to Questionnaire on Parliaments and the Treaty-making Power" the following references were made to the Labour case:

The federal government is not entitled, merely because it has entered into a treaty, to legislate on matters that fall within the competence of the provinces. This is the effect of the Labour Conventions case. Attorney-General of Canada v. Attorney-General of Ontario (labour Conventions) (1937) A.C.

Although it has been argued that legislation to implement a treaty is within the federal power over the peace, order and good government of Canada, and that Section 132 should be interpreted in the light of changing circumstances, the Supreme Court of Canada has yet to rule on this question, which would involve a reconsideration of the reasoning in the Labour Conventions case. (Parliaments and the Treaty-making power —"Canadian Reply to Questionnaire on Parliaments and the Treaty-making Power")

61. In the Labour Convention case, criteria for being part of the decision-making process were proposed.

Several of the Counsels objected to the imposition of federal legislation to comply with international obligations because the provinces were not part of the decision.

They cited the following aspects of being part of the decision: "cooperation", "obtaining advice", "obtaining consent" or "asking for approval":

- *Cooperation (at 327)*

...from her new international status Canada incurred obligations, they must, so far as legislation was concerned, when they dealt with Provincial classes of subjects, be dealt with by the totality of powers — by co-operation between the Dominion and the Provinces.

- *Obtaining advice (at 340)*

said that in treaties affecting subject-matters within the legislative competence of the Provincial Legislatures and bring into operation the provisions of s 132 of the BNA act the King should have his assent on the advice of his Provincial advisers as distinct from his dominion advisers.

- *Obtaining consent (at 339)*

The dominion has not brought the draft Conventions before the authority or authorities ' within whose competence the matter lies' and has not obtained the consent of those authorities as required by art 405., paras 5 and 7.

- *Asking for approval (at 331)*

It is ordinary constitutional practice to ask the approval of the body which will, in the event of the engagement being entered into, have the power to enact the legislation.

62. In the Appeal it will be shown that B.C., through consultations with the Federal Government at the ministerial level prior to the signing and the ratifying of the treaties, B.C. was consulted through the Federal governments engaging in "cooperation", "obtaining advice", "obtaining consent" or "asking for approval":

On August 8, 1994, the Strategic Planning Committee of the Council of Ministers of the Environment was contacted by Appellant and asked to forward a chronology of the Federal /Provincial Consultation process that occurred leading up to the Earth Summit and the signing of the UNCED Conventions (June, 1992), and leading up to the ratification of the UNCED Conventions (December, 1992).

63. It is expected that this chronology from their Strategic Planning Committee will have been made available in time to present it at the Leave to Appeal hearing. This evidence which will be submitted will demonstrate that in reference to the Biodiversity Convention and the Framework Convention on Climate Change, the provinces were consulted prior to the signing of the Convention (at numerous Ministerial meetings at the Prep Coms leading up to June, 1992) and prior to ratification (November 23, 1992 meeting prior to the ratification of the document in December of 1992).

64 It would appear that prior to signing and ratifying the Convention the Federal government consulted with the provinces and if the Federal government followed the

External Affairs principle of ensuring that the necessary legislation was in place to enable performance of the treaty obligations under the Convention there had been opportunities during the consultation meetings to ensure that the necessary legislation was in place .

65. It would appear that B.C. played a significant role in the provincial endorsement of the UNCED Conventions by moving the endorsement at the November, 1992 Ministerial meeting, and by obtaining Cabinet support:

Jaime Alley, former representative for Corporate Affairs in the Ministry of the Environment said:

"That the provincial governments insisted on not being just another stakeholder in the consultation process but on having government to government consultation."

..."The province endorsed the ratification. We agreed with Canada to ratify it. There was provincial endorsement. The move to endorse the Conventions was made by John Cashore, the then B.C. Minister of Environment" Cashore then went to Cabinet, sought their support and endorsement of the ratification and then stated that the Cabinet had approved the Conventions to the CCME meeting.

"Barbara MacDougall, wrote to all provincial constitutional ministers seeking their advice prior to ratification" "There was continuous consultation you need to contact the CCME for details"

(Personal Communication, August, 1994)

66 In a document obtained through the Freedom of information Act there was evidence of the Provincial cabinet endorsement for the ratification of the Biodiversity and Climate Change Conventions:

EXHIBIT: E "UNCED follow-up: Endorsement of International Convention on Climate change and Biological diversity" November 4, 1992.

67. Through the "UNCED follow-up: Endorsement of International Convention on Climate change and Biological diversity" November 4, 1992, there has been the B.C. Provincial cabinet endorsement of the Biodiversity and Climate Change Conventions.

68. In the Appeal it will be contended that B.C. through a letter prior to August 1992, the then Constitutional Minister of B.C., the Hon Moe Sihota conveyed by letter to the Hon. Barbara McDougall, The Secretary for External Affairs, B.C.'s support for the Biodiversity and Climate Change Conventions.

On August 29 the Hon Barbara McDougall, Minister of State for External Affairs wrote to the Hon Moe Sihota Minister responsible for Constitutional Affairs to acknowledge B. C's

support and to indicate that Canada plans to complete the ratification process by the end of 1992 (P. 05 of FAX of Exhibit E)

[The Appellant made an application (July 17, 1994) through the Freedom of Information Act for a copy of this correspondence.

69. In this Cabinet submission, dated November 4, 1992, the B.C. government affirmed that it was bound by the Biodiversity Convention and the Framework Convention on Climate Change:

Canada signed binding International Conventions on climate Change and Biodiversity
.and indicated its support for ...a "Global Green Plan" for sustainable development, entitled Agenda 21.

70. In the event that the Appeal Court will not concur that the Labour Convention case can be distinguished on the basis of the argument that there was sufficient consultation prior to the signing and the ratification of the Convention on Biological Diversity and the Framework Convention on Climate Change, then a subsequent argument will be presented that the subject matter "Biodiversity" and "Climate Change" could come under the residuary powers of Section 91 of the Constitution. At the appeal, the Labour Convention case will also be distinguished on the ground that the decision in that case followed the Supreme Court case "In the Matter of Legislative Jurisdiction over Hours of Labour, [1925] Can. S.C. R. 505. where the Judge stated without discussion that "labour" issues" could come under the head of #13— "Property and civil Rights" or under # 16 "Local and Private Matters Within the Provinces." Thus, labour issues were not perceived to fulfill the categories outlined for justifying the invoking of residuary powers under Section 91. It will be submitted that the "International Labour Convention" — the subject matter in the Labour Convention case can be distinguished from the "Biodiversity," and "Climate Change." — the subject matter United Nations Convention on Environment and Development (UNCED).

71. In the Labour Convention case properties were set out for the designation of matters that could be deemed to come under residuary powers.

It would appear that "labour" issues' not warranting the invoking of residuary powers could be distinguished from "biodiversity" and "climate change issues because both the latter issues fulfilled most of the criteria or properties set down by the judges for determining inclusion in section 91. The subjects of "Biodiversity" and "Climate change" could be justifiably a subject that would not come under Section 92, and thus would fall to federal residuary powers. "Biodiversity" and "Climate Change" could be distinguished from labour on a number of grounds:

In the Labour Convention case Mr. Justice Atkin summarized the distinction between S 91 and S. 92 of the BNA act as follows:

section 91 under the general powers, sometimes called the residuary powers, given by s. 91 to the dominion parliament to make laws for the peace, order and good government of Canada in relation to all matters not coming within

the classes of subjects by this act assigned exclusively to the legislatures of the provinces. p. 342 Atkin's judgment

In the Labour Convention case the criteria for determining whether the subject fell under section 92 were the following:

If the new functions affected the classes of subjects enumerated in s. 92 legislation to support the new functions was within the competence of the provincial legislatures only. If they did not the competence of the Dominion Legislature was declared by s 91 and existed ab origin.

It was decided in this case that Labour relations would quite legitimately be placed under the subjects in section 92. "Property and civil rights in the province" which was assigned exclusively to the legislature of the provinces by head 13 of s92 of the BNA Act.

It was noted in the Labour case at 328 that there must be some grounds for taking the subjects out [of 13 of s 92). The Court was not satisfied that the federal government had established sufficiently the grounds for taking the subject of "labour issues" out of the subject area in section 92, as noted above in the 1925, Supreme Court case.

72. In the Labour Convention case, Counsels for the Attorney General of Canada and for the Attorney Generals for the provinces referred to a number of properties of a subject which would enable the subject to be designated as a new function and then come under the residuary powers of section 91. It was decided that "labour relations" did not fit into this category. In the appeal an attempt will be made to demonstrate that 'biodiversity' and "Climate Change" are categories of subjects that could be deemed to invoke the residuary powers because these subjects would fulfill the properties advocated in the Labour Convention case, as well as in re: Regulation and Control of Radio Communication in Canada (Radio Case) (1932] A.C., p. 304 and in Re: The Regulation and Control of Aeronautics in Canada (Aeronautics Case) [1931] A.C. 1932, p. 54.

• *New subject:*

Counsel acting for the Attorney General of New Brunswick distinguished the Radio case on the ground that the subject matter in the radio case, in contrast to that of the Labour Convention Case, was a "new subject not embraced within the enumerated heads of s.92.(338.). It is quite likely that "biodiversity" and "climate change" would fall into this category. Biodiversity, and climate change are issues that transcend national, provincial and state boundaries are certainly new subjects that were not deemed to be limited to regional control.

73. It will be contended in the Appeal that Biodiversity and Climate Change because of the responsibility to not have activities under one jurisdiction impact on other jurisdiction would surely be considered to be activities that would come under "new subjects" and thus come under residuary powers of the federal government. If these two issues would be deemed as new subjects, then the federal government would be obliged to invoke its residuary powers and ensure that as of June 1992, no

activities in Canada would defeat the purpose of these treaties. Consequently, federal government would be both entitled and bound to enact legislation that could override provincial legislation in the event that the provincial legislation would not be able to prevent the defeating of the purposes of the Conventions.

- *Matter of "such general importance"*

Further, the present legislation was not concerned with matters of such general importance as to justify the overriding of the normal distinction of powers in SS 91 and 92 (head note of Labour Convention case)

- *"Exceptional Circumstances"* Mr. Justice Atkin at 353

EXHIBIT F: AFFIDAVIT: Affirmation of the urgency of the global situation

EXHIBIT F* Exhibit submitted in the September 15 Application and presented in transcripts

Statements from Royal Society, Science Council, presented before Mr. Justice Drake.

74. From the B.C. government's own "State of the Environment Reporting" document, 1993, the "importance" and "exceptional conditions" of biodiversity are stressed:

Biodiversity is the variety of life on the planet. It is important for a number of reasons. First, we have an ethical stewardship responsibility for other living things with which we share the planet. Second, high species diversity contributes to ecosystem stability. Third, biodiversity has immeasurable aesthetic value; provides food medicine and other products of enormous economic value; and generates critical ecosystem services essential to all life:

"

Standard of necessity" Mr. Justice Atkin at 353

75. From the B.C. government's own "State of the Environment Reporting" document the essence and necessity of Biodiversity is affirmed because of its links to other cycles

Biodiversity is essential to maintain ecosystem processes that support all life. these include; Maintaining the gaseous compositions of the atmosphere, climate control, regulating the hydrological cycle, generating and maintaining soils, cycling nutrients necessary for the growth of living things, and decomposing waste materials.

76 From the B.C. government's own "State of the Environment Reporting" document the B.C. government also recognized the importance of identifying species and its inability to assess the current state in B.C:

Genetic diversity enables species to adapt to changes in their environment over time. It is difficult and costly to measure genetic diversity and therefore difficult to assess its current state in B.C.

77. From the B.C. government's own "State of the Environment Reporting" document the importance of the biodiversity of coastal temperate rainforests is acknowledged

Trees in coastal temperate rain forests grow to very large sizes and exceptionally old ages. Such ecosystems have the highest standing biomass of any ecosystem on earth and provide for tremendous biodiversity. Coastal temperate rain forest occurs in a few scattered spots around the world, and are considered rare on a global scale. North America has the largest continuous tract of coastal temperate rain forest on earth, approximately half of which is in B.C.

- *Matters of national importance* at 335

Matters of national importance of such wide import as to affect the body politic of the dominion in the overriding way that was found in *Russell v the Queen.*, if they were taken out of the specific heads of s. 92, then Ontario is satisfied to see this legislation supported. (At 335 Labour Convention case)

In the press release issued at the time of ratifying the Biodiversity Convention. Prime Minister Brian Mulroney indicated Canada's commitment:

to [fulfill] Canada's commitment to ratify the Convention before the end of 1992. Canada is the first industrialized country to ratify both agreements. The Convention which emerged from last June's Earth Summit in Brazil, exemplify a global commitment to the principles of sustainable development ...as embodied in Agenda 21 and agreed to at the Earth Summit. the Convention on Biological Diversity provides a framework for conserving the planet's animal and plant life and maintaining their habitats.

WHAT IS CANADA'S POSITION ON THE BIODIVERSITY CONVENTION?

Canada supports the international effort to conserve biodiversity. Canadian representatives participated fully in negotiations of the Convention and the federal provincial and territorial governments all believe that the Convention is a good basis for tackling this international problem.

- *Extraordinary peril to the National life of Canada*" Mr. Justice Atkin at 353

The federal government in its background to this press release at the time of ratification of the Biodiversity Convention on December 4, 1992, also affirmed without Biodiversity, "humanity's ability to survive is threatened."

What is biodiversity: Biodiversity provides the very foundation for human life and life support systems. without healthy and stable biological resources, humanity's ability to survive is threatened.

(Press Release on Ratification of the Biodiversity Convention, Dec. 4, 1992)

- Canada is continuing to play an active international role in discussion about the Convention. It has been actively involved in preparing for the implementation of the Convention, by participating in all the UN meeting on biodiversity since the Earth Summit.

- the federal, provincial and territorial government in Canada are proud of Canada's leadership on the issue of biodiversity conservation. As one of the

first countries to sign the Convention and the first industrialize country to ratify it, Canada has demonstrated its commitment and leadership to the world. we must of course, continue to ensure that our performance at home lives up [to] that commitment

From these statements both by the provincial government and by the federal government, it would appear that "biodiversity" is of "general importance."

- *Not foreseen matters*

Robertson, KC indicated p.340 (arguing the federal position]

One of the things upon which the parties were able to agree at confederation in respect of matters not provided for not foreseen, was that they were to go to the Dominion. One of the outstanding dangers at the time of confederation and to-day, is that of sectional interests and prejudices and private interests interfering with the good government of Canada as a whole. Reliance is placed on the residuary powers as conferring the performance of treaty obligations: ... Radio case (1932] A.C. 304, 311, 313.

Residual powers for environmental issues which are all pervasive, similar argument could be for climate change. The principle that could apply is the consequences cannot be controlled by a particular jurisdiction within Canada let alone even within Canada. The impact of anthropogenic actions on biodiversity and climate change are not "restrict able" to traditional jurisdictional boundaries. Presumably the largest unit of jurisdictional power should be in control of the fulfillment of obligations under the Convention.

- *Importance which outweighs the civil right of the individual*

Robertson K.C. supporting the federal position indicated:

When a matter has attained an importance which outweighs the civil right of the individual, once it has reached that stage, then the civil right is lost sight of and the matter from an international aspect outshines it, and is the one to which attention should be directed. Here an international obligation has arisen and it is the duty of Canada to see that obligations are performed Canada alone can perform it and Canada, therefore, in these particular circumstances and while the obligation endures, is the body to legislate because it is an international obligation. Is not the proper view that once Canada has properly created international obligations then it is necessary for the peace, order and good government of the Dominion that Canada should perform it? p. 341

Note: the reference to the aeronautics case were not in the original submission. They were, however, referred to in the oral submission. The following references and a subsequent page of documentation was written into the leave to the appellant's appeal book but not fully referred in the court submission

Note: Applicability of Aeronautics case at 71, AC 1931
cites propositions from Attorney General of Can. V Attorney General of B.C.
AC 1930

1. the legislation of the parliament of the dominion, so long as it strictly relates to subjects of legislation expressly enumerated in s91, is of paramount authority

at 71

2. the general power of legislation conferred upon the subjects expressly enumerated must be strictly confined to such matters as are unquestionably of national interest and importance. And must not trench on any of the subjects enumerated in s92, as within the scope of provincial legislation, unless these matters have attained such dimensions as to affect the body politic of the dominion.

4. there can be a domain in which Provincial and Dominion legislation may overlap, in which case neither legislation will be ultra-virus, if the field is clear, but if the field is not clear and the two legislations meet the dominion legislation must prevail

at 73

it is obvious therefore that there may be cases of emergency where the dominion is empowered to act as a whole” also by reason of the plain terms of s132

78. In the Appeal the relevance of Section 132 of the B.N.A. Act will be reconsidered in the light of the fact that it is the only section that does refer explicitly to obligations under treaties.

The Parliament and government of Canada shall have all powers necessary or proper for performing the obligations of Canada or of any Province thereof, as part of the British Empire, towards foreign countries arising under treaties between the Empire and such foreign countries. (Section 132, B.N.A.)

In the "Aeronautics case" s. 132 was still deemed to be relevant.

At 73, Mr. Justice Swanky held that

by reason of the plain terms of s 132, where Canada as a whole having undertaken an obligation is given the power necessary and proper for performing that obligation

at 7070 also held:

The underlying objective of the BNA Act was to establish a system... the real object of the Act was to give the central Government those functions and almost sovereign powers by which uniformity of legislation might be secured on all questions which were of common concern to all provinces as members of a constituent whole

at 73 he stated

there may be cases where the dominion is entitled to speak for the whole...by reason of plain terms of S.132 where Canada as a whole having undertaken an obligation is given the power necessary and proper for performing that obligation.

In the 1992, United Nations Convention on Environment and Development (UNCED) Action plan, Agenda 21, in the Biodiversity Chapter 15, — a positive duty is assumed by governments adopting Agenda 21:

" At the same time, it is particularly important in this context to stress that states have the sovereign right to exploit their own biological resources pursuant to their environmental policies, as well as the responsibility to conserve their biodiversity and use their biological resource sustainably, and to ensure that activities within their jurisdiction or control do not cause damage to the biological diversity of other States or of areas beyond the limits of national jurisdiction. " (15.3. Agenda 21).

It would appear that it would be possible in the light of "changing circumstances" that a Convention such as the Biodiversity Convention which deals with a phenomenon that does not respect proprietary divisions; that subject areas such as biodiversity and climate change would come under federal purview. In this context it could be argued that biodiversity because of the responsibility to not have activities under jurisdiction impact on other jurisdiction that biodiversity would come under section 132 which bestows upon the federal government overriding powers, in the light of changing circumstances — which in this case would be the pervasiveness of biodiversity. In 1867, no one was thinking of incurring environmental obligations.

79. At the Appeal, evidence will be presented to indicate the assessment of Canada's responsibility to other states for B.C.'s practices:

At the IUCN (World Heritage Union) 1994 Annual General meeting of the IUCN Commission on Environmental Law, the question of Federalism and International Law was raised. In particular, the Appellant raised the question about the responsibility under a treaty of the federal state when there is non-compliance within the sub-unit. As a specific example, Canada's responsibility for B.C.'s actions was raised. Several of the lawyers, some of whom had served as advisers to the International Court of Law or to the United Nations, concurred that Canada could be held responsible under the Conventions to other countries, if through B.C.'s actions Canada was in non-compliance with international legal obligations under the two Conventions signed at UNCED.

80. In the Appeal it will be noted that under the Convention of Law of Treaties, Canada has been obliged not to invoke internal law to justify failure to perform international obligations.

Under Article 27 of the Vienna Convention on the Law of Treaties, Canada is bound to not invoke Internal law to justify failure to perform a treaty:

A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty.

Neither the internal law of the B.C. Government's land use decision regarding Clayoquot Sound, nor the internal law of judicial injunctions justifies failure to meet the provisions within the Conventions.

81. In the Appeal, it will be argued that as a result of MacMillan Bloedel's applying for an injunction and the Court's granting this injunction, the Courts have permitted the continuation of practices that are in violation of the Biodiversity and Climate Change Conventions. The Courts have inadvertently encouraged non-compliance with international law.

In addition, Canada, if not having notified otherwise, is bound by what occurs in B.C.

Under Article 29 of the Convention of Law of Treaties, "territorial scope of treaties", Canada is bound throughout its territory including all provinces and territories:

Unless a different intention appears for the treaty or is otherwise established, a treaty is binding upon each party in respect of its entire territory.

If Canada has expressed a different intention, then it is important that the other states of the world know that when Canada signs an international agreement in areas over which provinces have jurisdiction, the provinces are not bound. Citizens from countries that have endorsed the self-executing principle related to international law presume that if Canada signs and ratifies a treaty that the treaty obligations are binding on all the parts of the country including provinces and territories

EXHIBIT: G Affidavit from a citizen from the US — a country that has endorsed the self-executing principle.

82. It will be contended that Canada has been in non-compliance since June 1992 (UNCED) because B.C. forest practices have been in contravention of provisions in the Conventions, and Canada has thus defeated the purposes of the Conventions.

83. It will be submitted in the Appeal that it can be demonstrated not only that Canada through the practices of B.C. has been defeating the purpose of the Conventions signed in June, 1992 at UNCED, but also that Canada has been defeating the purpose of another Convention that is particularly relevant to Clayoquot and the injunction granted to MacMillan Bloedel: the UN Convention for the Protection of Cultural and Natural Heritage (1972).

The UN Convention for the Protection of Cultural and Natural Heritage was signed in 1972. Canada has been obligated to identify and nominate sites as being sites of "outstanding universal value." Canada and B.C. have been remiss in not identifying and nominating an extensive network of ancient coastal temperate rainforests, including Clayoquot Sound as being a natural heritage of "outstanding universal value."

84. From the B.C. government's own "State of the Environment Reporting" document the importance of the biodiversity of coastal temperate rainforests is acknowledged:

Trees in coastal temperate rain forests grow to very large sizes and exceptionally old ages. Such ecosystems have the highest

standing biomass of any ecosystem on earth and provide for tremendous biodiversity. Coastal temperate rain forests occur in a few scattered spots around the world, and are considered rare on a global scale. North America has the largest continuous tract of coastal temperate rain forest on earth, approximately half of which is in B.C.

85. Canada has failed to comply with the Biodiversity Convention and the Climate Change Convention because B.C. since the moment of signing the Biodiversity and Climate Change Conventions has continued to log in an ecologically unsound way, such as clearcutting primary growth coastal temperate rain forests.

86. Canada has contravened the Convention because, B.C. since June 1992 has defeated the purpose of Biodiversity Convention by having failed to identify biodiversity

Under the Convention the parties are required "to identify biodiversity"

At the ratification of the Biodiversity Convention in the December 4, 1992, speech by Prime Minister Mulroney, he informed the public of about the state of identification of species in Canada and admitted that there were an equally large number not reported:

Canada is one of the largest countries in the world and is home to about 70,000 known species and many different habitats. However, many of Canada's ecosystems are threatened.

Biodiversity the web of life (environment Canada publication)

A total of just over 70,000 species of animals, plants and micro-organisms have been described or reported to occur in Canada. The same number remain undescribed or unreported by science. If viruses are added, the total is doubled to 290,000

Canada may claim to be complying with the Biodiversity Convention by indicating that they are developing a "Canadian Biodiversity Strategy" (see draft document June, 1994); however, even by its own admission:

the Status of Biodiversity is also not fully understood. As many as half of the estimated 140,000 species in Canada have not yet been identified.... and that only vertebrates and vascular plants are being evaluated.... . The status of most of Canada's species such as fungi, bacteria and invertebrates -- all of which play crucial roles in ecosystem function — is not fully known.

Yet Canada, through ecologically unsound practices in B.C. continue to log primary forest ecosystems that contain the biodiversity that will be lost before it is identified.

87 From the B.C. government's own "State of the Environment Reporting" document the B.C. government also recognized the importance of identifying species and its inability to assess the current state in B.C:

Genetic diversity enables species to adapt to changes in their environment over time. It is difficult and costly to measure genetic diversity and therefore difficult to assess its current state in B.C.

British Columbia had not sufficiently identified biodiversity at the time of signing the Convention, and British Columbia has continued to permit practices that contribute to the loss of biodiversity. In the event of the government's own admission that it is virtually impossible to identify species; it should not defeat the purpose of the Biodiversity Convention by ensuring that the storehouses of biodiversity not be logged.

88. Canada since June 1992 has defeated the purpose of Biodiversity Convention through B.C.'s having failed to carry out an environmental assessment review of anything that could contribute to a reduction or loss of biodiversity,

The former Canadian Ambassador for the Environment to the United Nations, Arthur Campeau, who was the head of the Canadian Delegation at UNCED concurred that Canada had been in non-compliance with the Convention because of Canada's failure to carry out an environmental assessment review of anything that could contribute to a reduction or loss of biodiversity [such as clear-cut logging and other ecologically unsound practices]. (Personal communication, March 1994)

In jurisdictions where an environmental impact assessment has been carried out, practices, typical of those carried out currently in BC forests, have been assessed as being destructive of biodiversity. For example, a German biologist, Dr. Schutt, specializing in biodiversity indicated the following about "clearcutting":

The practice of clearcutting, followed by artificial reforestation has undoubtedly many technical and organizational advantages. In the course of time, however, soil scientists and ecologists found out that the practice of clearcutting automatically leads to considerable drawbacks:

- wounding of the soil surface through logging operations.
- Risk of erosion -High irradiation and higher climatic extremes alter the microclimate, the flora and the microflora and deteriorate the growing conditions for a number of valuable tree species. -
- Soil compression and a reduction of species richness
- An accelerated decomposition of organic matter occurs, combined with a wash out of nutrients, and the eutrophication of ground water, rivers and lakes occur (Dr. Schutt, Biological Department, University of Munich, Environmental Ethics Conference, 1992, Vancouver)

89. Canada since June 1992 has defeated the purpose of Biodiversity Convention through B.C. government's and its courts' having failed to avoid or minimize the threat of significant reduction or loss of biological diversity through their not invoking the precautionary principle which reads as follows:

..where there is a threat of significant reduction or loss of biological diversity, lack of full scientific certainty should not be used as a reason for postponing measures to avoid or minimize such a threat (Convention on Biological Diversity)

As of June 1992, Canada undertook the obligation under the Biodiversity Convention to invoke the precautionary principle.

At the ratification of the Biodiversity Convention in the December 4, 1992, speech by Prime Minister Mulroney indicated his awareness of the loss of biodiversity and in particular the impact of modern forestry practices:

Biodiversity is being threatened directly and indirectly by human activity such as

(i) Destruction of wildlife habitat

the conversion of natural areas, on land and at sea, to other uses destroys disrupt animal and plant habitat. Such loss of habitat leads directly to the loss of species. ...

(ii) Over-exploitation of animal and plant species

(iii) Disturbances of natural ecosystems

Each of the world' ecosystems consists of a community of animals, plants and micro-organisms and the sunlight, water, soil and minerals they need to survive. These ecosystems exist in a delicate balance, with each piece of the puzzle playing a specialized role. Any disruption of the balance can cause a ripple effect of disruptions, threatening the entire ecosystem and individual parts of it...

(1v) Modern agricultural and forestry practices

...similarly, modern forestry often replants a single high-yielding tree species after logging a diverse forest ecosystem

Any human activity that has a negative effect on the environment has a negative effect on biodiversity.

Undoubtedly the "modern forestry practices" he was referring to were the silviculture regimes of clearcutting and replanting.

90. It will be brought to the attention of the judges in the Appeal that experts throughout the world recognize that the practice of clear-cut logging destroys biodiversity, and that if Canada were to invoke the precautionary principle, clear-cut logging and other ecologically unsound selective logging practices would be discontinued.

There is sufficient evidence that clear-cut logging destroys biodiversity as defined under the convention. Dr. Richard Mittermeir, President of Conservation International, has correctly, stated that the precautionary principle, if invoked, would justify the banning of clear-cut logging (Personal Communication, IUCN Annual General Meeting, 1994)

91. Canada, since June 1992, is in non-compliance with the Framework Convention on Climate Change through B.C.'s failure to conserve carbon sinks, and through B.C.'s destruction of sinks, Canada has defeated the purpose of the Convention.

B.C. since June 1992 has defeated the purpose of Climate Change Convention by having failed to protect carbon sinks; it has continued to permit the harvesting in

significant carbon sinks like primary coastal temperate rainforest such as those of Clayoquot Sound.

Under the Framework Convention on Climate Change Canada is required to protect and enhance Greenhouse gas sinks and reservoirs:

Each of these Parties shall adopt national policies and take corresponding measures on the mitigation of climate change, by limiting its anthropogenic emissions of greenhouse gases and protecting and enhancing its greenhouse gas sinks and reservoirs.

92. Canada, through B.C. 's not fulfilling its duty to identify, protect and conserve natural heritage of outstanding universal value, such as Coastal temperate rainforest areas like Clayoquot Sound, has since 1972 , when it signed the UN Convention for the Protection of Cultural and Natural Heritage, failed to discharge its obligation to protect the natural heritage of outstanding universal value for future generations under the United Nations Convention for the Protection of Cultural and Natural Heritage:

Each State Party to this Convention recognizes that the duty of ensuring the identification, protection, conservation, presentation and transmission to future generations of the cultural and natural heritage referred to in articles 1 and 2 and situated on its territory, belongs primarily to that State. (United Nations Convention for the Protection of Cultural and Natural Heritage, 1972)

In the UN Conference on Humans and Environment of 1972, the requirement to preserve our environmental heritage and the requirement to save a representative sample of natural ecosystems for future generations were being recognized:

The natural resources of the earth including the air, water, land, flora and fauna and especially representative samples of natural ecosystems must be safeguarded for the benefit of present and future generations (Principle 2)

Man has a special responsibility to safeguard and wisely manage the heritage of wild life and its habitat which are now gravely imperiled by a combination of adverse factors (Principle 4),

This international obligation was reaffirmed in the UN Resolution 37/7 (1982):

Reaffirming that man must acquire the knowledge to maintain and enhance his ability to use natural resources in a manner which ensures the preservation of the species and ecosystems for the benefit of present and future generations, (UN Resolution 37/7, 1982)

In 1988 the trend gravity of the situation for "generations to come" was recognized by the Science Council of Canada

THE ECOLOGICAL CRISIS

The continuing and accelerating deterioration of the planet's ecological base poses a significant threat to the long-term viability of our world. Evidence concerning global warming, ozone depletion, species depletion and elimination, the spread of the deserts, forest destruction, soil degradation, acidified lakes, rivers and streams, and groundwater pollution exists in abundance in the scientific literature. (1988, Science council of Canada)

Much of the evidence is subject to many qualifications and even scientific debate, but the overall trend and its gravity for our planet, to its multitude of species and to the generations to come, are beyond question. (11)

This Commitment to future generations was restated in the Caracas Declaration in February 1992:

To support the development of national protected area policies which are sensitive to customs and traditions, safeguard the interest of indigenous people, take full account of the roles and interests of both men and women, and respect the interests of children of this and future generations (Caracas Declaration in February 1992, p.3)

It will be noted that throughout the UNCED documents there was expressed the responsibility to future generations.

The principle of considering the need to preserve ecological heritage for future generations, because of its continued inclusion in international documents has become a principle of international customary law.

Not only has Canada been remiss in not ensuring compliance to this principle of international customary law, but also since June 1992, Canada is in non-compliance with both the Biodiversity Convention and the Climate Change Convention for failing to conserve and sustainably use biological diversity for future generations. Under the Biodiversity Convention, Canada has indicated its determination to do the following:

"To conserve and sustainably use biological diversity for the benefit of present and future generations (Biodiversity Convention, UNCED, 1992)

In the appeal there will be an affidavit indicating the impact on the youth of governments undertaking obligations and not fulfilling them

EXHIBIT: H Affidavit by Christopher Scott along with affidavits from representatives of future generations

In the appeal there will be an affidavit indicating the impact on the youth of governments undertaking obligations and not fulfilling them

EXHIBIT: I Affidavit by Susan Gage

Since 1972 Canada has been remiss in not fulfilling its duty under the UN Convention for the Protection of Cultural and Natural Heritage (1972)

In 1972, through this Convention, Canada, along with the other states that are parties to this Convention, recognized the urgent need to address the disappearance of natural heritage and acknowledged the global responsibility to preserve natural heritage:

Considering that parts of the cultural or natural heritage are of outstanding interest and therefore need to be preserved as part of the world heritage of [humankind] as a whole (Convention for the Protection of the World cultural and Natural Heritage, preamble, 1972).

Considering that in view of the magnitude and gravity of the new dangers threatening them, it is incumbent on the international community as a whole to participate in the protection of the cultural and natural heritage of outstanding universal value... (Convention for the Protection of the World cultural and Natural Heritage, preamble, 1972)

Under Article 4 of this Convention, Canada undertook a positive duty of ensuring the identification of natural heritage:

Each State Party to this Convention recognizes that the duty of ensuring the identification, protection, conservation, presentation and transmission to future generations of the cultural and natural heritage referred to in articles 1 and 2 and situated on its territory, belongs primarily to that State. It will do all it can to this end, to the utmost of its own resources and where appropriate with any international assistance and co-operation ...

and under article 5 d the appropriate legal measures must be taken to ensure identification:

- To take the appropriate legal, scientific, technical, administrative and financial measures necessary for the identification, protection, conservation, presentation and rehabilitation of this heritage. (Article 5d)

Canada, and B.C. have failed to fulfill their duties by not identifying a network of coastal temperate rainforests, including Clayoquot Sound, and nominating this network as a World Heritage Site. In 1981, Australia, nominated a large

area of its temperate rainforest, and in 1993 nominated an additional network of temperate rain forests. With the continued fragmentation of the forests in B.C. If we do not act immediately, it will be too late to nominate a network of temperate rainforests and conservation corridors because the forested areas in B.C. will no longer be able to fulfill the criteria for being designated as a World Heritage site.

94. In the Appeal the Franklin Dam case will be examined in relation to the UN Convention for the Protection of Cultural and Natural Heritage

In the Franklin Dam case, the area under dispute — a network of temperate old growth forest had already been proposed in 1981 by the state and confederation governments as a World Heritage Site. The network was inspected by the IUCN, the World Conservation Union, which is the body responsible for determining if a proposed site fulfills the criteria for protection as a World Heritage Site.

Although Clayoquot Sound has not yet been nominated by B.C and Canada as a World Heritage site, it was part of a proposal contained in a resolution passed at the 1994, Annual General Meeting of the IUCN. The proposed network was deemed to fulfill the criteria for nomination, even though B.C. and Canada have not undertaken to nominate a network of old growth temperate rainforest as a World Heritage Site.

A network of temperate rainforests including Clayoquot Sound would fulfill the criteria for nomination as a World Heritage Site.

95. A network of old growth temperate rainforests, including Clayoquot Sound would fulfill the following criteria for inclusion in the World Heritage list:

- (ii) be outstanding examples representing significant ongoing geological processes... biological evolution and man [human] interaction with his [its] natural environment; as distinct from the periods of the Earth's development, this focuses upon ongoing processes in the development of communities of plants and animals, landforms and marine areas and fresh water bodies;
- (iii) contain superlative natural phenomena formations or features for ... outstanding examples of the most important ecosystems, areas of exceptional natural beauty or exceptional combinations of natural and cultural elements;
- (iv) containing the most important and significant natural habitats where threatened species of animals or plants of outstanding universal value form the point of view of science or conservation still survive

96. The IUCN (the World Conservation Union) the organization that has been given the responsibility under the UN Convention for the Protection of Cultural and Natural Heritage, passed a resolution at the January 1994 Annual General Meeting; This resolution

called upon B.C. to preserve and nominate a network of temperate coastal rainforests taking into consideration the proposals by the Western Canada Wilderness Committee (whose proposal included Clayoquot Sound).

97. A resolution on North American Coastal Temperate Forests ("19.72REV2 North American Coastal Temperate Forests") was passed by the IUCN General Assembly meeting at Buenos Aires, Tuesday, January 25, 1994. The IUCN is an international organization of state, professional and non-governmental representation from over 125 countries. In order to pass the resolution has to pass the two houses: the state house composed of state representation from 125 countries and the NGO house with representation from the same countries. This resolution was passed with only one country abstaining, Canada.

This resolution recognized the uniqueness of the area:

UNDERSTANDING that many endemic and unusual plants and animals occur only in these forests; and that in biomass productivity, the old growth forests (ancient forests) of this biome are unequaled anywhere;

This resolution also acknowledged that on Vancouver Island Forest practices have been the cause of the disappearance of these forests:

MINDFUL of the fact that such ancient forests on Vancouver Island and on the mid-coast of British Columbia are disappearing at a rapid rate as a result of practices that have, to date, not been ecologically sustainable;

This Resolution also called upon the governments of Canada and B.C. to consult with groups like the Western Canada Wilderness Committee (WCWC) about networks of protected areas. The network proposed by WCWC does include Clayoquot Sound.

UNDERSTANDING that the Raincoast Conservation Society, the Sierra Club, and the Western Canada Wilderness Committee have proposed a large network of protected areas, including conservation corridors, in areas of such ancient forests on Vancouver Island and the midcoast of British Columbia;

IUCN

2. CALLS UPON the Governments of Canada and British Columbia to substantially expand the amount of land in networks of protected areas, with conservation corridors, on Vancouver Island and the midcoast of British Columbia, taking into consideration the recommendations of environmental groups active in the regions such as the Raincoast Conservation Society, the Sierra Club and the Western Canada Wilderness Committee;

EXHIBIT: J 19.72REV2 North American Coastal Temperate Forests

98. In the Appeal it will be pointed out that the Western Canada Wilderness Committee proposal for a network does include Clayoquot Sound.

EXHIBIT: K Information to be submitted by the Western Canada Wilderness Committee. Copy of vision of Vancouver Island.

99. This appeal will also refer, as was done in the original September 15 submission to Mr. Justice Drake, to the Common Law Doctrine of Legitimate Expectations. If this doctrine were applied it could be argued that citizens of Canada have a legitimate expectation that Canada will fulfill its international legal obligations.

100. Citizens of B.C. have the right to expect that B.C. as part of Canada will fulfill international obligations undertaken by Canada after consultation with B.C.:

In Re: Canada Assistance plan (Canada) 1991 (2SCR at 525), the B.C. government recognized the importance of using the Doctrine of Legitimate Expectation in a dispute with the Federal Government. Even though at the Supreme Court of Canada, the B.C. argument was dismissed, the case supports the contention that the Government of British Columbia, including the Attorney General's office endorsed the doctrine.

Canada has continually conveyed its professed concern for the environment in a way that should entitled Canadians to expect actions that reflect this concern. For example, in the preface of Canada's National Report, which was submitted to the Earth Summit in Rio, the Canadian government gave the impression that Canadians were "stewards" observing their "environmental responsibility":

as stewards of a vast and beautiful land, and as a people intimately connected to the environment, Canadians are aware of their environmental responsibilities. (Canada's National Report, Preface)

And further in the section on the "quality of life", the Canadian government stated

As a small population with a large land mass, Canadians have access to relatively unspoiled wilderness areas rich in wildlife ... Canada has an international reputation as a beautiful, safe and mostly unspoiled country. (Canada's National Report, p.49)

If the government of Canada continues to convey the impression to the global community, through official Internationally circulated documents, that Canadians are concerned about being "stewards" of a "relatively unspoiled wilderness", then the citizens of Canada should legitimately expect that Canada will fulfill this obligation.

There is a maxim of equity which states that "Equity imputes an intention to fulfill an obligation."

This maxim was reaffirmed by the former Ombudsman of British Columbia, Steven Owen:

To create an expectation is an empty gesture without a promise to fulfill it. Before creating an expectation, an organization must assure itself of its ability to fulfill the promise it implies" (Introduction, Ombudsman Annual Report, 1991)

101 Citizens of Canada can justifiably expect that Canada will adhere to international principles that are part of international agreements signed by Canada, and citizens of Canada can justifiably expect that the courts of Canada will abide by international commitments undertaken by Canada.

102. The Prime Minister, Brian Mulroney, in his address to the General Assembly at the Earth Summit in Rio de Janeiro, 12, June, 1992, indicated the following commitment to the international community:

Our generation has seen our planet from space. We know its beauty and we understand our fragility. We know that nature is part of us as we are a part of nature.

Canada's national soul breathes its life from our forests and plains and mountains and lakes. Our native peoples depend on the environment for their spiritual sustenance and material well-being. Canadians are the stewards of 10 per cent of the world's forests. ...

For Canada, sustainable development is not a slogan it is a prerequisite of our prosperity and a safeguard of our identity. It is also the standard of our responsibility. ...

We are the leaders. We must assume our responsibilities to our own peoples, to each other and to history. We are here to commit our governments to action. The prevention of global climate change and the preservation of the world's animal and plant species is on the top of our agenda.

Countries have a right to manage their forest resources, and humanity has a right to expect that those management decisions will be ecologically wise. Canada wants clear guidelines, on which we all can agree, and a binding international convention which codifies our rights as well as our responsibilities.

... the agreements on climate change and biodiversity require urgent and constructive follow-up...

As political leaders, our job is to force the pace and stretch out the limits of international cooperation. The nations gathered here today have the human genius to create a world free from deprivation and secure from degradation. What remains is for governments to provide the leadership the world so desperately needs.

Let us find that will and marshal it to the task at hand on behalf of the five billion people we represent

Our children, the Rio generation will be our judges and our beneficiaries.

103. In the press release issued at the time of ratifying the Biodiversity Convention in December, 1992. Prime Minister Brian Mulroney conveyed Canada's recognition of the importance of the Convention:

The Convention which emerged from last June's Earth Summit in Brazil, exemplify a global commitment to the principles ... as embodied in Agenda 21 and agreed to at the Earth Summit.
the Convention on Biological Diversity provides a framework for conserving the planets animal and plant life and maintaining their habitats.

104. Not only has the previous Conservative government conveyed to the global community its commitment to "provide the leadership the world so desperately needs", but also the current Liberal government conveyed the impression to the citizens of Canada that it would demonstrate leadership by ensuring that international obligations under the UNCED Conventions would be adhered to in the case of Clayoquot.

[The Liberal party in its pre-election promises, affirmed that it would preserve Clayoquot Sound to be preserved by making it part of Pacific Rim national Park.]

105. The Appeal will not only address the obligations under legally binding documents but also those under globally adopted documents. The fulfillment of these obligations also draws upon the Common law Doctrine of Legitimate Expectations.

Not only was there evidence of Canada's and B.C.'s agreement at the UN Conference on the Environment and Development (UNCED) to the legally binding documents but also to the globally adopted document such as Agenda 21.

106. In the Appeal evidence will be supplied that the representatives from the B.C. government, the Assistant Deputy Minister of Forests, Wes Cheston, and from the Commission on Resources and Environment, Commissioner Steven Owen indicated B.C.'s commitment to fulfill the obligations under all the UNCED documents, the legally binding as well as the globally adopted. This evidence was referred to in a report on an inquiry requested by the appellant into how B.C. was going to be complying with UNCED obligations. Scotty Gardiner, the Senior Investigator in Resource Issues in the Ombudsman's office, stated that he would not release the information, that the information cannot be requested through the Freedom of Information Act, and that the Ombudsman's office and officers are not "compellable" to appear in court to testify.

107. In the Ombudsman's Report from Senior Investigator of Resource Issues, (Russow/Gage Complaint and Inquiry, File No. 91 06247) April 1993, to a request for an inquiry into how the B.C. government was going to fulfill its

obligations under UNCED, the Senior investigator from the Ombudsman's office, in his report on the inquiry responded indicating that he had received confirmation of the government's commitment to comply with international agreements from UNCED:

Compliance with International Agreements.

Direct personal discussions were held with Mr. Cheston, Assistant Deputy Minister of Operations Division, Ministry of Forests, and Mr. Owen, Commissioner on Resources and Environment. Both Mr. Cheston's and Mr. Owen's responsibilities reflect the government's priority for those issues of concern to you...

From these meetings, as well as from additional discussions with senior staff from the Ministry of Forests and the Ministry of Environment, Lands and Parks, we have determined that BC intends to comply with the agreements signed at the UNCED in June 1992.

He does not specify that the government will comply with only the legally binding Conventions; it would thus appear from his statement that the government will be complying with other globally adopted documents, such as Agenda 21. Through this statement the Provincial government has demonstrated its intention to adhere to principles from Agenda 21, the Rio Declaration and the Biodiversity Convention.

When asked whether a copy of these expressed commitments could be made available for the Leave to Appeal hearing, the Senior Investigator responded that he would not release the information. A request to proceed through the Freedom of Information Act, was denied and the senior investigator indicated that only the documents submitted to the office by the complainant are accessible to the complainant and that none of the other documents could be released. The Ombudsman's office is beyond the Freedom of information Act. It is thus difficult to confirm part of the commitment because Cheston was recently released from his position. Steven Owen has been contacted. His response will be included in the Appeal.

108. Agenda 21 is a comprehensive plan of action which was adopted by the members of the United Nations participating in UNCED. There are numerous principles that form an intrinsic part of this document.

There is throughout the document a consistent recognition of the urgency of the global situation.

Humanity stands at a defining moment in history. We are confronted with a perpetuation of disparities between and within nations, a worsening of poverty, hunger, ill health and illiteracy, and the continuing deterioration of the ecosystems on which we depend for our well-being. ... (1.1 Preamble, Agenda 21)

109. An essential principle from the UNCED documents is the requirement to carry out environmental audits, or full environmental accounting; and to take into account the costs of ecological consequences.

A principle that was affirmed at UNCED and agreed to by Canada was the need to carry out a full life cycle analysis of activities that could have significantly adverse effects. This principle, if complied with, in the forest industry would entail an examination of the environmental impacts of each stage of current forest practices — impact of the disruption and sudden elimination of a significant portion of an ecosystem through clearcutting; impact of broadcast burns; impact of treatment by pesticides; impact of off-site planting; impact of replacing a forest with a tree farm; impact of planting monocultures; impact of denying species succession; impact of creating increased susceptibility to forest fires; impact of loss of ecologically sound forest associated employment etc. At UNCED there was also a call for "environmental audits", and "full environmental accounting and "taking into account ecological consequences" of aspects related to life cycles of ...resources", and "for taking into account the costs of any ecological consequences."

Ensure that relevant decisions are preceded by environmental impact assessments and also take into account the costs of any ecological consequences (7.42)

A full environmental audit of current forest practices has not been undertaken in B.C. The Auditor General has not been requested by government to carry out a full-scale audit of the true costs of the current logging practices, and to compare these costs to those incurred by alternative forestry practices such as ecoforestry. When the Assistant Auditor General was asked by the Appellant, if the Office was going to undertake such an inquiry, which undeniably would be within his mandate, he responded that it would be an almost impossible task and not economically feasible (Personal Communication, 1993).

110. The requirement to take into account the costs of any ecological consequences is a particularly relevant consideration in assessing "irreparable harm" [see other grounds section B, and the MacMillan Bloedel v Mullin case]

Ensure that relevant decisions are preceded by environmental impact assessments and also take into account the costs of any ecological consequences (7.42)

111. Another principle that came out of UNCED and was agreed to by Canada. is a the positive-duty-to protect-indigenous-lands principle. This principle reads as follows:

recognition that the lands of indigenous people and their communities should be protected from activities that are environmentally unsound or that the indigenous people concerned consider to be socially and culturally inappropriate (Agenda 21, 16.3. ii)

EXHIBIT: K Affidavit Saul Arbess (to be submitted for the Appeal)

112. Similarly, at the Provincial level if the provincial government imputes that it intends to fulfill an obligation, the citizens should be justified in requiring the government to have the obligation fulfilled.

In a letter dated March, 1992, from both the Provincial Ministry of Forests and the Provincial Ministry of Environment (sent to members of the public presumably from a government mail-out list), the following intention is imputed:

As we, in BC Parks and BC Forest Service begin to work on implementing our components of B.C.'s protected areas under the aegis of the Commission on Resources and Environment, we will be mindful of this Declaration [Parks Protected Areas and the Human Future: the Caracas Declaration] and its implications. Our objective will be to have a system of protected areas which we are proud to present to the world.

Through this intention to be "mindful of this Declaration" the Provincial Government of B.C. through its Ministries of Environment and Forests has recognized the Caracas Declaration and the UN Resolution 37/7 (1982) World Charter for Nature.

EXHIBIT: L Letter from Ministries making commitments to the Caracas Declaration.

B.C. has failed to fulfill a commitment made through B.C.'s endorsement of the Caracas Convention (Parks Protected Areas and the Human Future: the Caracas Declaration, February 1992) and in its participation in the Caracas Congress to "move from logging old growth to second growth" (Report on implementation requirements of the Caracas Declaration, Mar. 1992)

113. It will be contended in the Appeal that not only has B.C. not complied with commitments made to the international conference on Parks at Caracas, but also B.C., through its actions in Clayoquot Sound, has failed to adhere to recommendations by the Caracas Congress on means to fulfill the Caracas Declaration

114. Obligations under the "Parks, Protected Areas and the Human Future: The Caracas Declaration" (February, 1992), and under recommendations by the Caracas Congress (CHECK Ref.).

The Caracas Declaration was adopted by over fifteen hundred leaders and participants at the Fourth World Congress on national parks and Protected Areas. (Feb. 1992).

3.2. Conserving Biodiversity

The congress urgently requested that all countries urgently undertake surveys to identify additional sites of critical importance for conservation of biological diversity, and wherever possible, accord total protection to them. Harvesting should be relocated from primary to secondary forests and tree plantations in previously deforested areas; or - where this is not possible sustainable forest harvesting systems which favour natural species diversity should be developed and introduced. p 8

3.3. Conservation on a regional scale

Protected areas have sometimes been seen as islands of nature and tranquility, surrounded by incompatible land uses. But the congress made it clear that such an "island mentality" is fatal in the long run. The congress recognized that it is unlikely that protected areas will be able to conserve biodiversity if they are surrounded by degraded habitats that limit gene-flow alter nutrient and water cycles and produce regional and global climate change that may lead to the final disappearance of these "island parks." Protected areas, therefore need to be part of broader regional approaches to land management. The term bioregion was used to describe extensive areas of land and water which include protected areas and surrounding lands, preferably including complete watersheds, where all agencies and interested parties have agreed to collaborative management.

recommendation 3

Global efforts to conserve biological diversity:

"The loss of biodiversity has reached crisis proportion and if present trends continue up to 25 % of the world's species may be sentenced to extinction or suffer severe genetic depletion in the next several decades, accompanied by equally significant and alarming degradation of habitats and ecosystems. This loss of biological diversity is impoverishing the world of its genetic resources, its species, habitats and ecosystems.

All species deserve respect, regardless of their usefulness to humanity. This Principle was endorsed by the UN Assembly when it adopted the World Charter for nature in 1982. The loss of the living richness of the planet is dangerous, because of the environmental systems of the world support all life, and we do not know which are the key components in maintaining their essential functions.

the IVth World Congress on national Parks and Protected Areas recommends that:

- a) governments make the protection of biological diversity, including species and habitat richness, representativeness and scarcity, a fundamental principle for the identification, establishment, management and public enjoyment of national parks and other protected areas;
 - b) all countries urgently undertake surveys to identify additional sites of critical importance for conservation of biological diversity and wherever possible, accord total protection to them
- Harvesting should be relocated from primary to secondary forests and tree plantations in previous deforested areas; or — where this is not possible — sustainable forest harvesting systems which favour natural species diversity should be developed and introduced: p. 30

Recommendation 4:
entitled legal regimes for protected areas.

Protected areas require a mutually reinforcing system of international and national environmental law for their establishment, maintenance and management. International treaties establish a harmonized set of obligations with regard to areas within national jurisdictions and activities having effect beyond national jurisdictional boundaries. These obligations must be reflected in national legislation; otherwise, the treaties cannot be implemented. In turn, innovative national legislation provides a basis and impetus for further international law. The dynamic interaction between the two levels is thus conducive to further progress. p. 31

The Caracas Congress which is responsible for interpreting the Declaration made the following recommendations that have been ignored by B.C.:

115. B.C. has failed to move from harvesting primary to secondary forests as recommended by the Caracas Congress

The congress urgently requested that all countries urgently undertake surveys to identify additional sites of critical importance for conservation of biological diversity, and wherever possible, accord total protection to them. Harvesting should be relocated from primary to secondary forests p 8

116. B.C. has failed to ensure sustainable forest harvesting systems which favour natural species diversity should be developed and introduced: p. 30

117. B.C. has failed to prevent incompatible land use. as recommended by the Caracas Congress

Protected areas have sometimes been seen as islands of nature and tranquility, surrounded by incompatible land uses. But the congress made it clear that such an "island mentality" is fatal in the long run. The congress recognized that it is unlikely that protected areas will be able to conserve biodiversity if they are surrounded by degraded habitats that limit gene-flow alter nutrient and water cycles and produce regional and global climate change that may lead to the final disappearance of these "island parks."

118. The Congress also addressed the urgency and the need for global efforts to Global efforts to conserve biological diversity.

"The loss of biodiversity has reached crisis proportion and if present trends continue up to 25 % of the world's species may be sentenced to extinction or suffer sever genetic depletion in the next several decades, accompanied by equally significant and alarming degradation of habitats and ecosystems. This loss of biological diversity is impoverishing the world of its genetic resources, its species, habitats and ecosystems.

All species deserve respect, regardless of their usefulness to humanity. This Principle was endorsed by the UN Assembly when it adopted the UN Resolution 37/7 (1982) World Charter of Nature. The loss of the living richness of the planet is dangerous, because of the environmental systems of the world support all life, and we do not know which are the key components in maintaining their essential functions.

119. It will be shown that it is not only the levels of government that have failed to live up to their stated intentions to fulfill obligations but resource ministries, institutions, organizations and industry have also "imputed an intention to fulfill an obligation," through the Forest Accord, a document which has been signed by Canadian Pulp and Paper Industry, the Council of Forest Industry, Wildlife habitat, Canadian Nature Federation, National Aboriginal Forestry Association, Minister of Forestry, Lands and Wildlife, Alberta, Minister of Natural resources Manitoba, Minister of Forests, B.C. Minister of Parks and Renewable Resources Saskatchewan, Minister of Natural Resources and Energy, New Brunswick, Minister of Natural Resources, Minister of Forestry Canada, Minister of Natural resources Ontario, the following concern and intention was expressed:

- Our forest heritage is part of our past, our present and our future identity as a nation. It is important to maintain a rich tapestry of forests across the Canadian landscape that sustains a diversity of wildlife:
- The spiritual qualities and the inherent beauty of our forests are essential to our physical and our mental well-being
- We will fulfill our global responsibilities in the care and use of forests, maintaining their importance of the environment and the well-being of all living things.]
March, 2, 1992

120. It will be shown that international customary law places a positive duty to act:

Considering that,.. in view of the magnitude and gravity of the new dangers threatening them, it is incumbent on the international community as a whole to participate in the protection of the cultural and natural heritage of outstanding universal value, by the granting of collective assistance which, although not taking the place of action by the State concerned, will serve as an effective complement thereto," (26.1 Convention for the Protection ...of Natural Heritage, 1972).

121. In not agreeing to preserve Clayoquot Sound and in permitting ecologically unsound practices in Clayoquot, Canada and B.C. have failed to comply with legally binding conventions such as the Biodiversity Convention, the Climate Change

Convention and the UN Convention on the Protection of Cultural and Natural heritage, and also has failed to comply with obligations undertaken through globally adopted commitments, such as the Caracas Declaration and Agenda 21 . Citizens of Canada should be able to justifiably expect that Canada will adhere to international principles that are part of international agreements signed by Canada. The citizens of Canada, also, should be able to justifiably expect that the courts of Canada will abide by international commitments made by Canada.

B. This case also addresses the contempt for statutory law that has been demonstrated by industry, and in particular MacMillan Bloedel, in its non-compliance with statutory law, and by governments in their failure to enforce statutory law, particularly in relation to tree farm license (in the manner of a profit a prendre property right claimed by MacMillan Bloedel)

122. Evidence will be submitted that B.C. has not only used internal law — the granting of injunctions to justify non-compliance to international obligations but has failed to invoke its own internal law to prevent violations of international obligations.

B.C. has failed to even invoke its own provincial legislation to ensure that it is not in violation with international obligations. The B.C. Ministry of forests has not invoked section 60 of the Forest Act; a section which has given the government discretionary powers to suspend Tree Farm Licenses indefinitely if there is evidence of damage to the natural environment through non-compliance with the Act. There is evidence that the Federal Government and provincial government have failed to enforce their own legislation. Although there have been some convictions against MacMillan Bloedel, the legislation has not been sufficiently enforced, and as a result of non-enforcement international obligations have not been fulfilled.

This section has been enforced by the Ministry of Forests not in a punitive way but in a mitigative way, and consequently no licenses have been suspended for forest practices that have caused serious damage to the natural environment, and canceled under section 61 (cancellation of licenses). If the Ministry of Forests had voluntarily enforced its own legislation, or if there had been a writ of mandamus from the courts to require the Ministry to enforce the Forest Act then the "serious damage to the natural environment" which has occurred would have been minimized. The demonstrations in the forests in the little remaining old growth forests could be attributed in part to the years of the Forest Industries noncompliance to the Forest Act and to the years of reluctance on the part of government and the courts to enforce the Forest Act.

123. In the Appeal, affidavit evidence will be submitted that not only has the Ministry of Forests been not enforcing its own legislation but that it has also contributed to the violation of the silviculture sections of the Forest Act. There has been evidence for years that the forest industry has failed to fulfill its obligations related to silviculture and that the government of B.C. has failed to enforce sections in the Forest Act, which require adequate silviculture.

Evidence will also be submitted that the Inventory Branch of the Ministry of Forests became aware of a serious discrepancy between the original estimation of inventory in a block currently being logged by MacMillan Bloedel. It was found through a research study, Omule A.Y., and K.D. Tudor. Report, "Ratio Sampling Analysis" by A.Y. Statistical Decision Support, Forest Inventory Branch, B.C. Ministry of Forests. (March 11), 1993) by inventory specialists that the inventory in Block 6 in the TFL 39 in the Queen Charlottes had been overestimated by over 40 percent. Rather than releasing this

document to the public or calling for suspension of licenses under section 59, the Inventory Branch of the Ministry of Forests asked MacMillan Bloedel to check the findings with their own data. The Appellant and David White became aware of the document and obtained the document through the Freedom of Information Act. It was only at that time that the Ministry of Forests released the information.

EXHIBIT: M. Affidavit from David White, former president of Greenpeaks, a silviculture contracting firm, and researcher responsible for uncovering the Inventory document.

124. In the Appeal, affidavit evidence will be submitted that MacMillan Bloedel was aware of alternative economically viable methods of selection logging which would have enabled Mac Milan Bloedel to have fulfilled its obligations under the Forest Act and thus its obligations under the TFL which they claim bestows a property right.

EXHIBIT: N Affidavit from Merv Wilkinson, Forester and internationally recognized specialists in selection logging

125. MacMillan Bloedel has not fulfilled its responsibility to protect fisheries, and in fact MacMillan Bloedel has been convicted under section 33 of the Federal fisheries Act for depositing deleterious substances which caused destruction to fish Habitat.

EXHIBIT: O Convictions under the Fisheries Act
Request through Freedom of Information Act for Charges.

126. Evidence was compiled by John Stephen from the Department of Fisheries on non-compliance with Ministry of Forest's TFL Engineering Specifications.
In this document, Stephen examined sections in the Engineering Specifications and submitted photographs demonstrating Non-compliance of the Forest Company with the Engineering Specifications. He describes the photographs as being random samples illustrating the ineffectiveness to date of environmental protection regulations attached to the TFL 46 document and its cutting Permits. These photographs are specific to the Loop Creek site in TFL 46, and referred to non-compliance of a Co. that is not MacMillan Bloedel. However, this type of evidence has been commonplace throughout the forest industry in British Columbia.

EXHIBIT: P John Stephen: M.O.F. 's TFL Engineering Specifications (1991)

127. Recently there has been further evidence of MacMillan Blondel's non fulfillment of responsibility under the Forest Act. The following is a summary of the findings of the Tripp report which was entitled *The Application and Effectiveness of the Coastal Fisheries forestry guidelines in selected cut blocks on Vancouver Island*

(D. Tripp, April, 1992)

Abstract

The Coastal Fisheries Forestry Guidelines, alone or in combination with site specific prescriptions, can effectively reduce the number and severity of the impacts experienced on streams in recently logged areas. Compliance with the guidelines and many prescriptions, however, was generally poor, regardless of location or the type of forest license involved. These were the findings of a recent survey of 21 logged cut blocks on Vancouver Island.

There was, on average, one major or moderate impact on one stream for every cut block inspected. Half of these impacts involved a Class 1 or 11 stream. The other half involved Class III or IV streams that were likely to have a negative effect in the near future on more valuable habitat downstream. Since most of the impacts were the result of debris torrents, large build-ups of sediment and debris were the main types of major impacts recorded in all stream classes.

Approximately 60% of the major problems observed were attributed to excess debris loads in steep gully systems, and a failure to appreciate the transport capabilities of such streams during heavy rains. Other contributing factors were failures to fall and yard away from the streams and failures to clean out the excess debris where cross stream yarding was permitted. Poor drainage controls on roads, and spur roads in particular, were responsible for approximately another 25% of the most significant problems, while a combination of landslides and a poorly located gravel pit accounted for the rest of the problems. Some questionable harvest practices in Streamside Management Zones accounted for six minor or moderate problems, but the long-term implication of the problems was beyond the scope of the present survey.

128. In the appeal evidence of violations of the Forest Act, collected by the Valhalla Wilderness Society, will be submitted.

EXHIBIT: Documentation of over 150 violations of statutory law prepared by the Valhalla Wilderness Society for a previous court case (to be submitted for the Appeal)

129 There has also been a failure on the part of the Ministry of forests to use its discretionary powers to suspend licenses under the Forest Act to address "serious damage to the natural environment"

The government in its response to Steven Owen June 2, 1993, indicated that "the government intends to firmly enforce standards." The government then indicated that, "imminent environmental damage could result in the immediate suspension of operations under Section 60 of the Forest Act" (p.15).

Section 60 of the Forest Act, reads as follows:

Suspension of rights

the regional manager, a district manager or a forest officer authorized by either of them may, by written order and without notice, suspend in whole or part the rights under an agreement where he believes on reasonable and probable grounds that its holder has failed to perform an obligation to be performed by him under the agreement or has failed to comply with this Act or the regulations, and that the failure of performance or compliance is causing or may imminently cause serious damage to the natural environment. 1978.

Since 1978 this section has been in place, and since 1978 "serious damage to the natural environment has occurred. (See EXHIBIT, as an example of this damage). This section has neither been enforced by the Ministry of Forests in a punitive way, nor been requested to be enforced by the Ministry of the Environment. When the Appellant contacted an enforcement officer who had been with the Ministry of Environment for 20 years, and asked him "how often the Ministry of Environment had called upon the Forest Ministry to invoke sections 59,60, and 61 of the Forest Act, his response was that he was unaware of these sections.

Sections 59 and 60 have been enforced by the Ministry of Forests not in a punitive way but in a mitigative way, and consequently no licenses were suspended for forest practices that had caused serious damage to the natural environment, and canceled under section 61 (cancellation of licenses). If the Ministry of Forests had voluntarily enforced its own legislation, or if there had been a writ of mandamus from the courts to require the Ministry to enforce the Forest Act then the "serious damage to the natural environment" which has occurred would have been minimized. The demonstrations in the little remaining old growth forests on Vancouver Island could be attributed in part to the years of the Forest Industries' noncompliance to the Forest Act and to the years of reluctance on the part of government and the courts to enforce the Forest Act.

130. The Government claims that the Forest Practice Code will have a strong enforcement component. On the one hand it is reassuring that the government is finally willing to enforce its legislation, but on the other hand, it is not reassuring that for years environmental harm has occurred because, past governments, as well as the current government, have not been willing to enforce sections 59, 60 and 61 of the Forest Act. For years, environmental groups have brought to the attention of the government that the Forest Act was not being complied with and as a result of non-compliance environmental harm has occurred. For years there has been contempt of the law by both industry and government.

131. In the Appeal it will be noted that a strong enforcement policy — enforcing "kinder and gentler" destructive forest practices such as clear-cut logging will not suffice to enable governments to fulfill international obligations under the Biodiversity Convention.

132. It would appear that the government, in making its decision to log Clayoquot Sound, took into consideration the possible cost of compensation to MacMillan Bloedel that would have resulted from setting aside Clayoquot Sound.

Often intact ecosystems that have been deserving of preservation have been irreversibly destroyed because it was deemed necessary, if these ecosystems were to be withdrawn from an existing tree farm license, for governments to pay compensation. In the past, compensation has been assessed purely on an economic basis without taking into consideration the true environmental costs. In order to assess the environmental costs of the destruction of significant ecosystems one may need to examine if damage to the natural environment within a significant ecosystem has occurred. Section 60 of the Forest Act does permit the suspension of licenses if environmental damage to the natural environment has occurred as a result of non-compliance with the Forest Act. The potential environmental costs of destroying significant ecosystems as a result of the Ministry of Forests not suspending tree farm licenses when there was evidence of destruction to the natural environment is necessary to include in the assessment of compensation. (Complaint submitted to the Ombudsman's office for investigation by appellant and Andrew Gage, 1991-1993)

133. Not only has the government been notified about non-enforcement of Section 60 of the Forest Act, but also the ombudsman's office has been notified about this non-enforcement (even at the time that Steven Owen was the Ombudsman). To investigate the lack of enforcement of section 60 of the forests act appears to be certainly within the mandate of Ombudsman's office.

It would appear then that the forest industry has, when causing environmental harm been outside the law, because neither the government, the ministry of Forest, the ministry of environment, or the ombudsman's office has demanded that section 60 be enforced and licenses be suspended, and that licenses be canceled under section 61. If licenses had been suspended under section 60 and canceled under section 61 because of the harm caused to the natural environment (section 60), the environmental harm such as the harm reported in the TRIPP report would not have occurred.

EXHIBIT: Q Affidavit re: data on MacMillan Blondel's current forest practices in Clayoquot Sound submitted by representative from "Forest Watch."

134. In section 28 of the Forest Act there is an indication that one condition of the granting of the license is that logging has to be "sustained." Environmental researcher Jack Etkin expressed the following concern about noncompliance with the responsibilities under the Act.

MacMillan Bloedel states in their management and working plans that in TFL 44 they will be able to cut about 2.4. million cubic metres of wood a year for the next 200 years. Because they say that 2.4. million is "sustained. We asked the company, how they knew that they could cut 2.4. million cubic metres of wood sustainably for the next 200 years.... they assured us that they have proof that their tree farms will grow sustainably. (press release, 1993)

In a follow-up letter received by Etkin from MacMillan Bloedel, the company stated:

"In conclusion, there is no hard, scientific proof that third and fourth generation forests are viable [not viable is defined as being able to survive and grow]. On the other hand, what evidence there is overwhelmingly positive (July 6, 1990).

Etkin (1993) in the Bridge newspaper indicated the following:

"The most frequently cited piece of evidence was FORCYTE, a computer simulation model out of UBC. According to the Director General of Forestry Canada, models like FORCYTE provide "Perhaps the strongest scientific evidence that B.C. forests can be sustainably managed..."

But here is what the developers of FORCYTE have to say about their model. "The model predictions should be viewed with caution...The model has not been validated against any long-term experimental data. Hence the precision and accuracy of the results are unknown'

EXHIBIT: R Letter received by Jack Etkin from MacMillan Bloedel (1990)

This suggests that MacMillan Bloedel cannot claim to be fulfilling section 28 of the Forest Act, and consequently one of the conditions that would limit its "right to profit a prendre" has not been fulfilled.

135 Given that MacMillan Bloedel has been in violation over the years of many sections of the Forest Act, Waste Management Act and the Fisheries Act, MacMillan Bloedel has not fulfilled the conditions of the TFL under the Forest Act, and thus the contracting party has failed to perform its part of the contract. In this case it would be inappropriate to recognize that MacMillan Bloedel has a property right in the nature of a "profit a 'Prendre." Surely the

Court would recognize that a right cannot be claimed by one who has not fulfilled the responsibilities contingent upon that right.

C. The appeal will rely upon a realistic and objective evaluation of equity. In particular the use of an equitable remedy such as an injunction to justify non-performance of provincial and federal statutory law and to justify non-performance of international legal obligations, and international customary law.

136. Evidence will be submitted that the injunction is an equitable remedy that has been misapplied in the Clayoquot case. Equity could never countenance the destruction of life rearing capacity and life forms in it trust on a massive scale with no genuine regard for future generations.

In the BC Litigation publication, Justice J.A. Norris described the nature of the injunctive remedy in British Columbia Law in the following way:

The remedy [of injunction] of course, is an equitable one. ' The exercise of the equitable jurisdiction is not to be restricted by the straitjacket of rigid rules but is to be based on broad principles of justice and convenience, equity regarding the substance and not merely the facade or the shadow. It moves with time and circumstances. (Justice J.A. Norris)

Although there is a beginning of the recognition of ecological rights in McMillan Bloedel vs. Mullin [1985, BCD Civ 1892-08] there does not yet appear to be a recognition in B.C. courts of the rights of the public to ecological preservation. In McMillan Bloedel vs. Mullin it was decided that

“the claim by an Indian band for 'aboriginal " title to land cannot be 'rejected summarily' and certainly not at the early stages of litigation. Nor must the right to log crown land given by license to a logging Company be ignored. However in light of the fact that unless the issue of title to the subject land is settled before logging occurs the Indians, if successful, will be deprived of valuable ecological rights, and in further light of the fact that irreparable harm will not result to the logging Company if timber harvest is delayed pending an expedited adjudication of issue of title, the principles applicable to the issue of interlocutory injunctions will militate that the status quo. be maintained.”

Although the above decision does recognize the concept of ecological rights when there is a dispute over ownership of property, it does not go far enough to accommodate the current and emerging evidence of time and circumstances. The international law and treaties and the public, including scientists and all reasonable persons who seriously consider the impact of our actions on future generations are now demanding preservation of unfragmented areas of biological complexity. In the UN Conference on Humans and the Environment 1972, the requirement to preserve our environmental heritage and the requirement to save a representative sample of natural ecosystems for future generations were being recognized:

‘The natural resources of the earth including the air, water, land, flora and fauna and especially representative samples of natural ecosystems must be safeguarded for the benefit of present and future generations (Principle 2)

Man has a special responsibility to safeguard and wisely manage the heritage of wild life and its habitat which are now gravely imperiled by a combination of adverse factors.”
(Principle 4),

In issues of preservation of ecosystems and ecological rights perhaps the courts should look to international researchers for guidance and to international documents for substance of moral suasion. Research from the international community and international documents could reflect a more accurate estimate of "the time and circumstance" in the domain of forestry issues, than affidavits from forestry companies that seek to perpetuate what is perceived by a substantial sector of the international community as contributing to environmental degradation, soil depletion, loss of biodiversity, loss of genetic diversity and even loss of productivity in their own industry.

The issue that an equitable remedy— an injunction is being used to prosecute citizens of criminal contempt when the justification for granting of this equitable remedy is still being questioned by the courts, will be examined. Reference will be made to the fundamental principle that it appears to be ethically questionable to continue to convict people under an equitable remedy where the legitimacy of the remedy was still under question in the courts.

137. There is the recognition in the MacMillan Bloedel vs. Mullin case of what could be called the "impossibility avoidance" or "the avoidance of a disappearing object principle": This principle is enunciated as follows:

Seaton, who delivered the judgment in the MacMillan v Mullin case, at 151 stated

The proposal is to clear-cut the area. Almost nothing will be left. I cannot think of any native right that could be exercised on lands that have recently been logged. It follows that rights far short of outright ownership might well warrant retaining the area until after a trial.

Seaton affirmed at 151:

I am firmly of the view that the claim to Indian title cannot be rejected at this stage of litigation. The questions raised by the claim are not the type of questions that should be decided on an interlocutory application. A great amount of factual evidence will have to be heard and considered, opinion evidence of those knowledgeable. in these matters will have to be assembled and related to the factual evidence, there will have to be a meticulous study of the law.

Seaton, (at p. 157), stated:

Each of the decisions {[from cases such as Amer. Cyanamid Co. v Ethicon Ltd., [1975] A.C. 396, to Siebart Rustproofing Ltd. v. Ottawa Rustproofing Ont. H.C. 8th February 1978 (unreported). } represents an attempt on the part of the court to see that justice is done. Often it is an attempt to preserve property so that a claimant will not find at the end of a successful trial that the subject matter is gone, and always there is an attempt not to impede others unnecessarily.

Seaton at 157 cited Cotton L.J in Preston v Luck (1884) 27 Ch. D 497 (at 505) referred to an interlocutory injunction:

...The object of which is to keep things in status quo, so that, if at the hearing the Plaintiffs obtain a judgment in their favour, the Defendants will have been prevented from dealing in the meantime with the property in such a way as to make that judgment ineffectual

Seaton at 157 further cited Spry in the Principles of Equitable Remedies, 2nd ed. (1980) after quoting the above, said at p. 423:

A need for protection of this kind most commonly arises where property as to which there is a dispute between the parties is threatened with damage, destruction or removal or where the value of other rights of the plaintiff may be diminished.

Seaton at 157 further referred to this principle as enunciated in Preston v Luck (1884) 27 Ch. D. 497 at 505, referred to an interlocutory injunction:

...the object of which is to keep things in status quo, so that at the hearing the plaintiffs obtain a judgment in their favour, the Defendants will have been prevented from dealing in the meantime with the property in such a way as to make that judgment ineffectual.

Spry in the Principles of Equitable Remedies, 2nd ed. (1980) after quoting the above, said at p. 423

A need for protection of this kind most commonly arises where property as to which there is a dispute between the parties is threatened with damage, destruction or removal or where the value of other rights of the plaintiff may be diminished.

Even MacDonald who dissented in part stated at 168:

"In order to prevent the alleged illegal activity pending trial, an interlocutory injunction is sought. That is so that the question of a permanent injunction after trial will not be rendered academic."

MacDonald stated at 169:

And the clear message from this court to judges hearing those applications will be that the existing situation should be present while the litigation continues. "

138. This principle enunciated above is to a certain extent an embodiment of a principle of international customary law which is eloquently stated in the Vienna Convention on the Law of Treaties: Under Article 18, a state is obliged to "not defeat the object and purpose of a treaty prior to the entry into force."

139. In the September 15, 1993, before Mr. Justice Drake, application to rescind the injunction the court was asked to consider `the requirement of international obligations related to both the legally binding Conventions from UNCED, signed in 1992, and the globally adopted agreements from UNCED 1992. It was argued that the granting of the injunction would be in violation of the above principle because proceeding with logging when the logging could and would defeat the purpose of any treaty protecting the "ecological rights" within the public trust.

140 The implications of the principle ("impossibility avoidance" or "the avoidance of a disappearing object principle"): enunciated in the MacMillan Bloedel v Mullin case, as well as in Article 18 and 61 of the Vienna Convention on the Law of Treaties, should be considered in relation to the Public Trust Doctrine (Friends Patrai Doctrine). It would appear that if there is a question raised about the legitimacy of eliminating ecological rights within areas coming under the public trust, that full consideration should be given that prior to the discussion and resolution of the question, nothing in the interim should be permitted that would eliminate the ecological rights contained therein. The affirmation of ecological principles contained in the UNCED document, such as the principle of an environmental assessment of any activities that could contribute to a reduction or loss of biodiversity or the principle that would require environmental audits or taking into account ecological consequences or accounting would mean that when considering the irreparable harm and thus the balance of convenience , ecological rights in areas under the public trust doctrine (Friends Patrai Doctrine) should and would have to be taken into consideration.

141. The requirement to take into account the costs of any ecological consequences is a particularly relevant consideration in assessing "irreparable harm" in injunctions. In Agenda 21, the globally agreed to UNCED Action Plan the affirmation of the need to ensure that the costs of any ecological consequences were taken into consideration:

“Ensure that relevant decisions are preceded by environmental impact assessments and also take into account the costs of any ecological consequences” (7.42 Agenda 21, UNCED. 1992)

142. In *MacMillan Bloedel vs. Mullin* it was decided that (at p. 146) that "Monetary damages would not be adequate compensation for the potential injury to Indian culture and social structure.

143. In the BC Litigation publication, Justice J.A. Norris described the nature of the injunctive remedy in British Columbia Law in the following way:

“The remedy [of injunction] of course, is an equitable one. ' The exercise of the equitable jurisdiction is not to be restricted by the straitjacket of rigid rules but is to be based on broad principles of justice and convenience, equity regarding the substance and not merely the facade or the shadow. It moves with time and circumstances”. (Justice J.A. Norris, B.C. Litigation, 1991)

144. As stated in *MacMillan Bloedel vs Mullin* by Seaton at 157 there is an affirmation of the essence of injunctive law (interlocutory injunctions) related to attempting on the part of the court to see that justice is done:

Each of the decisions represents an attempt on the part of the court to see that justice is done. Often it is an attempt to preserve property so that a claimant will not find at the end of a successful trial that the subject matter is gone, and always there is an attempt not to impede others unnecessarily.

145 A case is being researched and will be initiated to determine whether Canada, through the actions of B.C. has been in violation of the Biodiversity Convention since the signing of the Convention in June 1992. Until this case is heard nothing should be done on crown lands which could diminish the value of the public trust rights.

146. The equitable principle of "he who comes to equity must come with clean hands" is a well-established principle of equity.

This principle as stated above should have been applied and if a company like *MacMillan Bloedel* has been in violation of statutory law as well as international law it should not be able to benefit from the granting of an equitable remedy such as an injunction. There is also evidence that the injunction is an equitable remedy that has been misapplied in the *Clayoquot* case, and the injunction should be rescinded, and Mr. Justice Drake's decision related to the applicability of international agreements should be overturned.

There is also evidence that the injunction is an equitable remedy that has been misapplied in the *Clayoquot* case.

147. In addition, in the *Clayoquot* trials, the court has condoned not only violations of guarantees in the Canadian Charter of Rights and Freedoms, but

also violations of guarantees in the International Covenant on Civil and Political Rights, such as the following:

In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him {Article 14 3 (e)}.

[NOTE THAT IN THE CLAYOQUOT TRIALS IN VICTORIA FEW WITNESSES HAVE BEEN PERMITTED TO APPEAR FOR THE DEFENCE]

EXHIBITS: S Affidavits. Ann and Merv Wilkinson

There appears to be little recourse for the Clayoquot Protectors than to eventually seek redress through the Optional Protocol International Covenant on Civil and Political Rights which provides the following remedy:

Subject to the provisions of article 1 individuals who claim that any of their rights enumerated in the Covenant have been violated and who have exhausted all available domestic remedies may submit a written communication to the committee for consideration. (Article 2)

AUTHORITIES:

International legally binding agreements:

UN Conference on the Human Environment, 1972
(#106);
[Also referred to as "Stockholm Convention"]
(#92 and #136)

UN Convention for the Protection of Cultural and Natural Heritage, (1972).
(#21, #31, #56, #83, #92, #93, #94, #96, #120 Note: error on page 37 #51
should read #93)

International Covenant on Civil and Political Rights, (1976).
(#26, #147)

Vienna Convention on the Law of Treaties, (1969).
(#25, #26, #28, #55, #80, #81, #138)

Vienna Convention for the Protection of Ozone, (1985)
[referred to in Affidavit, Exhibit F]

Montreal Protocol on Substances that Deplete the Ozone Layer, 1987 (and
London and Copenhagen Protocols).
[referred to in Affidavit, Exhibit F linked to #73]

Convention on Biological Diversity, (1992).
(#29, #34, #55, #55, #68, #70, #77, #89, #103)
[also referred to as the Biodiversity Convention]
(#28, #29, #31, #57, #58, #63, #69, #77, #78, #85, #86, #87, #88, #89, #92,
#103, #107, #121, #131, #145)

UN Framework Convention on Climate Change (1992).
(#31, #33, #55, #58, #63, #68, #69, #70, #71, #81, #91)
[Also referred to as "Climate Change Convention"]
(#29, #34, #59, #66, #67, #68, #85, #92, #121)

Globally adopted Resolutions, Charters and Declarations:

Agenda 21, UNCED (1992).
(#59, #69, #77, #78, #79, #103, #105, #107, #108, #112, #121, #141)

Caracas Convention (Parks Protected Areas and the Human Future: the
Caracas Declaration, February 1992)
(#92, #112, #113, #114, #121)

Implementation of the Caracas Declaration: Recommendations by the
Caracas Congress. IUCN Nov. 1973
(#113, #114, #115, #117, #121)

World Charter of Nature, UN Resolution 37/71982
(#26, #92, #112, #118)

NGO/State Resolutions:

19.72REV2 North American Coastal Temperate Forests
IUCN Resolution passes at the 1994 IUCN Annual General Meeting, Buenos
Aires
(#97)

Statutory Law:

Forest Act (in particular Sections, 11, 28, 59, 60, 61, and Sections on
silviculture, and inventory.
(#122, #123, #124, #127, #128, #129, #131, #132, #133, #134, #135)

Fisheries Act (in particular, section 33)
(#125, #135)

Waste Management Act (in particular, evidence of MacMillan Bloedel's
violations)
in EXHIBIT O

Government Documents and Correspondence:

Backgrounder to this press release at the time of ratification of the Biodiversity
Convention on December 4, 1992
(#77)

B.C. "State of the Environment Reporting" document , (1993).
(#74, #76, #77, #84, #87)

Draft: Canadian Biodiversity Strategy. (June 1994).
the Federal-Provincial-Territorial Biodiversity Working Group
(#87)

The UNCED Follow-up: Endorsement of International Conventions on Climate
Change and Biological Diversity. Cabinet Submission (November, 1992).
(#66, #67, #68)

Reports:

Greenpeace. Report on Forest Watch (1994).
(#134)

Science Council Annual Report, 1988
Ottawa: Science Council of Canada
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Tripp, D. *The Application and Effectiveness of the Coastal Fisheries Forestry Guidelines in Selected Cut Blocks on Vancouver Island*
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(#133)

Report from the Clayoquot Sound Scientific Panel, (March 1994).
(#34) [Referred, in error, to in text as International Scientific Panel]

Letter from MacMillan Bloedel to Jack Etkin: Re: Forests Forever (1990)
(#134)

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Ombudsman Annual Report. (1991)
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(#126)

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(#99, #100, #105)

Doctrine of Legitimate Expectations.
(#99, #100, #105)

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(#136, #143)

Roscoe Pound in Cambridge Legal Essays (1926), pp259 et seq., cited from
P.V. Baker and P. St Langar (1990). *Snell's Equity* London Sweet and
Maxiwell,

Spry, Principles of Equitable Remedies, 2nd ed. (1980)
(#137)

Cases considered:

Attorney-General for Canada v Attorney-general for Ontario Supreme Court of
Canada A.C. 1937. pp. 326 -354 .

[Referred to as the "Labour Convention Case]

(#21, #22, #23, #32, #34, #41, #45, #58, #59, #60, #61, #70, #71, #72, #73,
#77, #78)

Canada Assistance Plan (Canada) 1991 (2SCR at 525).
(#100)

Commonwealth of Australia and Another v State of Tasmania and Others of
(C6 of 1983) High Court of Australia, Australian Law Reports 1983 pp 625-
831 Constitutional law [Franklin Dam Case]:

(#21, #34, #35, #36, #38, #54, #94)

Koowarta v Bjelke-Petersen (1982) 56 ALJR 625: 39 ALR 417 (Koowarta
Case)

(#38, #39, #40, #41, #42, #43, #44, #47, #48, #49, #50, #51)

[also spelled Kooarta]

R v Burgess: Ex parte Henry (1936) 55 (at 645/453)
(#35, #41, #46, #49)

Cases referred to:

Airlines of NSW Pty Ltd v New South Wales (No. 2) (1965) 113 CLR 54
(#35)

Amer. Cyanamid Co. v Ethicon Ltd., [1975] A.C. 396
(#137)

Preston v Luck (1884) 27 Ch. D 497 (at 505)
(#137)

New South Wales v Commonwealth (the Seas and submerged Lands case
(1975) 135 CLR 337; 8 ALR
(#36)

Radio case (1932] A.C.
(#72, #78)

R v Poole; Ex parte Henry (no.2) and They were repeated in Airlines of NSW
(No 2) by Windeyer J (at 152
(#46)

Siebart Rustproofing Ltd. v. Ottawa Rustproofing Ont. H.C. 8th February 1978
(unreported). }
(#137)

EXHIBITS:

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Bruce Torrie
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Al

Ray Travers

Mathew Re: Forest Watch

Western Canada Wilderness Committee

Susan Gage

EXHIBITS

19.72REV2 North American Coastal Temperate Forests (Retyped with January 25 Amendments from the floor)

RECOGNISING that temperate coniferous forests, and especially rain forests, constitute a very rare type of ecosystem in the world, originally covering less than one-fifth of one percent of the earth's land surface, and that one half of the earth's original forest of this type occurs along the pacific Coast of North America from northwestern California to southeastern Alaska;

UNDERSTANDING that many endemic and unusual plants and animals occur only in these forests; and that in biomass productivity, the old growth forests (ancient forests) of this biome are unequaled anywhere;

AWARE that more than one half of the Earth's original coastal coniferous forests (ancient forests) have been logged, including more than 40 % of the ancient forests of this type on North America, and that few large unfragmented examples of this type of forest, other than in protected areas, exist outside of British Columbia and Alaska;

MINDFUL of the fact that such ancient forests on Vancouver Island and on the mid-coast of British Columbia are disappearing at a rapid rate as a result of practices that have, to date, not been ecologically sustainable;

ALSO, MINDFUL that past management practices have been controversial, while the US government has enacted legislation to ensure sustainable management of all forests, questions continue to arise;

UNDERSTANDING that the Raincoast Conservation Society, the Sierra Club, and the Western Canada Wilderness Committee have proposed a large network of protected areas, including conservation corridors, in areas of such ancient forests on Vancouver Island and the midcoast of British Columbia;

AWARE of the fact that none of the protected areas that Canada maintains in forest areas along the Pacific Coast have been designated as World Heritage sites under the provisions of the World Heritage Convention[s] and that these ancient forests may be of outstanding universal value;

The General Assembly of IUCN — the World Conservation Union, at its 19th Session in Buenos Aires, Argentina, 17-26 January 1994:

1. URGES the Government of Canada and the United States to properly manage the temperate coastal coniferous forests of the Pacific Coast of North America by establishing appropriate protected areas and by adopting ecologically oriented systems of forest management which can be permanently sustained and which protect biodiversity;

2. CALLS UPON the Governments of Canada and British Columbia to substantially expand the amount of land in networks of protected areas, with conservation corridors, on Vancouver Island and the midcoast of British Columbia, taking into consideration the recommendations of environmental groups active in the regions such as the Raincoast Conservation Society, the Sierra Club and the Western Canada Wilderness Committee;

3. URGES the Government of Canada to consider nominating sites or combinations of sites (such as networks), in these forests as World Heritage sites under the World Heritage Convention[s];

4. RECOMMENDS that special efforts be made by these parties and their citizens to restore degraded parts of these forests and to secure the overall integrity of the biome by linking now separate forest stands

Resolution proposed by Michael McCloskey, Sierra Club USA, in collaboration with Joan Russow (B.C. Canada) member of the IUCN Commission on Education and Communication

27. The dissenting judges had attempted to apply the 1937 Labour Convention case see **EXHIBIT**

27. The 1937 case was distinguished by Brennan J. at 482

Lord Atkin in delivering the reasons for judgment....distinguished between the formation and the performance of treaty obligations. The making of a treaty is a function of the executive, but legislation to implement a treaty is a matter for the legislature. he said in reference to the Canadian constitution (at 348): The obligations imposed by treaty may have to be performed, if at all, by several legislatures and the executive have the task of obtaining the legislative assent not of the one parliament to whom they may be responsible, but possibly of several Parliaments to whom they stand in no direct relation. The question is not how is the obligation formed, that is the function of the executive: but how is the obligation to be performed, and that depends upon the authority of the competent legislature or legislatures. "

Brennan at 485

when the subject matter of a law is the subject of a treaty obligation and is 'indisputably international in character', para (xxix) is available to support the law. the present questions whether a law which creates or affects rights, duties powers or privileges regulating a field of activity which is the subject of a treaty obligation is a law with respect to an external affair, or whether some additional quality, "indisputably international" must be found in the subject of the treaty obligations. ...in Burgess..." at 30: "The external affairs power authorizes the parliament to make a law for the purpose of carrying out or giving effect to a treaty, at least if the treaty is in reference to some matter indisputably international in character." and Mason J said (at 470/91): " There is abundant authority for the proposition that the subject matter extends to Australia's relationships with other countries and in particular to carrying into effect treaties and conventions entered into with other countries and in particular to carrying into effect treaties and conventions entered into with other countries provided at any rate that they are truly international in character.

Brennan at 487

Where a particular aspect of the internal legal order of a nation is made the subject of a treaty obligation, there is a powerful indication that subject does affect the parties to the treaty and their relations one with another. They select that aspect as an element of their relationship, the obligee nations expecting and being entitled in international law to action by the obligor nation in performance of the treaty. And therefore, to subject an aspect of the internal legal order to treaty obligations stamps the subject of the obligation with the character of an external affair.

This is consistent with the view of the majority of the court in *R v Burgess*... at 644 said: "The Commonwealth Parliament was given power to legislate to give effect to international obligations binding the Commonwealth or to protect national rights internationally obtained by the commonwealth whenever legislation was necessary or deemed to be desirable for this purpose." Starke J (at 657) said: The constitution, in the legislative power to make laws with respect to external affairs, recognizes that the Commonwealth will have political relations with other Powers and States, and legislative power is conferred upon it in comprehensive terms, so that it may control those foreign or external relations and implement obligations that may have been assumed in the course of those relations. And Evatt and McTiernan JJ said (at 681): " in truth, the King's power to enter into international conventions cannot be limited in advance of the international situations which may from time to time arise. And in our view the fact of an international convention having been duly made about a subject brings that subject within the field of international relations so far as such subject is dealt with by the agreement."

27. Brennan at 487 affirmed that the mere acceptance of a treaty obligation related to an internal matter, makes the matter an external affairs matter

These views were adhered to in *R v Poole; Ex parte Henry* (no.2) and They were repeated in *Airlines of NSW (No 2)* by Windeyer J (at 152): A law necessary to give effect to a particular treaty obligation of the Commonwealth is a law with respect to external affairs." If Australia, in the conduct of its relations with other nations, accepts a treaty obligation with respect to an aspect to Australia's internal legal order, the subject of the obligation thereby becomes (if it was not previously) an external affair, and a law with respect to that subject is a law with respect to external affairs.

27. Brennan at 487 proposed a criterion for assessing the external affairs nature

I would agree, however, that a law with respect to a particular subject would not necessarily attract the support of para (xxix) if a treaty obligation had been accepted with respect to that subject merely as a means of conferring legislative power upon the Commonwealth Parliament. 26. The power to affect the obligation imposed by a convention lies on the Confederation (federal)

In *RV Burgess: Ex parte Henry* (1936) 55 (at 645/453) the judgment of Stephen J...

His Honour stated (at 646/454) that the content of the external affairs power must be determined by what is generally regarded

at any particular time as part of the external affairs of the nation, describing that as " a concept the content of which lies very much in the hands of the community of nations of which Australia forms a part" ... (p. 689)

Case is authority for the proposition that the power authorizes a law which gives effect to an obligation imposed on Australia by a bona fide international convention or treaty to which Australia is a party (689)

EXHIBIT

Stephen J. at 445

The constitution confers upon the Parliament of the commonwealth power to make laws for the peace, order and good government of the Commonwealth." It should be made clear that no question arises as to the power of Australia to enter into the convention. The Governor-General exercising the prerogative over of the Crown can make treaties on subjects which are not within the legislative power of the Commonwealth. However, the treaties when made are not self-executing: they do not give rights to or impose duties on members of the Australian community unless their provisions are given effect by statute. The power of the parliament to carry treaties into effect is not necessarily as wide as the executive power to make them. This was made clear by the Judicial Committee in *Attorney-General for Canada v Attorney-General for Ontario* [1937] AC 326 at 348, where their lordships said: "... in a federal State where legislative authority is limited by a constitutional document, or is divided up between different legislatures in accordance with the classes of subject-matter submitted for legislation, the problem is complex. The obligations imposed by treaty may have to be performed, if at all, by several legislatures; and the executive have the task of obtaining the legislative assent not of the one Parliament to whom they may be responsible, but possibly of several Parliaments to work they stand in no direct relation. The question is not how is the obligation formed, that is the function of the executive but how is the obligation to be performed, and that depends upon the authority of the competent legislature or legislatures."

... and at 435 ..in the *Labour Convention 1937* case at 353-4 their lordships pointed out that their decision in that case that legislation of the Dominion of Canadas giving effect to certain conventions was ultra vires did not have the result that Canada was incompetent to legislate in performance of treaty obligations. They said (at 354): in totality of legislative powers, Dominion and Provincial together, she is fully equipped. But the legislative powers remain distributed, and if in the exercise of her new functions derived from her new international status, Canada incurs obligations they must, so far as legislation be concerned, when they deal with Provincial classes of subjects, be dealt with by the totality of powers, in other words by co-operation between the Dominion and the Provinces."

Koowarta v Bjelke-Petersen and others Queensland v Commonwealth of Australia

2-4 March, 11 May 1982 High Court of Australia, Aust. Law Reports.

Constitutional law — Commonwealth — Legislative Powers — act implementing an international treaty

it was held Sections 9 and 12 were valid laws with respect to external affairs within s 51 (xxix) of the Constitution,

Per Stephen J. at 418. There existed a quite precise treaty obligation on a subject of major importance in international relationships, which called for domestic implementation within Australia

Per Mason J. at 418 It would seem to follow inevitably from the plenary nature of the external affairs power that it would enable the parliament to legislate not only for the ratification of a treaty but also for its implementation by carrying out any obligation to enact a law that Australia assumed by the treaty

Brennan J. at 418 If Australia in the conduct of its relations with other nations accepted a treaty obligation with respect to an aspect of Australia's internal legal order, the subject of the obligation thereby because (if it was not previously) an external affair, and a law with respect to that subject was a law with respect to external affairs.

Wilson at 480 state" the task of ensuring the co-operation of the States may present a political challenge, although the developing practices of including State representation in commonwealth delegations to international conferences on subjects which may call for implementation by State legislatures augurs well for future co-operation in the pursuit of an effective foreign policy and the maintenance of good international relations:

Wilson at 480 [dissenting] raised the Judicial Committee in Attorney-General for Canada v Attorney-General for Ontario [1937]

Where their Lordships expressed the view that in the totality of Dominion and Provincial legislative powers, Canada was fully equipped to implement any international obligations that might be incurred. The decision in that case, though not the accuracy of the observation to which I have referred was subjected to a good deal of criticism.

However, a recent assessment appears in an article by Edward McWhinney in the Canadian Yearbook of International law (1969) vol. 7 p3 wherein (at 4-5) the author wrote: 'Not merely has the Labour Convention decision not rendered impossible the conduct of a national Canadian foreign policy. In fact, no single example has ever been cited, in the years since 1937...where its rationale has presented any practical difficulties, or even mild inconvenience, in the conduct of Canada's foreign relations. At the concrete, empirical level, it has in fact proved easily possible for Canadians to live with the decision...'

The 1937 Canadian Labour case was used by the dissenting judge at 434 It should be made clear that no question arises as to the power of Australia to enter into the convention. The Governor-General exercising the prerogative over of the Crown can make treaties on subjects which are not within the legislative power of the Commonwealth. However, the treaties when made are

not self-executing: they do not give rights to or impose duties on members of the Australian community unless their provisions are given effect by statute. The power of the parliament to carry treaties into effect is not necessarily as wide as the executive power to make them. This was made clear by the Judicial Committee in *Attorney-General for Canada v Attorney-General for Ontario* [1937] AC 326 at 348, where their lordships said: " in a federal State where legislative authority is limited by a constitutional document, or is divided up between different legislatures in accordance with the classes of subject-matter submitted for legislation, the problem is complex." The obligations imposed by treaty may have to be performed, if at all, by several legislatures; and the executive have the task of obtaining the legislative assent not of the one Parliament to whom they may be responsible, but possibly of several Parliaments to work they stand in no direct relation. The question is not how is the obligation formed, that is the function of the executive but how is the obligation to be performed, and that depends upon the authority of the competent legislature or legislatures."

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Stephen J. at 445

The constitution confers upon the Parliament of the commonwealth power to make laws for the peace, order and good government of the Commonwealth with respect to the division of powers.

[In the Australian Act, the Racial Discrimination Act" there is the following statement:

"to make provision for giving effect to the Convention

Stephen at 452

"So long as treaties departed little from their early nature as compacts between princes, having no concern with domestic affairs, the conflict was muted: but in the century international conventions have come to assume a more extensive role. They prescribe standards of conduct for both governments and individuals having wide application domestically in areas of primarily regional concern, the very areas which, in federations, have tended to be entrusted to the legislative competence of the regional units of governments. This has necessarily exacerbated the problem which federations encounter in the implementation of international treaties while emphasizing the need for regional units in federations to recognize the legitimacy of national governments' increased concern regarding domestic observance of internationally agreed norms of conduct. "

Stephen at 453 Thus areas of what are of purely domestic concern are steadily contracting and those of international concern are ever expanding.

Stephen at 454 post war growth in consensual international law.

Stephen at 454 What has occurred is rather a growth in the content of "external affairs"; this growth reflects the new global concern for human rights and the international acknowledgment of the need for universally recognized norms of conduct particularly in relation to the suppression of racial discrimination.

Stephen at 456

Even were Australia not a party to the Convention, this would not necessarily exclude the topic as a part of its external affairs. It was contended on behalf of the Commonwealth that, quite apart from the Convention, Australia has an international obligations to suppress all forms of racial discrimination because respect for human dignity and fundamental rights and thus the norm of non-discrimination on the grounds of race, is now part of customary international law, as both created and evidenced by state practices and as expounded by jurists and eminent publicists.

Stephen at 456. In the present cases it is not necessary to rely upon this aspect of the external affairs power since there exists a quite precise treaty obligation on a subject of major importance in international relationships, which calls for domestic implementation within Australia.

Mason at 459 It would seem to follow inevitably from the plenary nature of the power that it would enable the parliament to legislate not only for the ratification of a treaty but also for its implementation by carrying out any obligation to enact a law that Australia assumed by the treaty.

Mason 459 recognized that; "It is a well-settled principle of the common law that a treaty not terminating a state of war has no legal effect upon the rights and duties of Australian citizens and is not incorporated into Australian law on its ratification by Australia (*Chow Hung Ching v R* (1948) not self-executing'

... to achieve this result the provisions have to be enacted as part of our domestic law, whether by Commonwealth of States statute. Section 51 (xxix), arms the Commonwealth Parliament with a necessary power to bring this about. So much was unanimously decided by the court in *R v Burgess: Ex parte Henry* (1936) 55 CLR 608. There the power enabled the Commonwealth Parliament to legislate so as to incorporate into our law the provisions of the Paris Convention for the regulation of aerial navigations.

Mason at 459 ... the consequence of the failure [of the *R. v Burgess: Ex parte Henry* (1936)] would have been to leave the decision on whether Australia should comply with its international obligations in the hands of the individual States as well as the Commonwealth, for the commonwealth would then lack sufficient legislative power to fully implement the treaty. The ramifications of such a fragmentation of the decision-making process as it affects the assumption and implementation by Australia of its international obligations are

altogether too disturbing to contemplate. Such a division of responsibility between the Commonwealth and each of the States would have been a certain recipe for indecision and confusion, seriously weakening Australia's stance and standing in international affairs. Fortunately, the approach in Burgess has since been confirmed by R v Poole; Ex parte Henry (no.2) 1939 61 CLR...

Mason at 462. doubtless the framers of the Constitution did not foresee accurately the extent of the expansion in international and regional co-operation which has occurred since 1900. ...There is no reason at all for thinking that the legislative power conferred by s 51 (xxix) was intended to be less than appropriate and adequate to enable the Commonwealth to discharge Australia's responsibilities in international and regional affairs. mason at 463 Increasing emphasis is given in the United Nations and in regional organizations to the pursuit by international treaties of idealistic and humanitarian goals. It is important that the Commonwealth should retain its full capacity through the external affairs power to represent Australia, to commit it to participation in these developments when appropriate and to give effect to obligations thereby undertaken. `

Mason 466. Broadly speaking the test which they favoured was whether in substance the legislation carries out or gives effect to the Convention.

Mason at 467 " On the broad view which I take of the power it extends to the implementation of the international convention on the... on the Elimination of all forms of Racial Discrimination. It is an international treaty to which Australia is a party which binds Australia in common with other nations to enact domestic legislation in pursuit of the common objective of the elimination of all forms of racial discrimination.

But I would go further and say that even on the more cautious expression of the scope of the power by Dixon in Burgess, it would extend to the implementation of the convention.

Mason at 468 At the level of international law the means chosen to attain this end was the formulation of the Convention. It imposes on each of the many parties to it an obligation to eliminate racial discrimination in its territory. The failure of a party to fulfill its obligations becomes a matter of international discussion, disapproval, and perhaps action by way of enforcement.

Murphy at 471 discussed "the obligations to take legislative measure...

Murphy at 472 Preservation of the world's endangered species, maintenance of universal standards of human rights. are for Australia as well as other nations, internal as well as external affairs.

Murphy at 473. the people of the States are entitled as well as obliged to have the legislative and executive conduct of those affairs which are part of Australia's external affairs carried out by the Parliament and executive Government of Australia.

Wilson at 480 state" the task of ensuring the co-operation of the States may present a political challenge, although the developing practices of including

State representation in commonwealth delegations to international conferences on subjects which may call for implementation by State legislatures augurs well for future co-operation in the pursuit of an effective foreign policy and the maintenance of good international relations:

Wilson at 480 [dissenting] raised the Judicial Committee in *Attorney-General for Canada v Attorney-General for Ontario* [1937]

Where their Lordships expressed the view that in the totality of Dominion and Provincial legislative powers, Canada was fully equipped to implement any international obligations that might be incurred. The decision in that case, though not the accuracy of the observation to which I have referred was subjected to a good deal of criticism.

However, a recent assessment appears in an article by Edward McWhinney in the *Canadian Yearbook of International Law* (1969) vol. 7 p3 wherein (at 4-5) the author wrote: 'Not merely has the Labour Convention decision not rendered impossible the conduct of a national Canadian foreign policy. In fact, no single example has ever been cited, in the years since 1937...where its rationale has presented any practical difficulties, or even mild inconvenience, in the conduct of Canada's foreign relations. At the concrete, empirical level, it has in fact proved easily possible for Canadians to live with the decision...'

Brennan J. at 482 also referred to *Labour Convention Case*... Lord Atkin in delivering the reasons for judgment... distinguished between the formation and the performance of treaty obligations. The making of a treaty is a function of the executive, but legislation to implement a treaty is a matter for the legislature. he said in reference to the Canadian constitution (at 348): The obligations imposed by treaty may have to be performed, if at all, by several legislatures and the executive have the task of obtaining the legislative assent not of the one parliament to whom they may be responsible, but possibly of several Parliaments to whom they stand in no direct relation. The question is not how is the obligation formed, that is the function of the executive: but how is the obligation to be performed, and that depends upon the authority of the competent legislature or legislatures. "

Brennan at 485 when the subject matter of a law is the subject of a treaty obligation and is 'indisputably international in character', para (xxix) is available to support the law. the present questions whether a law which creates or affects rights, duties powers or privileges regulating a field of activity which is the subject of a treaty obligation is a law with respect to an external affair, or whether some additional quality, "indisputably international" must be found in the subject of the treaty obligations. ...in *Burgess*... " at 30: "The external affairs power authorizes the parliament to make a law for the purpose of carrying out or giving effect to a treaty, at least if the treaty is in reference to some matter indisputably international in character." and Mason J said (at 470/91): " There is abundant authority for the proposition that the subject matter extends to Australia's relationships with other countries and in particular to carrying into effect treaties and conventions entered into with other countries and in particular to carrying into effect treaties and

conventions entered into with other countries provided at any rate that they are truly international in character.

Brennan at 487 Where a particular aspect of the internal legal order of a nation is made the subject of a treaty obligation, there is a powerful indication that subject does affect the parties to the treaty and their relations one with another. They select that aspect as an element of their relationship, the obligee nations expecting and being entitled in international law to action by the obligor nation in performance of the treaty. And therefore, to subject an aspect of the internal legal order to treaty obligations stamps the subject of the obligation with the character of an external affair. This is consistent with the view of the majority of the court in *R v Burgess*... at 644 said: "The Commonwealth Parliament was given power to legislate to give effect to international obligations binding the Commonwealth or to protect national rights internationally obtained by the commonwealth whenever legislation was necessary or deemed to be desirable for this purpose." Starke J (at 657) said: The constitution, in the legislative power to make laws with respect to external affairs, recognizes that the Commonwealth will have political relations with other Powers and States, and legislative power is conferred upon it in comprehensive terms, so that it may control those foreign or external relations and implement obligations that may have been assumed in the course of those relations. And Evatt and McTiernan JJ said (at 681): " in truth, the King's power to enter into international conventions cannot be limited in advance of the international situations which may from time to time arise. And in our view the fact of an international convention having been duly made about a subject brings that subject within the field of international relations so far as such subject is dealt with by the agreement."

Brennan at 487 "These views were adhered to in *R v Poole*; *Ex parte Henry* (no.2) and They were repeated in *Airlines of NSW (No 2)* by Windeyer J (at 152): A law necessary to give effect to a particular treaty obligation of the Commonwealth is a law with respect to external affairs." If Australia, in the conduct of its relations with other nations, accepts a treaty obligation with respect to an aspect to Australia's internal legal order, the subject of the obligation thereby becomes (if it was not previously) an external affair, and a law with respect to that subject is a law with respect to external affairs.

Brennan at 487 I would agree, however, that a law with respect to a particular subject would not necessarily attract the support of para (xxix) if a treaty obligation had been accepted with respect to that subject merely as a means of conferring legislative power upon the Commonwealth Parliament. 26. The power to effect the obligation imposed by a convention lies on the Confederation (federal)

In *RV Burgess*: *Ex parte Henry* (1936) 55 (at 645/453) the judgment of Stephen J...

His Honour stated (at 646/454) that the content of the external affairs power must be determined by what is generally regarded at any particular time as part of the external affairs of the nation, describing that as " a concept the content of which lies very much in the hands of the community of nations of which Australia forms a part" ... (p. 689)

Case is authority for the proposition that the power authorizes a law which gives effect to an obligation imposed on Australia by a bona fide international convention or treaty to which Australia is a party (689)

EXHIBIT: EXCERPTS FROM THE FRANKLIN DAM CASE

1. does the enactment of the law constitute an implementation by Australia of an obligation imposed on it by the Convention? conversely would Australia be in breach of an obligation imposed on it by the Convention., if it failed to enact the law or some law substantially to the same effect?
2. Does the subject-matter of the Convention to which the law gives effect in the manner in which it is treated, involve in some way a relationship with other countries or with persons or things outside Australia?
3. Is the subject-matter of the convention to which the law gives effect, something which, although it relates to domestic activity, affects relations between Australia and another or other countries?

the first of the three tests seeks to express the idea that it is the implementation of an obligation imposed on Australia by a treaty that attracts the external affairs power, that it is the treaty obligation and its implementation that constitutes the relevant subject or matter of external affairs. As I pointed out in *Koowarta* (at 648-50/457-62), the treaty itself is a matter of external affairs, as is its implementation by domestic legislation. The insistence in *Burgess* of the legislation to carry into effect provisions of the convention in accordance with the obligations which that Convention imposed on Australia is not inconsistent with what I have said, though it does raise a question as to the scope of the legislative power in this application to a treaty,

At this point it is sufficient to say that there is no persuasive reason for thinking that the international character of the subject matter or the existence of international concern is confined to that part of a treaty which imposes an obligation on Australia. A provision in a treaty which is designed to secure to Australia a benefit may be just as much a matter of international concern, possessing an international character, with a potential to affect Australia's relationships with other countries, as a provision in a treaty which imposes an obligation upon Australia.

... But when we have regard to international affairs as they are conducted today, when the nations of the world are accustomed to discuss, negotiate, co-operate and agree on an ever-widening range of topics, it is impossible to enunciate a criterion by which potential for international action can be identified from topics which lack this quality.

... p691

It is suggested that if a topic becomes the subject of international cooperation or an international convention it is necessarily international in character —

...

The fact of entry into and of ratification of, an international convention, evidences the judgment of the Executive and of Parliament that the subject matter of the convention is of international character and concern and that its implementation will be a benefit to Australia. ...

the court should accept and act upon the decision of the Executive government and upon the expression of the will of Parliament in giving legislative ratification to the treaty or convention. (p. 692)

... Koowarta makes the point that the content of the external affairs power has expanded greatly in recent times along with the increase in the number of international conventions and the extended range of matters with which they deal (ALJR) at 645-6, 650; (ALR) at 453-4, 462-3

Section 51(xxix)

"There is no reason at all for thinking that the legislative power conferred by s51(xxix) was intended to be less than appropriate and adequate to enable the Commonwealth to discharge Australia's responsibilities in international and regional affairs... As the object of conferring the power was to equip the Commonwealth with comprehensive capacity to legislate with respect to external affairs, it is not to the point to say that such is the scope of external affairs in today's world that the content of the power even to the Commonwealth is greater than it was thought to be in 1900."

Accordingly, it conforms to established principle to say that s51 (xxix) was framed as an enduring power in broad and general terms enabling the Parliament to legislate with respect to all aspects of Australia's participation in international affairs and of its relationship with other countries in a changing and developing world and in circumstances and situations that could not be easily foreseen in 1900. (p693) This circumstance is often overlooked by those who are preoccupied with the impact that the exercise of the power may have in areas of legislation traditionally regarded by the States as their own. The consequences to Australia resulting from an inadequate Commonwealth legislative power with respect to external affairs — which represents the price to be paid for the preservation to the States of these areas of legislation — were emphasized in Koowara (ALJR) at 650-1, 656; (ALR)

... it must always be remembered that we are interpreting a constitution broad and general in its terms, intended to apply to the varying conditions which the development of our community must involve."

Despite Norris' assessment of the "equitable remedy of the injunction" in most injunctive cases, the condition for granting an injunction appears to be restricted to a "balance of convenience" (the term "convenience" appears to be interpreted as meaning suitability; and the term "just" appears to be absent indicating perhaps that the courts do not believe that there is a significant distinction between "suitability" and "just"). It is, understandable that the courts, in deciding between two competing economic claims, would approach the claims as being a balance of convenience. Not all conflicts, however, can always be justly resolved by balancing conveniences. Further, cases between short term economic claims and long-term ecological concerns of potential irreversible destruction surely must not be resolved by misconstruing an ecological right as being one of convenience, and an economic privilege as being one of irreparable harm as had been done in *Wiigyet vs District Manager*. ∞ FULL

In judicial decisions related to conflicts between short term economic interests and long-term ecological concerns the courts in using equitable remedies must reexamine fundamental principles of justice and equity, so as to ensure that the legal system fosters not inhibits justice and equity. It may also be necessary to accept a limitation on freedoms: i.e., that which was considered to be a right may now only be deemed to be a privilege, and in being a privilege it should receive different and more intense scrutiny.

The global system is presently attaining or approaching an ecological state of irreversibility or privation. The time has passed for the perpetuation of precedence reflecting the exclusive reliance on narrowly defined "convenience" and "balance of convenience" or conflict between "convenience and irreparable damages or harm", and reliance on Forest Company affidavits as a basis for granting injunctions. There appears to be a serious discrepancy or lack of correspondence between the criteria for making injunctive decisions and the current recognition of time and circumstance as reflected by concerns in the international scientific and academic community and by proclamations in international documents.

The need to redefine irreparable damage is made evident in the previously mentioned *Wiigyet vs. District Manager* case. International and national documents could assist the court in defining irreparable damage so that the court could "move with time and circumstance" (Norris).

A F I D A V I T

I, Joan Russow, of 1230 St. Patrick St. of the city of Victoria, Province of British Columbia MAKE OATH AND SAY AS FOLLOWS:

1. THAT I am a Sessional lecturer in Global Issues in the Environmental Studies Program at the University of Victoria; the Chair of the International Affairs Caucus of the British Columbia Network (BCEN); a member of an International Commission-the IUCN (World Conservation Union) Commission on Education and Communication, and founder of the International Law and Obligations Institute (ILOI) — an institute established to monitor compliance to International obligations.

2. THAT I attended the New York Prep Com (March 1992), the UNCED Earth Summit and Global Forum (June, 1992), the meeting of the World Heritage Committee, and the Annual General Meeting of the IUCN.

3. THAT I am a researcher in an international Harvard -based project, which examines climate change, ozone depletion and acid rain documentation and implementation of policy in eight different countries; and that I am involved in co-coordinating a "Global Compliance Project" for the 1995 UN Conference in Beijing.

4. THAT I have extensive experience in analyzing and categorizing research data and in carrying out content analysis in different disciplines. Since 1985 I have been doing a content analysis of international documents. I have analyzed statements in the following International legal instruments and UN resolutions:

Universal Declaration of Human Rights, 1948; Stockholm Conference on the Human Environment, 1972; UN Conservation of Natural Heritage, 1972; UN Convention on International Trade in Endangered Species of Wild Fauna and Flora, 1973; International Covenant of Social, Cultural Rights; International Covenant on Civil and Political Rights, 1976; the Vienna Convention of Treaties, 1978; the World Charter of Nature, 1982; Non-proliferation of Nuclear weapons; Vienna Convention for the Protection of Ozone, 1985; Montreal Protocol on Substances that Deplete the Ozone Layer, 1987 (and London and Copenhagen Protocols); UN Convention on the Rights of the Child, 1989; Convention for the Control of trans-boundary Movements of Hazardous Wastes (Basel Convention 1989); Environmental Assessment Review of trans-boundary Projects; 1991 ASEAN; Jakarta Declaration. the Caracas Declaration, 1992; Rio Declaration and Agenda 21, 1992, Convention on Biological Diversity, 1992; UN Framework Convention on Climate Change, 1992.

In particular, I have done a content analysis of the UNCED documents, and extracted over 200 principles enunciated in those documents. In October, 1993, at the University of Victoria, I also organized a panel discussion on "International Law and Obligations: Implications for the Clayoquot".

5. THAT I am currently involved in a university project examining B.C. and Canadian environmental legislation

6. THAT I have had input into the drafting of several international documents: a proposed Earth Charter for UNCED; the NGO Earth Charter at the UNCED Global Forum; and the IUCN "Covenant" prepared by the IUCN Commission on Environmental Law.

7. THAT I have reviewed international documents such as the UNCED Forest Principles document, and indicated its inconsistency with other international documents; I have reviewed federal documents such as the proposed Charlottetown Accord, and the CIDA guidelines for international projects, and indicated the inconsistency of these documents with other international and federal documents. I have reviewed provincial documents such as CORE Charter, B.C. Environmental Bill of Rights, the B.C. Prevention Act, the Forest Practices Code; B.C. Standards for Pollution Prevention, and indicated the inconsistency of these documents with other Federal and international documents.

8 THAT I will submit evidence about the following:

6.1. THAT there is a strong indication from statements from international documents, and from experts that there is an urgency to address the global environmental situation, and that "inaction is negligence" (Digby McLaren, Past President of the Royal Society of Canada, Keynote address, Global Issues Conference, 1991).

EXHIBIT A: Evidence of statements about urgency by Science Council of Canada; by the Royal Society of Canada; by the Concerned Scientists, Warning to Humanity; and by the international community in international documents.

6.2. THAT there is a duty expressed in international documents to act to address this urgency, and through international customary law as expressed in the International Covenant on Civil and Political Rights, and in UN Resolution 37/82, a duty has been placed on states to adopt such legislative or ... measures as may be necessary to give effect ... to international documents, and BC has undertaken this duty as a result of this international customary law.

EXHIBIT B: Evidence of statements of duty expressed internationally, nationally and provincially.

6.3. THAT Canada as well as B.C. has failed in many cases to exercise this duty and comply with its obligations. In particular, Canada has failed to comply with the Convention on Biological Diversity which Canada signed (June, 1992) and ratified (December, 1992); and which has been in force since December 1993; and that Canada under Article 18 of the Convention of Treaties, must not "defeat the purpose of the Treaty in the interim between the signing of the treaty and the coming into force of the treaty."

EXHIBIT C: Evidence that Canada has defeated the purpose of the Treaty since June 1992 by failing to conserve biodiversity, by failing to identify biodiversity, by failing to invoke the precautionary principle to justify the banning of ecologically unsound practices, and by failing to carry out an environmental assessment review of anything that could contribute to the loss or reduction of biodiversity.

6.4. THAT Canada has invoked internal law to justify not complying with these obligations (through claiming that B.C. is not bound by these documents and thus not required to comply. Under Article 27 of the Vienna Convention of Treaties, Canada is bound not to invoke internal law to justify non-compliance to international treaties.

EXHIBIT D1: Evidence that Canada under the Convention of Treaties has undertaken not to invoke internal law to justify not fulfilling international treaty obligations.

EXHIBIT D2: Evidence that indicates that B.C. as well as Canada is bound by these international obligations whether through legally binding documents such as the Biodiversity Convention and the Climate Change Convention, or through international customary law including the Common Law Doctrine of Legitimate Expectation, and evidence that the 1937 International labour Supreme Court Decision can be distinguished in the case of the Convention on Biological Diversity.

6.5. THAT Canada has invoked internal law to justify not complying with these obligations through granting injunctions that prevent the fulfilling of these obligations. Under Article 27 of the Vienna Convention of Treaties, Canada is bound not to invoke internal law to justify non-compliance to international treaties.

EXHIBIT E : Evidence that B.C. has not only used internal law — the granting of injunctions to justify noncompliance to International obligations but has failed to invoke its own internal law to prevent violations of international obligations.

6.6. THAT many of the Clayoquot Protectors were informed through circulated material and proclamations that there were international obligations undertaken by Canada and B.C., and that these obligations were being violated in the Clayoquot.

EXHIBIT F: Evidence of examples of documents about B.C. 's non-compliance to international obligations circulated to Clayoquot protectors.

6.7. THAT there has been international condemnation of British Columbia through a resolution from IUCN, an international organization with representation from 125 countries, including representation from governments and non-governmental organizations. I am a member of the Commission on Education and Communication of the IUCN (the World Conservation Union)

—an organization that has both non-governmental and governmental representation, and academic and professional representation from 125 countries. I was instrumental in January 1994 in assisting in the drafting of the "North American Temperate Rainforest" Resolution which passed with only one state abstaining, Canada. The IUCN undertakes to circulate any resolution passed at the Annual General Meeting to all states in the United Nations, and it is the responsibility of the proposer of a resolution to monitor the fulfillment of IUCN resolutions, and to submit documentation about the fulfillment of the resolutions for distribution at the next IUCN Annual General Meeting.

EXHIBIT G: Evidence of International condemnation of forest practices in British Columbia, and of international call for the protection of a large network of original temperate rainforests as recommended by the Western Canada Wilderness Committee whose proposal for a network includes Clayoquot Sound.

6.8. THAT it may not be equitable to prosecute citizens through the use of an equitable remedy— an injunction- when the granting of the equitable remedy is still under question in the courts, and when the equitable remedy is being used against those who call for the adherence to international obligations. I also propose that the issuance of equitable remedy such as an injunction which has usually been issued to prevent irreparable harm, has in this case of Clayoquot sound been issued against those who strive to prevent irreparable harm and call for the adherence to international obligations. [Note: that there have been several attempts to set aside the injunction, the last one being heard in January with no decision yet being handed down in June, and citizens are still being tried as criminals for contempt of court for their not complying with the injunction]

EXHIBIT H: Evidence that the injunction is an equitable remedy that has been misapplied in the Clayoquot case.

In the BC Litigation publication, Justice J.A. Norris described the nature of the injunctive remedy in British Columbia Law in the following way:

The remedy [of injunction] of course, is an equitable one. ' The exercise of the equitable jurisdiction is not to be restricted by the straitjacket of rigid rules but is to be based on broad principles of justice and convenience, equity regarding the substance and not merely the facade or the shadow. It moves with time and circumstances. (Justice J.A. Norris)

6.9. THAT there is a positive duty upon citizens to ensure that a state adheres to its international obligations.

EXHIBIT I: Evidence to support the proposal that it is the responsibility and duty of individuals to act to ensure compliance with international obligations

6.10. THAT in cases of potential irreversibility there may not be time for citizens to wait to exhaust all domestic measures before bringing their concerns to the international forum; and THAT the exercising of this positive duty as was done in Clayoquot Sound by peacefully assembly to protest the non-compliance with international obligations should not be considered to be a demonstration of criminal contempt of court. When established members of the community, such as representatives of government at international conferences, senior scientists from national institutions indicate the gravity and urgency of the global situation, including deforestation, it is inequitable for the courts to impose injunctions that were traditionally an equitable remedy to prevent irreparable harm on those who try to prevent irreparable harm. It is equally inequitable to charge those who call upon governments to live up to their commitments as criminals while those who do not adhere to international commitments, federal laws and provincial statutes are fined occasionally for their "transgressions." Since Canada has made these commitments outlined in the above exhibits, and because these commitments are inconsistent with the continuing to log in significant stands of unfragmented watersheds the injunction should have been rescinded because the injunction is contributing the non-fulfillment of international, national and provincial obligations.

In my opinion the court has violated principles of equitable law, such as the principle that "he who comes to equity must come with clean hands," by granting an equitable remedy to a party, MacMillan Bloedel, that itself has been in violation of international, federal and provincial law. When the ignoring of this equitable principle was brought to the attention of Judge Drake, he ruled that, in equity, "equity follows the law." If that were the case, and if international laws, such as the UN Resolution 37/7 (1982), federal laws, such as the Fisheries Act, and provincial laws, such as the Forest Act had been applied years ago, tree Farm licensees would have been suspended and canceled, and forest practices changed. In the absence of the court's willingness to enforce international law and federal and provincial statutory law, "equity has not followed the law."

In the Clayoquot, the court failed to invoke the law, and instead has demonstrated contempt for its own laws, by misconstruing the purpose of the equitable remedy of an injunction, which is to prevent irreparable harm. In circumstances where the state has failed to exercise its duty to act, and the court has failed to enforce the law, it is the state and the court that has demonstrated contempt for the law. This contempt has been shown at all three levels:
international, federal and provincial.

In addition, in the Clayoquot trials, the court has condoned not only violations of guarantees in the Canadian Charter of Rights and Freedoms, but also violations of guarantees in the International Covenant on Civil and Political Rights, such as the following:

In the determination of any criminal charge against him,
everyone shall be entitled to the following minimum guarantees,
in full equality:

To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him {Article 14 3 (e)}.

[NOTE THAT IN THE CLAYOQUOT TRIALS IN VICTORIA FEW WITNESSES HAVE BEEN PERMITTED TO APPEAR FOR THE DEFENCE]

It is institutions not individuals that have demonstrated contempt for law and justice.

There appears to be little recourse for the Clayoquot Protectors than to eventually seek redress through the Optional Protocol International Convention of Civil and Political Rights which provides the following remedy:

Subject to the provisions of article 1 individuals who claim that any of their rights enumerated in the Covenant have been violated and who have exhausted all available domestic remedies may submit a written communication to the committee for consideration. (Article 2)

Ombudsman

In a letter from the Ombudsman's office indicating the findings of the Ombudsman's office (1993) related to the Russow/Gage inquiry into the way the B.C. government will be fulfilling international commitments: the senior investigator for the Ombudsman's office conveyed the commitment of B.C. to the UNCED obligations:

Compliance with International Agreements.

Direct personal discussions were held with Mr. Cheston, Assistant Deputy Minister of Operations Division, Ministry of Forests, and Mr. Owen, Commissioner on Resources and Environment. Both Mr. Cheston's and Mr. Owen's responsibilities reflect the government's priority for those issues of concern to you...

From these meetings, as well as from additional discussions with senior staff from the Ministry of Forests and the Ministry of Environment, Lands and Parks, we have determined that BC intends to comply with the agreements signed at the UNCED in June 1992.

Canada and B.C. are also bound by the UN convention on Cultural and natural Heritage

Not to do anything that could

not to invoke internal law to justify the performance of a treaty

Here are two letters that I wrote in relation to the designation of a network of forests being designated as international heritage sites.

1. Letter to Arthur Campeau; I think this letter got lost in the government shift. Usually, Campeau is good at responding to letters. Unfortunately, I did not follow up with another letter. A redraft of the letter could be resubmitted to John Fraser's office. Perhaps signed by the Friends and the Ecological Rights Association.

2. letter to President of World Heritage Committee. I did receive a response from the president of the World Heritage Committee
He did not agree with my interpretation of the "heritage in peril clause." He contends that this designation only applies to sites that have already been nominated by the state, approved by the IUCN, and accepted by the World Heritage Committee to be placed on the heritage list. Once a site has been placed on a world heritage list, and the state does not protect it then the site can be placed on the heritage in danger list. I think that we can argue that the intention of the Convention was expressed in the Preamble (the duty placed on the international community to identify sites of outstanding universal value), and that the drafters of the Convention did not envision that states would not be interested in preserving these sites.

Joan Russow (In person) Appearing for the Applicants

John J.L. Hunter Appearing for the Respondent

Place and Date of Hearing Vancouver, British Columbia

October 25, 1994

Place and Date of Judgment Vancouver, British Columbia

December 7, 1994

Court of Appeal for British Columbia

MacMillan Bloedel Limited

- v. -

Joan Russow and Betty Kleiman

- and -

Sheila Simpson et al.

Reasons for Judgment of the Honourable Mr. Justice Carrothers (In Chambers)

- 1 The applicants before me, Joan Russow and Betty Kleiman, by "Notice of Application for Leave to Appeal" filed October 13, 1993, seek leave to appeal an order of Mr. Justice Drake made September 17, 1993, dismissing an application for an order rescinding the order of Mr. Justice Hall made on August 26, 1993, granting interim injunction relief and extending other injunctions until August 31, 1994, or until trial which ever shall be earlier.
- 2 This application is best understood in the context of its involvement in that series of injunctions granted and subsequently varied and extended by a number of judges of the Supreme Court of British Columbia between September 1991 and the summer of 1993, and prohibiting interference with the logging operations of the respondent MacMillan Bloedel Limited in its tree farm licence in the area northwest of Kennedy Lake on Vancouver Island and in the vicinity of Clayoquot Sound. Of particular

concern is that order which I have mentioned of August 26, 1993, made by Mr. Justice Hall granting fresh injunctive relief and the extension of injunction orders previously granted and which were about to expire.

- 3 On August 23, 1994, the present application for leave to appeal came on in Court of Appeal chambers before Madam Justice Proudfoot, who, advertent to the fact that the injunction itself would expire on August 31, 1994, and that there are totally new grounds of appeal being advanced with reference to this leave application which were not covered in a companion appeal from Mr. Justice Hall's order (which had been heard in this Court January 20 and 21, 1994), adjourned the matter generally.

- 4 On September 30, 1994, judgment of this Court in the companion appeal of the order of Mr. Justice Hall was delivered and it is reported indexed as ***MacMillan Bloedel Ltd. v. Simpson*** 1994 943 (BC CA), (1994), 96 B.C.L.R. (2d) 201. Macfarlane J.A. describes the nature of that appeal at p. 206:
 - 1 This appeal [from reflex, (1993), 106 D.L.R. (4th) 556] concerns the granting of injunctions to restrain conduct forming part of a mass public protest against government forest policy.

 - 2 The appeal concerns the validity of interim injunctions granted at the behest of a private party, MacMillan Bloedel Limited, which prohibited named defendants, John Doe, Jane Doe and Persons Unknown, and "all persons having notice of the order" from conduct interfering with alleged private property rights, where the conduct enjoined may not only affect private property but may also be a public wrong for which a remedy lies under the ***Criminal Code***.

 - 3 In this case, identified and unidentified persons protesting government forestry policy had blocked a road providing access to the logging operations of MacMillan Bloedel Limited, thereby preventing the company from exercising its alleged property rights. The appellants say the conduct was proscribed by ***Criminal Code*** s. 430(1) (mischief) and s. 423(1)(g) (blocking or obstructing a highway).

(my emphasis)

- 5 The present applicants fell into that category of persons which I have emphasized in the above passage. That appeal was dismissed. The present applicants did not avail themselves of the opportunity to participate in that appeal. Notwithstanding that, the present applicants are bound by the result which makes the subject appeal moot on its main issue. It is not customary for this Court to hear an appeal which is moot. On that ground alone I would refuse leave to appeal.
- 6 At the chambers hearing before me on October 25, 1994, of the application for leave to appeal, the applicant Joan Russow made extensive submissions which she herself called "a lecture" rather than an argument. The applicant Russow submitted that there was a failure to bring to the attention of Mr. Justice Hall that his granting and extension of the injunctive relief could contribute to non-compliance with international obligations of Canada and its courts on the basis that clear cutting in the Clayoquot Sound area was inconsistent with Canada's obligations under a United Nations convention on biodiversity. Further this applicant suggested that, in the application before Mr. Justice Drake, for rescission of Mr. Justice Hall's order, Mr. Justice Drake erred in his assessment of international law, particularly in relation to biodiversity and climate change issues as affected by current forest industry practices.
- 7 The lengthy submission reflects the large assemblage of material contained in the applicants' leave book, which cannot be summarized. I have taken the time to read and consider substantially all of it. I have not been shown and I have been quite unable to discern or identify any pertinent or applicable principle of international law, whether developed by custom and usage, treaty or convention, or legislative or judicial determination, which falls within the judicial capacity and function of the courts of this province. In my opinion, there is no issue in this case to be advanced on an appeal which warrants the attention of this Court.

COMMENT:

AT FIRST IN THE APPEAL, HUNTER CLAIMED: "SINCE YOU WERE ARRESTED, YOU DO NOT COME TO THE COURT WITH CLEAN HANDS."

I TOLD HIM THAT I HAD NOT BEEN ARRESTED IN CLAYOQUOT SOUND

THEN THE NEXT TIME WE WERE IN COURT, HE STATED "THE APPEAL SHOULD NOT BE HEARD BECAUSE I HAVE NO STANDING

8 Leave to appeal must be refused.

COMMENT

() EXHIBIT:

EVIDENCE OF LAWYER'S UNWILLING TO USE INTERNATIONAL LAW
Through Freedom of Information I obtained cabinet document in which the BC government had endorsed the Framework Convention on Climate Change, and the Convention on Biological Diversity. I had urged lawyers within the Sierra Legal Defence and Cameron Ward lawyers who were acting on behalf of The Friends of Clayoquot Sound, and Greenpeace, respectively, to use this document to demonstrate that the Province of British Columbia was bound by the Conventions and could not rely on the 1937 Supreme Court Labour Convention case, and that the 1936 radio case was a relevant precedent. Greg McDade QC, formerly with the Sierra Legal Defence refused to use international law in environmental cases, but he ridiculed me and told that judges in BC do not take into consideration international law. He also discredited me for using international law and undermining issues. Cameron Ward responded that using international law in the Clayoquot case, when the case went to the Supreme Court, would muddy the waters.

BACKGROUND FOR THE FREEDOM OF INFORMATION REQUEST

37. Initially when I contacted Premier Harcourt's office to request information about the consultation process with the Federal government surrounding the deliberation at UNCED, I was told that there was no official consultation. It was when I was on a train to Montreal, only by chance I saw, Arthur Campeau –the Canadian Ambassador for the Environment at the UN- whom I had met previously. I told him that it was important for me to know about the extent of consultation with the BC government prior and during Rio, and that I had been told that there had not been official consultation and that I was puzzled because I had seen John Cashore seated with the Canadian Delegation at the UN. Arthur Campeau told me that he had actually seen a cabinet document endorsing the two conventions from Rio.

I then contacted Premier Harcourt's office and asked specifically for the Cabinet document endorsing the conventions from Rio, and within the month I had received the 12-page document with extensive deletions.

It would appear that B.C. played a significant role in the provincial endorsement of the UNCED Conventions by moving the endorsement and by seeking cabinet support

Jaime Alley, former representative for corporate affairs in the Ministry of the Environment, indicated that the provincial governments insisted on not being just another stakeholder in the consultation process but on having government to government consultation"
"Province endorsed the ratification. we agreed with Canada to ratify it. Provincial endorsement. the move to endorse the Conventions John Cashore, the then B.C. Minister of Environment" Cashore went to Cabinet and sought their support

and endorsed the ratification and state that to the CCME meeting that it was approved by cabinet"

"Barbara MacDougall, wrote to all provincial constitutional ministers seeking their advice prior to ratification" (Personal Communication, August, 1994)

"There was continuous consultation you need to contact the CCME for details"

36. In the Appeal it will be contended that B.C. through a letter prior to August 1992, the then constitutional minister of B.C., the Hon Moe Sihota indicated to the Hon. Barbara McDougall, The Secretary for External Affairs, B.C.'s support for the Biodiversity and Climate Change Conventions, was bound not to defeat the purpose of the Conventions:

The Hon. Moe Sihota , the then Minister Responsible for Constitutional Affairs communicated to the Hon Barbara McDougall, Minister of State for External Affairs for Canada B.C.'s support for the Convention on Biological Diversity and for the Framework Convention on Climate Change (November 4, 1992, in the B.C. Cabinet Submission , entitled "UNCED follow-up: Endorsement of International Convention on Climate change and Biological diversity") [Note that Russow, on July 17, 1994, made an application through the Freedom of Information Act for a copy of this letter of this letter is being requested through the Freedom of Information Act].

35. In this Cabinet submission, dated November 4, 1992, the B.C. government affirmed that it was bound by the Biodiversity Convention and the Framework Convention on Climate Change:

Canada signed binding International Conventions on climate Change and Biodiversity

..and indicated its support for ...a "Global Green Plan" for sustainable development, entitled Agenda 21.

36. Provincial cabinet endorsement of the Biodiversity and Climate Change Conventions binds them to not defeat the purpose of the Convention. In a document obtained through the Freedom of information Act there was evidence of the Provincial cabinet endorsement for the ratification of the Biodiversity and Climate Change Conventions:

"UNCED follow-up: Endorsement of International Convention on Climate change and Biological diversity" November 4, 1992.

38. Evidence will be presented to indicate the assessment of Canada's responsibility for B.C.'s actions in relation to other states.

When the question of Canada's responsibility for actions of B.C. that could impact on the fulfilling of the Convention was raised the IUCN (World Heritage Union) meeting of the Commission on Environmental Law. Several of the lawyers who had served as advisers to the International Court of Law or to the United Nations, concurred that Canada could be held accountable for B.C.'s

non-compliance with international legal obligations under the two Conventions signed at UNCED.

THAT B.C. IS ALSO BOUND BECAUSE OF COMMITMENTS MADE TO THE FEDERAL GOVERNMENT AT THE CABINET LEVEL

(Note document is not included because the cabinet document which was obtained through the Freedom of Information Act, has excluded sections under Section 12 of the Freedom of Information Act. For the court purposes, I would presume that the complete document could be obtained).

EXHIBIT: E UNCED Follow-up: Endorsement of International Convention on Climate change a
(p.26, in text)

EXHIBIT: EVIDENCE OF JUDGES IN BC SHOWING DISRESPECT FOR INTERNATIONAL LAW

() **THAT** In 1993, I organized a panel on Clayoquot Sound and International Law at the University over 300 participated; It was broadcast on Shaw

() **THAT** in 1992 and 1993, I submitted documents to the Roundtable CORE process which was chaired by Stephan Owen. I criticized the Roundtable as being an arena of competing interests that also glorified conflict of interest. I proposed that there be instead principle-based decision making drawn from internationally agreed to principles.

EXHIBIT

**Statement of Obligation
Conservation and Ecologically Sound Practices**

Joan Russow
Sessional Lecture, Global Issues in Sustainability
Environmental Studies Program
University of Victoria

Humanity stands at a defining moment in history. We are confronted with a perpetuation of disparities between and within nations, a worsening of poverty, hunger, ill health and illiteracy, and the continuing deterioration of the ecosystems on which we depend for our well-being. ... (1.1 Preamble, Agenda 21)

**Statement of Obligation
Conservation and Ecologically Sound Practices**

**"Maxim of Equity: Equity imputes an intention to fulfill an obligation."
(Snell's *Equity* 1990)**

Canada has made international commitments, and the public can impute an intention to fulfill these obligations

Convention of treaties:

recognition of urgency

- *Biological diversity is being significantly reduced by certain human activities, (preamble, Convention of Biological Diversity)*
- *Importance of biological diversity for evolution and for maintaining life sustaining systems of the biosphere, (preamble, Convention of Biological Diversity)*
- *Conservation of biological diversity is a common concern of humankind, (preamble, Convention of Biological Diversity)*
- *This natural wealth is being eroded at an unprecedented rate, because of the rapid growth in human numbers, the uneven and often excessive consumption of natural resources, mistaken and socially harmful styles of development, global pollution and defective economic regimes, so that the future of humanity is now threatened (Caracas declaration)*
- *Many people must modify their styles of living and the world community must adopt new and equitable styles of development, based on the care and sustainable use of the environment, and the safeguarding of global life-supporting systems (Caracas declaration)*

Intention: Compliance with international agreements

Canada continually indicates its professed concern for the environment in a way that should entitled Canadians to expect actions that reflect this concern. For example, in the preface of Canada's National Report, which was submitted to the Earth Summit in Rio, the Canadian government gave the impression that Canadians were "stewards" observing their "environmental responsibility."

as stewards of a vast and beautiful land, and as a people intimately connected to the environment, Canadians are aware of their environmental responsibilities (Canada's National Report, Preface).

And further in the section on the "quality of life", the Canadian government stated

As a small population with a large land mass, Canadians have access to relatively unspoiled wilderness areas rich in wildlife ... Canada has an international reputation as a beautiful, safe and mostly unspoiled country (Canada's National Report, p.49).

If the government of Canada continues to give the impression to the global community that Canadians are concerned about being "stewards" of a "relatively unspoiled wilderness", then the citizens of Canada have the

equitable right to expect that Canada will fulfill this expectation. (Doctrine of expectation)

Citizens of Canada can justifiably expect that Canada will adhere to international principles that are part of international agreements signed by Canada, and citizens of Canada can justifiably expect that the courts of Canada will abide by international commitments made by Canada.

Statement of Obligation

Conservation and Ecologically Sound Practices

Similarly, at the Provincial level if the provincial government imputes that it intends to fulfill an obligation, the citizens should be justified in having the obligation fulfilled.

- a letter from the Ombudsman's office indicating the findings of the Ombudsman's office (1993) related to the Russow/Gage inquiry into the way the B.C. government will be fulfilling international commitments.

2 Compliance with International Agreements.

Direct personal discussions were held with Mr. Cheston, Assistant Deputy Minister of Operations Division, Ministry of Forests, and Mr. Owen, Commissioner on Resources and Environment. Both Mr. Cheston's and Mr. Owen's responsibilities reflect the government's priority for those issues of concern to you...

From these meetings, as well as from additional discussions with senior staff from the Ministry of Forests and the Ministry of Environment, Lands and Parks, we have determined that BC intends to comply with the agreements signed at the UNCED in June 1992. (Gardiner, 1993)

Through this statement the Provincial government has demonstrated the intention to adhere to principles from Agenda 21, the Rio Declaration and the Biodiversity Convention.

- a letter from both the Provincial Ministry of Forests and the Provincial Ministry of Environment (March, 1992) in which the following intention is imputed:

As we, in BC Parks and BC Forest Service begin to work on implementing our components of B.C.'s protected areas under the aegis of the Commission on Resources and Environment, we will be mindful of this Declaration [the Caracas Declaration: Parks Protected Areas and the Human Future] and its implications. Our objective will be to have a system of protected areas which we are proud to present to the world.

In the Caracas Declaration; Parks Protected Areas and the Human future is the recognition of the following international documents:

bearing in mind the message of *Caring for the Earth: A strategy for Sustainable Living*, *The Global Biodiversity Strategy*. launched at this

Congress, and the earlier messages of the World Conservation /Strategy, the World Charter for Nature and the World Commission on Environment and Development, CD

Through this intention to be "mindful of this Declaration" the Provincial government through its Ministry of Environment and Forests has recognized the CARACAS Declaration and the UN Resolution 37/7 (1982) World Charter for Nature.

The government of Canada has imputed the intent to fulfill obligations under the UNCED documents, the CARACAS Declaration and the World Charter of Nature

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Statement of Obligation
Conservation and Ecologically Sound Practices
Principles delineating Obligation

Principle that international law shall be reflected in the law and practice of the state

The principles set forth in the present Charter shall be reflected in the law and practice of each State, as well as at that international level (14, World Charter of Nature).

Principle of moral code of action regarding every form of life

• Every form of life is unique, warranting respect regardless of its worth to man, and to accord other organisms such recognition's, man must be guided by a moral code of action (Preamble, World Charter of Nature)

Principle of intrinsic value of biological diversity

• Recognition of the intrinsic value of biological diversity ... (Preamble Biodiversity Convention)

Principle of intrinsic worth of nature

• Nature has intrinsic worth and warrants respect regardless of its usefulness to humanity (Caracas Declaration).

Principle of maintenance of essential ecological processes

-Lasting benefits from nature depend upon the maintenance of essential ecological processes and life support systems, and upon the diversity of life forms, which are jeopardized through excessive exploitation and habitat destruction by man (Preamble, World Charter of Nature)

-Lasting benefits from nature depend upon the maintenance of essential ecological processes and life support systems, and upon the diversity of life forms, which are jeopardized through excessive exploitation and habitat destruction by man (Preamble, World Charter of Nature).

Principle of limit of natural capacity for regeneration

Living resources shall not be utilized in excess of their natural capacity for regeneration (3 a World Charter of Nature).

Principle of burden of proof of benefit being placed on the proponent of intervention into the ecosystem

Activities which are likely to pose a significant risk to nature shall be preceded by an exhaustive examination; their proponents shall demonstrate that expected benefits outweigh potential damage to nature, and where potential adverse effects are not fully understood, the activities should not proceed (11 (b) World Charter of Nature).

Principle of rehabilitation of areas degraded by human activity

Areas degraded by human activities shall be rehabilitated for purposes in accord with their natural potential and compatible with the well-being of affected populations 16. All planning shall include, among its essential elements, the formulation of strategies for the conservation of nature, the establishment of inventories of ecosystems and assessments of the effects on nature of proposed policies and activities; all of these elements shall be disclosed to the public by appropriate means in time to permit effective consultation and participation (11 e World Charter of Nature).

Principle of early intervention and monitoring to protect ecosystems

- The status of natural processes, ecosystems and species shall be closely monitored to enable early detection of degradation or threat, ensure timely intervention and facilitate the evaluation of conservation policies and methods (19, World Charter of Nature).

Principle of informed action

- There is general lack of information and knowledge regarding biological diversity and of the urgent need to develop scientific, technical and institutional capacities to provide the basic understanding upon which to plan and implement appropriate measures (Preamble, Convention of Biological Diversity).

Principle of anticipation and reduction at source

- It is vital to anticipate, prevent and attack the causes of significant reduction or loss of biological diversity at source (preamble, Convention of Biological Diversity).

Precautionary principle

- where there is a threat of significant reduction or loss of biological diversity, lack of full scientific certainty should not be used as a reason for postponing measures to avoid or minimize such a threat (Preamble, Convention of Biological Diversity).

Principle of in-situ conservation

- the fundamental requirement for the conservation of biological diversity is the *in-situ* conservation of ecosystems and natural habitats and the maintenance and recovery of viable populations of species in their natural surroundings (Preamble, Convention of Biological Diversity).

Principle of intergenerational equity:

- To conserve and sustainably use biological diversity for the benefit of present and future generations (Preamble, Convention of Biological Diversity).

Principle of sustainable use and intergenerational equity

- The use of components of biological diversity in a way and at a rate that does not lead to the long-term decline of biological diversity, thereby maintaining its potential to meet the needs and aspirations of present and future generations (Definition, Convention of Biological Diversity).

Principle of ecological diversity

- Means the variability among living organisms from all sources including, *inter alia*, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part; this includes diversity within species, between species and of ecosystems (Definition. Convention of Biological Diversity).

Principle of ecosystem as a dynamic complex

- "*Ecosystem*" means a dynamic complex of plant, animal and micro-organism communities and their non-living environment interacting as a functional unit (Definition. Convention of Biological Diversity).

Principle of in-situ conservation

- "*In-situ conservation*" means the conservation of ecosystems and natural habitats and the maintenance and recovery of viable populations of species in their natural surroundings and, in the case of domesticated or cultivated species, in the surroundings where they have developed their distinctive properties (Definition. Convention of Biological Diversity).

Principle of identification of activities likely to have significant adverse impacts on the conservation

- Identify processes and categories of activities which have or are likely to have significant adverse impacts on the conservation and sustainable use of biological diversity, and monitor their effects through sampling and other techniques (7 c Convention for Biological Diversity).

Principle of establishing system of protected areas

- Establish a system of protected areas or areas where special measures need to be taken to conserve biological diversity (8 a, Convention for Biological Diversity).

Principle of sustainable use of biological diversity

- Regulate or manage biological resources important for the conservation of biological diversity whether within or outside protected areas, with a view to ensuring their conservation and sustainable use (8 c, Convention for Biological Diversity).

Principle of protection of ecosystems

- Promote the protection of ecosystems, natural habitats and the maintenance of viable populations of species in natural surroundings (8 d, Convention for Biological Diversity).

Principle of environmentally sound development adjacent to protected areas

- Promote environmentally sound and sustainable development in areas adjacent to protected areas with a view to furthering protection of these areas (8 e, Convention for Biological Diversity).

Principle of rehabilitation and restoration of degraded ecosystem

- Rehabilitate and restore degraded ecosystems and promote the recovery of threatened species, *inter alia*, through the development and implementation of plans or other management strategies (8 f, Convention for Biological Diversity).

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Statement of Obligation

Conservation and Ecologically Sound Practices

Principles of Obligation

Principle of protecting and encouraging traditional cultural use (10c, Convention for Biological Diversity)

- Protect and encourage customary use of biological resources in accordance with traditional cultural practices that are compatible with conservation or sustainable use requirements (10 c Convention for Biological Diversity).

Principle of remedial action

- Support local populations to develop and implement remedial action in degraded areas where biological diversity has been reduced (10d Convention for Biological Diversity).

Principle of promoting understanding of importance and measures required for conservation of biological diversity and sustainable use

- Promote and encourage understanding of the importance of, and the measures required for, the conservation of biological diversity, as well as its propagation through media, and the inclusion of these topics in educational programmes (13, a. Convention of Biological diversity)

- Cooperate, as appropriate, with other States and international organizations in developing educational and public awareness programmes, with respect to conservation and sustainable use of biological diversity (13, b. Convention of Biological diversity).

Principle of environmental impact assessment of projects likely to have significant adverse effects on biodiversity

- Introduce appropriate procedures requiring environmental impact assessment of its proposed projects that are likely to have significant adverse effects on biological diversity with a view to avoiding or minimizing such effects and, where appropriate, allow for public participation in such procedures (14 a Convention of Biological Diversity).

Principle of taking into account environmental consequences

- Introduce appropriate arrangements to ensure that the environmental consequences of its programmes and policies that are likely to have significant adverse impacts on biological diversity are duly taken into account (14 a Convention of Biological Diversity).

Principle of Environmental impact assessment should be carried out of projects likely to have significant impacts upon biological diversity

- Introduce appropriate environmental impact assessment procedures for proposed projects likely to have significant impacts upon biological diversity.... (Agenda 21, 15.5 k).

Principle of positive duty to protect indigenous lands.

- The lands of indigenous people and their communities should be protected from activities that are environmentally unsound or that the indigenous people concerned consider to be socially and culturally inappropriate (Agenda 21, 16.3. ii).

Principle of value of non-damaging-use

- The implications of the harvesting of forest resources for other values of the forest should be taken fully into consideration in the development of forest policies. It is also possible to increase the value of forest through non-damaging uses such as eco-tourism ... (Agenda 21, 11.22).

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Principle of Environmental impact assessment should be carried out of projects likely to have significant impacts upon biological diversity

- Introduce appropriate environmental impact assessment procedures for proposed projects likely to have significant impacts upon biological diversity.... (Agenda 21, 15.5 k)

The British Columbia government has failed to insist on an environmental impact assessment on the potentially significant impact of current forest

practices, such as clear-cut logging, on biodiversity. Even though, as admitted by Dale Lovick, the Chair of public hearings on the B.C. Environmental Assessment Act, the public was demanding for forest practices to be included on the list of projects and activities which should require an environmental assessment., forest practices appear to be excluded from this Act.

In jurisdictions where an environmental impact assessment has been carried out, practices, typical of those carried out currently in BC forests, have been assessed as being destructive of biodiversity. For example, a German biologist specializing in biodiversity indicated that:

The practice of clear-cutting, followed by artificial reforestation has undoubtedly many technical and organizational advantages. In the course of time, however, soil scientists and ecologists found out that the practice of clear-cutting automatically leads to considerable drawbacks:

-wounding of the soil surface through logging operations.

- Risk of erosion

-High irradiation and higher climatic extremes alter the microclimate, the flora and the micro flora and deteriorate the growing conditions for a number of valuable tree species. - -Soil compression and a reduction of species richness

-An accelerated decomposition of organic matter occurs, combined with a wash out of nutrients, and the eutrophication of ground water, rivers and lakes occur

(Dr Schutt, Biological Department, University of Munich, Environmental Ethics Conference, 1992, Vancouver)

Principle of full life cycle analysis of activities that could have significantly adverse effects.

This principle if complied with in the forest industry would entail an examination of the environmental impacts of each stage of current forest practices. At UNCED there was also a call for "environmental audits", and "full environmental accounting of aspects related to life cycles of ...resources", and "for taking into account the costs of any ecological consequences."

- Governments, in collaboration with industry and appropriate international organizations, should develop procedures for monitoring the application of the cradle to grave approach, including environmental audits (20.20 e)
- Ensure that relevant decisions are preceded by environmental impact assessments and also take into account the costs of any ecological consequences (7.42)

A full environmental audit of current forest practices has not been undertaken in B.C. the Auditor general has not been requested by government to carry out a full-scale audit of the true costs of the current logging practices, and to compare these costs to those incurred by alternative forestry practices such as ecoforestry.

Principle related to positive mandate-to conserve

- Establishing, expanding and managing, as appropriate to each national context, protected area systems, which includes systems of conservation units for their environmental, social and spiritual functions and values, including conservation of forests in representative ecological systems and landscapes, primary old-growth forests, conservation and management of wildlife, nomination of world Heritage Sites under the World Heritage ... and conservation of biological diversity and the traditional forest habitats of indigenous people, forest dwellers and local communities; (Agenda 21, 11.15 b)

This principle is a reaffirmation of the principle established and endorsed by Canada in 1972 in the Convention for the Preservation of Cultural and Natural Heritage.

- Noting that the cultural heritage and the natural heritage are increasingly threatened with destruction not only by the traditional causes of decay, but also by changing social and economic conditions which aggravate the situation with even more formidable phenomena of damage or destruction"
- Considering that deterioration or disappearance of any item of the cultural or natural heritage constitutes a harmful impoverishment of the heritage of all the nations of the world."
- Considering that the existing international conventions, recommendations and resolutions concerning cultural and natural property demonstrate the importance, for all the peoples of the world, of safeguarding this unique and irreplaceable property, to whatever people it may belong"

"Considering that parts of the cultural or natural heritage are of outstanding interest and therefore need to be preserved as part of the world heritage of [humankind] as a whole"

"Considering that, in view of the magnitude and gravity of the new dangers threatening them, it is incumbent on the international community as a whole to participate in the protection of the cultural and natural heritage of outstanding universal value, by the granting of collective assistance which, although not taking the place of action by the State concerned, will serve as an effective complement thereto,"

Canada has not lived up to its international commitment to preserve a significant area of international worth: a network of intact old growth watershed, conservation corridors including Clayoquot sound (this type of extensive preservation has currently been carried out in Australia, and Australia has applied to have this network of temperate rainforests designated as an international heritage site at the recent meeting in 1993 of the World Heritage Committee at UNESCO)

4. the positive-duty-to protect-indigenous-lands principle. This principle reads as follows:

Recognition that the lands of indigenous people and their communities should be protected from activities that are environmentally unsound or that the indigenous people concerned consider to be socially and culturally inappropriate (Agenda 21, 16.3. ii)

A fifth principle that came out of UNCED and was agreed to by Canada is the recognition of non-damaging-use value principle. This principle reads as follows:

The implications of the harvesting of forest resources for other values of the forest should be taken fully into consideration in the development of forest policies. It is also possible to increase the value of forest through non-damaging uses such as ecotourism ... (Agenda 21, 11.22)

CONVENTION FOR THE PROTECTION OF THE WORLD CULTURAL AND NATURAL HERITAGE (PARIS, 23 NOVEMBER 1972) (CPCNH)

Noting that the cultural heritage and the natural heritage are increasingly threatened with destruction not only by the traditional causes of decay, but also by changing social and economic conditions which aggravate the situation with even more formidable phenomena of damage or destruction, (CPCNH)

Considering that deterioration or disappearance of any item of the cultural or natural heritage constitutes a harmful impoverishment of the heritage of all the nations of the world, (CPCNH)

Considering that protection of this heritage at the national level often remains incomplete because of the scale of the resources which it requires and of the insufficient economic, scientific and technical resources of the country where the property to be protected is situated, (CPCNH)

Recalling that the Constitution of the Organization provides that it will maintain, increase and diffuse knowledge, by assuring the conservation and protection of the world's heritage and recommending to the nations concerned the necessary international conventions (CPCNH)

Considering that the existing international conventions recommendations and resolutions concerning cultural and natural property demonstrate the importance, for all the peoples of the world of safeguarding this unique and irreplaceable property, to whatever people it may belong, (CPCNH)

Considering that parts of the cultural or natural heritage are of outstanding interest and therefore need to be preserved as part of the world heritage for [mankind] as a whole, (CPCNH)

Considering that, in view of the magnitude and gravity of the new dangers threatening them, it is incumbent on the international community as a whole to participate in the protection of the cultural and natural heritage of outstanding universal value, by the granting of collective assistance which, although not taking the place of action by the State concerned, will serve as an effective complement thereto, (CPCNH)

Considering that it is essential for this purpose to adopt new provisions in the form of a convention establishing an effective system of collective protection of the cultural and natural heritage of outstanding universal value,

organized on a permanent basis and in accordance with modern scientific methods, (CPCNH)

1. Definitions of the Cultural and the Natural Heritage

Article 1

For the purposes of this Convention, the following shall be considered as "cultural heritage" monument: architectural works, works of monumental sculpture and paintings, elements or structures of an archaeological nature, inscriptions, cave dwellings and combinations of features, which are of outstanding universal value from the point of view of history, art or science: (CPCNH)

groups of buildings: groups of separate or connected buildings which, because of their architecture, their homogeneity or their place in the landscape, are of outstanding universal value from the point of view of history, art or science;

sites: works of man or the combined works of nature and of man, and areas including archaeological sites which are of outstanding universal value from the historical, aesthetic, ethnological or anthropological points of view.

(CPCNH)

Article 2

For the purposes of this Convention, the following shall be considered as "natural heritage": natural features consisting of physical and biological formations or groups of such formations, which are of outstanding universal value from the aesthetic or scientific point of view; geological and physiographical formations and precisely delineated areas which constitute the habitat of threatened species of animals and plants of outstanding universal value from the point of view of science or conservation; natural sites or precisely delineated areas of outstanding universal value from the point of view of science, conservation or natural beauty (CPCNH)

Article 3

It is for each State Party to this Convention to identify and delineate the different properties situated on its territory mentioned in Articles 1 and 2 above (CPCNH)

II National Protection and International Protection of the Cultural and Natural Heritage

Article 4

Each state Party to this Convention recognizes that the duty of ensuring the identifications, protection, conservation, presentation and transmission to future generations of the cultural and natural heritage referred to in Article 1 and 2 and situated on its territory, belongs primarily to that State. It will do all it can to this end, to the utmost of its resources and where appropriate with any international assistance and co-operation, in particular, financial, artistic, scientific and technical, which it may be able to obtain. (CPCNH)

Article 5

To ensure that effective and active measures are taken for the protection, conservation and presentation of the cultural and natural heritage situated on its territory, each State Party to this Convention shall endeavour, in so far as possible, and as appropriate for each country:

- a) to adopt a general policy which aims to give the cultural and natural heritage a function in the life of the community and to integrate the protection of that heritage into comprehensive planning programmes; (CPCNH)
- b) to set up within its territories, where such services do not exist, one or more services for the protection, conservation and presentation of cultural and natural heritage with an appropriate staff and possessing the means to discharge their functions: (CPCNH)
- c) to develop scientific and technical studies and research and to work out such operating methods as will make the State capable of counteracting the dangers that threaten its cultural or natural heritage; and (CPCNH)
- d) to take the appropriate legal, scientific, technical, administrative and financial measures necessary for the identification, protection, conservation, presentation and rehabilitation of this heritage; and (CPCNH)
- e) to foster the establishment or development of national or regional centres for training in the protection, conservation and presentation of the cultural and natural heritage and to encourage scientific research in this field. (CPCNH)

Article 6

1. Whilst fully respecting the sovereignty of the States on whose territory the cultural and natural heritage mentioned in Articles 1 and 2 is situated, and without prejudice to property rights provided by national legislation, the States Parties to this Convention recognize that such heritage constitutes a world heritage for whose protection it is the duty of the international community as a whole to co-operate. (CPCNH)
2. The States parties undertake, in accordance with the provisions of this Convention, to give their help in the identification, protection, conservation and preservation of the cultural and natural heritage referred to in paragraphs 2 and 4 of Article 11 if the States on whose territory it is situated so request (CPCNH)
3. each State Party to this convention undertakes not to take any deliberate measures which might damage directly or indirectly the cultural and natural heritage referred to in Articles 1 and 2 situated on the territory of other States parties to this Convention (CPCNH)

Article 7

For the purpose of this Convention, international protection of the world cultural and natural heritage shall be understood to mean the establishment of a system of international co-operation and assistance designed to support States Parties to the Convention in their efforts to conserve and identify that heritage. (CPCNH)

III Intergovernmental Committee for the Protection of the World Cultural and Natural Heritage

1. An intergovernmental Committee for the Protection of the Cultural and Natural Heritage of Outstanding Universal Value, called "the World Heritage Committee", is hereby established within UNESCO. It shall be composed of 15 States Parties to the Convention, elected; by States Parties to the Convention meeting in general assembly during the ordinary session of the General Conference of the UNESCO. the number of States members of the Committee shall be increased to 21 s from the date of the ordinary session of the General Conference following the entry into force of this Convention for at least 40 states. (CPCNH)

2. Election of members of the Committee shall ensure an equitable representation of the different regions and cultures of the world. (CPCNH)

Article 11

1. Every State party to this Convention shall, in so far as possible, submit to the World Heritage Committee an inventory of property forming part of the cultural and natural heritage, situated in its territory and suitable for inclusion in the list provided for in paragraph 2 of this Article. This inventory, which shall not be considered exhaustive, shall include documentation about the location of the property in question and its significance. (CPCNH)

3. The inclusion of a property in the World Heritage List requires the consent of the State concerned. The inclusion of a property situated in a territory sovereignty or jurisdiction over which is claimed by more than one State shall in no way prejudice the rights of the parties to the dispute. (CPCNH)

4. The Committee shall establish, keep up to date and publish, whenever circumstances shall so require, under the title of "List of World Heritage in Danger", a list of the property appearing in the World Heritage list for the conservation of which major operations are necessary and for which assistance has been requested under this Convention. This list shall contain an estimate of the cost of such operations. The list may include only such property forming part of the cultural and natural heritage is threatened by serious and specific dangers, such as the threat of disappearance caused by accelerated deterioration, large-scale public or private projects or rapid urban or tourist development projects; destruction caused by changes in the use or ownership of the land; major alternations due to unknown causes; abandonment for any reason whatsoever; the outbreak or the threat of an armed conflict; calamities and cataclysms; serious fires, earthquakes, landslides; volcanic eruptions; changes in water level, floods, and tidal waves. The Committee may at any time, in case of urgent need, make a new entry in the List of World Heritage in Danger and publicize such an entry immediately. (CPCNH)

UN RESOLUTION 37/7 (1982) THE WORLD CHARTER OF NATURE

The General Assembly,

Reaffirming the fundamental purposes of the United Nations, in particular the maintenance of international peace and security, the development of friendly relations among nations and the achievement of international co-operation in solving international problems of an economic, social, cultural, technical, intellectual or humanitarian character,
(WCN)

Aware that:

(a) {Mankind} is part of nature and life depends on the uninterrupted functioning of natural systems which ensure the supply of energy and nutrients (WCN)

(b) Civilization is rooted in nature, which has shaped human culture and influences all artistic and scientific achievement, and living in harmony with nature gives man the best opportunities for the development of his creativity, and for rest and recreation, (WCN)

Convinced that:

(a) Every form of life is unique, warranting respect regardless of its worth to man, and to accord other organisms such recognition's, man must be guided by a moral code of action,

(b) Man can alter nature and exhaust natural resources by his action or its consequences and, therefore, must fully recognize the urgency of maintaining the stability and quality of nature and of conserving natural resources, (WCN)

Persuaded that:

(a) Lasting benefits from nature depend upon the maintenance of essential ecological processes and life support systems, and upon the diversity of life forms, which are jeopardized through excessive exploitation and habitat destruction by man (WCN)

(b) The degradation of natural systems owing to excessive consumption and misuse of natural resources as well as to failure to establish an appropriate economic order among peoples and among States, leads to the breakdown of the economic, social and political framework of civilization, (WCN)

(c) Competition for scarce resources creates conflicts, whereas the conservation of nature and natural resources contributes to justice and the maintenance of peace and cannot be achieved until mankind learns to live in peace and to forsake war and armaments, (WCN)

Reaffirming that man must acquire the knowledge to maintain and enhance his ability to use natural resources in a manner which ensures the preservation of the species and ecosystems for the benefit of present and future generations, (WCN)

Firmly convinced of the need for appropriate measures, at the national and international, individual and collective, and private and public levels, to protect nature and promote international co-operation in this field. (WCN)

Adopts, to these ends, the present World Charter for Nature, which proclaims the following principles of conservation by which all human conduct affecting nature is to be guided and judged. (WCN)

1. General Principles

1. Nature shall be respected and its essential processes shall not be impaired (WCN)

2. The genetic viability on the earth shall not be compromised: the population levels of all life forms, wild and domesticated, must be at least sufficient for their survival, and to this end necessary habitats shall be safeguarded (WCN)

3. all areas of the earth, both land and sea, shall be subject to these principles of conservation; special protection shall be given to unique areas, to representative samples of all the different types of ecosystems and to the habitats of rare or endangered species. (WCN)

4. Ecosystems and organisms, as well as the land, marine and atmospheric resources that are utilized by man, shall be managed to achieve and maintain optimum sustainable productivity, but not in such a way as to endanger the integrity of those other ecosystems or species with which they coexist. (WCN)

5. Nature shall be secured against degradation caused by warfare or other hostile activities. (WCN)

II Functions

6. In the decision-making process it shall be recognized that man's needs can be met only by ensuring the proper functioning of natural systems and by respecting the principles set forth in the present Charter. (WCN)

7 In the planning and implementation of social and economic development activities, due account shall be taken of the fact that the conservation of nature is an integral part of those activities. (WCN)

8. In formulating long-term plans for economic development, population growth and the improvement of standards of living, due account shall be taken of the long-term capacity of natural systems to ensure the subsistence and settlement of the populations concerned, recognizing that this capacity may be enhanced through science and technology. (WCN)

9. The allocation of areas of the earth to various uses shall be planned and due account shall be taken of the physical constraints, the biological productivity and diversity and the natural beauty of the areas concerned. (WCN)

10. Natural resources shall not be wasted, but used with a restraint appropriate to the principles set forth in the present Charter, in accordance with the following rules: (WCN)

(a) Living resources shall not be utilized in excess of their natural capacity for regeneration; (WCN)

(b) The productivity of soils shall be maintained or enhanced through measures which safeguard their long-term fertility and the process of organic decomposition and prevent erosion and all other forms of degradation; (WCN)

(c) Resources, including water, which are not consumed as they are used shall be reused or recycled; (WCN)

(d) Non-renewable resources which are consumed as they are used shall be exploited with restraint, taking into account their abundance, the rational possibilities of converting them for consumption, and the compatibility of their exploitation with functioning of natural systems. (WCN)

11. Activities which might have an impact on nature shall be controlled, and the best available technologies that minimize significant risks to nature or other adverse effects shall be used; in particular, (WCN)

(a) activities which are likely to cause irreversible damage to nature shall be avoided; (WCN)

(b) Activities which are likely to pose a significant risk to nature shall be preceded by an exhaustive examination; their proponents shall demonstrate that expected benefits outweigh potential damage to nature, and where potential adverse effect are not fully understood, the activities should not proceed; (WCN)

(c) Activities which may disturb nature shall be preceded by assessment of their consequences, and environmental impact studies of development projects shall be conducted sufficiently in advance, and if they are to be undertaken, such activities shall be planned and carried out so as to minimize potential adverse effects; (WCN)

(d) Agriculture, grazing forestry and fisheries practices shall be adapted to the natural characteristics and constraints of given areas; (WCN)

(e) Areas degraded by human activities shall be rehabilitated for purposes in accord with their natural potential and compatible with the well-being of affected populations (WCN)

12. Discharge of pollutants into natural systems shall be avoided and: (WCN)

(a) Where this is not feasible, such pollutants shall be treated at the source, using the best practicable means available; (WCN)

(b) special precautions shall be taken to prevent discharge of radioactive or toxic wastes (WCN)

13. Measures intended to prevent, control or limit natural disasters, infestations and diseases shall be specifically directed to the causes of these scourges and shall avoid adverse side-effects on nature. (WCN)

III Implementation

14. The principles set forth in the present Charter shall be reflected in the law and practice of each State, as well as at that international level. (WCN)

15. Knowledge of nature shall be broadly disseminated by all possible means, particularly by ecological education as an integral part of general education. (WCN)

16. All planning shall include, among its essential elements, the formulation of strategies for the conservation of nature, the establishment of inventories of ecosystems and assessments of the effects on nature of proposed policies and activities; all of these elements shall be disclosed to the public by appropriate means in time to permit effective consultation and participation. (WCN)

17. Funds, programmes and administrative structures necessary to achieve the objective of the conservation of nature shall be provided. (WCN)

18. constant efforts shall be made to increase knowledge of nature by scientific research and to disseminate such knowledge unimpeded by restrictions of any kind. (WCN)

19. The status of natural processes, ecosystems and species shall be closely monitored to enable early detection of degradation or threat, ensure timely intervention and facilitate the evaluation of conservation policies and methods. (WCN)

20 Military activities damaging to nature shall be avoided (WCN)

21. States and, to the extent they are able, other public authorities, international organizations, individuals, groups and corporations shall: (WCN)

(a) Co-operate in the task of conserving nature through common activities and other relevant actions, including information exchange and consultations; (WCN)

(b) Establish standards for products and manufacturing processes that may have adverse effects on nature, as well as agreed methodologies for assessing these effects; (WCN)

(c) Implement the applicable international legal provisions for the conservation of nature and the protection of the environment; (WCN)

(d) Ensure that activities within their jurisdiction or control do not cause damage to the natural systems located within other States or in the areas beyond the limit of national jurisdiction; (WCN)

(e) Safeguard and conserve nature in areas beyond national jurisdiction. (WCN)

22. Taking fully into account the sovereignty of States over their natural resources, each State shall give effect to the provisions of the present Charter through its competent organs and in co-operation with other States. (WCN)

23. All persons, in accordance with their national legislation, shall have the opportunity to participate, individually or with others, in the formulation of decisions of direct concern to their environment, and shall have access to means of redress when their environment has suffered damage or degradation. (WCN)

24. Each person has a duty to act in accordance with the provisions of the present Charter; acting individually, in association with others or through participation in the political process, each person shall strive to ensure that the objectives and requirements of the present Charter are met. (WCN)

ASEAN AGREEMENT ON THE CONSERVATION OF NATURE AND NATURAL RESOURCES (KUALA LUMPUR, 1985) (Indonesia, Negara Brunei Darussalam, Malaysia, Philippine, Singapore and Thailand. (ASEAN) (ACNNR)

excerpts from Agreement

...

Conscious also that the interrelationship between conservation and socio-economic development implies both that conservation is necessary to ensure sustainability of development, and that socio-economic development is necessary to the achievement of conservation on a lasting basis; (ACNNR)

Recognizing the interdependence of living resources, between them and with other natural resource, within ecosystems of which they are part; (ACNNR)

Wishing to undertake individual and joint action for the conservation and management of their living resources and the other natural elements on which they depend; (ACNNR)

Recognizing that international co-operation is essential to attain many of these goals (ACNNR)

; Convinced that an essential means to achieve such concerted action is the conclusion and implementation of an Agreement;

Chapter 1

Conservation and Development

Article 1

Fundamental Principle

1. The contracting Parties, within the framework of their respective national laws, undertake to adopt singly, or where necessary and appropriate through concerted action, the measures necessary to maintain essential ecological processes and life-support systems, to preserve genetic diversity, and to ensure the sustainable utilization of harvested natural resources under their jurisdiction in accordance with scientific principles and with a view to attaining the goal of sustainable development. (ACNNR)

2. To this end they shall develop national conservation strategies, and shall co-ordinate such strategies within the framework of a conservation strategies, and shall co-ordinate such strategies within the framework of a conservation strategy for the Region. (ACNNR)

Article 2

Development Planning

1. The Contracting Parties shall take all necessary measures, within the framework of their respective national laws, to ensure that conservation and management of natural resources are treated as an integral part of development planning at all stages and at all levels. (ACNNR)

2) to that effect that shall, in the formulation of all development plans, give as full considerations to ecological factors as to economic and social ones. (ACNNR)

3) The contracting Parties shall, where necessary, take appropriate action with a view to conserving and managing natural resources of significant importance for two or several Contracting Parties (ACNNR)

chapter II

Conservation of Species and Ecosystems

Article 3

Species — genetic diversity

1. The Contracting Parties shall, wherever possible, maintain maximum genetic diversity by taking action aimed at ensuring the survival and promoting the conservation of all species under their jurisdiction and control (ACNNR)

2. to that end, they shall adopt appropriate measures to conserve animal and plant species whether terrestrial, marine and freshwater, and more specifically (ACNNR)

a) conserve natural, terrestrial, freshwater and coastal or marine habitats; (ACNNR)

b) ensure sustainable use of harvested species; (ACNNR)

c) protect endangered species; (ACNNR)

d) conserve endemic species; and (ACNNR)

e) take all measures in their power to prevent the extinction of any species or subspecies. (ACNNR)

3. In order to fulfill the aims of the preceding paragraph of this Article the Contracting Parties shall, in particular endeavour to

a) create and maintain protected areas; (ACNNR)

b) regulate the taking of species and prohibit unselective taking methods; (ACNNR)

c) regulate and, where necessary, prohibit the introduction of exotic species; (ACNNR)

d) promote and establish gene banks and other documented collections of animal and plant genetic resources (ACNNR)

Article 4

Species — sustainable use

The Contracting Parties shall pay special attention to harvested species, and, to that effect, shall endeavour to (ACNNR)

1) develop, adopt and implement management plans for those species, based on scientific studies and aiming at (ACNNR)

a) preventing decrease in the size of any harvested population to levels below those which ensure its stable recruitment and the stable recruitment of those species which are dependent upon, or related to them; (ACNNR)

- b) maintaining the ecological relationship between harvested, dependent and related populations of living resources of the ecosystem considered; (ACNNR)
 - c) restoring depleted populations to at least the levels referred to in subparagraph (1) of this paragraph; (ACNNR)
 - d) preventing changes or minimizing risk of changes in the ecosystem considered which are not reversible over a reasonable period of time. (ACNNR)
2. Take the appropriate and necessary legislative and administrative measures on harvesting activities in the light of their national interest whereby (ACNNR)
- c) all indiscriminate means of taking and the use of all means capable of causing local extinction of, or serious disturbance to, populations of a species or related species are prohibited (ACNNR)
 - d) such activities are prohibited or strictly regulated at certain periods, seasons or places of importance in the life cycle of the species; (ACNNR)
 - e) such activities may be regulated more strictly, temporarily or locally in order to assist restoration of population levels or counterbalance any threat caused by special circumstances; (ACNNR)
 - f) special measures, such as restocking, are provided for whenever the conservation status of a species so warrants; (ACNNR)

Article 5

Species — endangered and endemic

Article 6

Vegetation Cover and Forest Resources

1. The Contracting Parties shall, in view of the role of vegetation and forest cover in the functioning of natural ecosystems, take all necessary measures to ensure the conservation of the vegetation cover and in particular of the forest cover on lands under their jurisdiction.
- b) regulate mining and mineral exploration operations with a view to minimizing (ACNNR) disturbance of vegetation and to requiring the rehabilitation of vegetation after such operations; (ACNNR)
 - c) set aside areas as forest reserve, Inter alia, with a view to conserve the natural forest genetic resources; (ACNNR)
 - d) in reforestation and afforestation planning avoid as far as possible monoculture causing ecological imbalance; (ACNNR)
 - e) designate areas whose primary function shall be the maintenance of soil quality in the catchment considered and the regulation of the quantity and quality of the water delivered from it; (ACNNR)
 - f) ensure, to the maximum extent possible the conservation of their natural forests, particularly mangroves with a view, inter alia, to maintaining maximum forest species diversity; (ACNNR)
 - g) develop their forestry management plans on the basis of ecological principles with a view to maintaining potential for optimum sustained yield and avoiding depletion of the resource capital. (ACNNR)

Article 7

Soil

1. The Contracting Parties shall, in view of the role in the functioning of natural ecosystems, take measures, wherever possible, towards soil conservation, improvement and rehabilitation; they shall, in particular, endeavour to take steps to prevent soil erosion and other forms of degradation, and promote measures which safeguard the processes of organic decomposition and thereby in continuing fertility (ACNNR)

2. To that effect, they shall, in particular, endeavour to

- a) establish land use policies aimed at avoiding losses of vegetation cover, substantial soil losses, and damages to the structure of the soil; (ACNNR)
- b) take all necessary measures to control erosion, especially as it may affect coastal or freshwater ecosystems, lead to siltation of downstream areas such as lakes or vulnerable ecosystems such as coral reefs, or damage critical habitats, in particular that of endangered or endemic species; ... (ACNNR)

Article 8

Water

1. The Contracting Parties shall, in view of the role of water in the functioning of natural ecosystems, take all appropriate measures towards the conservation of their underground and surface water resources. (ACNNR)

2. They shall to that effect, in particular, endeavour to

- a) undertake and promote the necessary hydrological research especially with a view to ascertaining the characteristics of each watershed; (ACNNR)
- b) regulate and control water utilization with a view to achieving sufficient and continuous supply of water for Inter alia, the maintenance of natural life supporting systems and aquatic fauna and flora; (ACNNR)
- c) when planning and carrying out water resource development projects take fully into account possible effects of such projects on natural processes or on other renewable natural resources and prevent or minimize such effects. (ACNNR)

Article 9

Air

The Contracting Parties shall, in view of the role of air in the functioning of natural ecosystems, endeavour to take all appropriate measures towards air quality management compatible with sustainable development. (ACNNR)

Chapter III

Conservation of Ecological Processes

Article 10

The Contracting Parties, with a view to maintaining the proper functioning of ecological processes, undertake, wherever possible, to prevent, reduce and control degradation of the natural environment and, to this end, shall endeavour to undertake, in addition to specific measures referred to in the following article; (ACNNR)

- a) to promote environmentally sound agricultural practice by, inter alia, controlling the application of pesticides, fertilizers and other chemical products for agricultural use, and by ensuring that agricultural development schemes, in particular for wetland drainage or forest clearance pay due regard to the

- need to protect critical habitats as well as endangered and economically important species; (ACNNR)
- b) to promote pollution control and the development of environmentally sound industrial process and products; (ACNNR)
- d) as far as possible to consider the originator of the activity which may lead to environmental degradation responsible for its prevention, reduction and control as well as, wherever possible, for rehabilitation and remedial measures required; (ACNNR)
- e) to take into consideration, when authorizing activities likely to affect the natural environment, the foreseeable interactions between the new activities proposed and those already taking place in the same area, and the result of such interactions on the air, waters, and soils of the area; (ACNNR)
- f) to pay particular attention to the regulation of activities which may have adverse effects on processes which are ecologically essential or on areas which are particularly important or sensitive from an ecological point of view, such as the breeding and feeding grounds of harvested species. (ACNNR)

Article 11

The contracting Parties, recognizing the adverse effect that polluting discharges or emissions may have on natural processes and the functioning of natural ecosystems as well as on each of the individual ecosystem components, especially animal and plants species, shall endeavour to prevent, reduce and control such discharges, emissions or applications, in particular by control such discharges, emissions or application, in particular by (ACNNR)

a) submitting activities likely to cause pollution of the air, soil, freshwater, or the marine environment, to controls which shall take into consideration both the cumulative effects of the pollutants concerned and the self-purification aptitude of the recipient natural environment; (ACNNR)

b) making such controls conditional on, inter alia appropriate treatment of polluting emissions; and (ACNNR)

c) establishing national environmental quality monitoring programmes particular attention being paid to the effects of pollution on natural ecosystems, and co-operation in such programmes for the Region as a whole. (ACNNR)

Chapter IV

1. The Contracting Parties shall wherever possible in the implementation of their development planning, give particular attention to the national allocation of land usage. They shall endeavour to take the necessary measures to ensure the integration of natural resource conservation into the land use planning process and shall, in the preparation and implementation of specific land use plans at all levels, give as full consideration as possible to ecological factors as to economic and social ones, in order to achieve optimum sustainable land use; they undertake to base their land use plans as far as possible on the ecological capacity of the land. (ACNNR)
3. They shall, where appropriate, coordinate their land use planning with a view to conserving and managing natural resources of significant importance for two or several Contracting Parties. (ACNNR)

Article 13

Protected Areas

1. The Contracting Parties shall, as appropriate, establish, in areas under their jurisdiction, terrestrial, freshwater, coastal or marine protection areas for the purpose of safeguarding

- the ecological and biological processes essential to the functioning of the ecosystems of the Region; (ACNNR)
- representative samples of all types of ecosystems of the Region; (ACNNR)
- satisfactory population levels for the largest possible number of species of fauna and flora belonging to those ecosystems; (ACNNR)
- areas of particular importance because of their scientific, educational, aesthetic, or cultural interest; and taking into account their importance in particular as: (ACNNR)
 - the natural habitat of species of fauna and flora, particularly rare or endangered or endemic species; (ACNNR)
 - zones necessary for the maintenance of exploitable stock of economically important species; (ACNNR)
 - pools of genetic material and safe refuges for species, especially endangered ones; (ACNNR)
 - sites of ecological, aesthetic or cultural interest; (ACNNR)
 - reference sources for scientific research; (ACNNR)
 - areas for environmental education (ACNNR)

They shall, in particular, take all measures possible in their power to preserve those areas which are of an exceptional character and are peculiar to their country or the Region as well as those which constitute the critical habitats of endangered or rare species, of species that are endemic to a small area and of species that migrate between countries of Contracting Parties. (ACNNR)

2. Protected areas established pursuant to this Agreement shall be regulated and managed in such a way as to further the objectives for the purpose of which they have been created. Contracting Parties shall, wherever possible, prohibit within such protected areas activities which are inconsistent with such objectives. (ACNNR)

3. Protected areas shall include

a) National Parks (ACNNR)

- i. This expression denotes natural areas that are sufficiently large to allow for ecological self-regulation of one or several ecosystems, and which have not been substantially altered by human occupation or exploitation (ACNNR)
- ii National Parks shall be placed under public control, their boundaries shall not be altered nor shall any portion of any National Park be alienated except by the highest competent authority. (ACNNR)
- iii. National Parks shall be dedicated to conservation and to scientific, educational and recreational uses and the common welfare of people. (ACNNR)

b) Reserves

- i) This expression denotes areas set aside for the purpose of preserving a specific ecosystem, the critical habitat of certain species of fauna or flora, a water catchment area or for any other specific purpose relating to the

conservation of natural resources or objects or areas of scientific, aesthetic, cultural, education or recreational interest. (ACNNR)

iii Reserves shall be dedicated to the purposes for which they have been created and, in the light of the national interests of the Contracting Parties, any activity inconsistent with such purposes shall be prohibited. (ACNNR)

4. Contracting Parties shall, in respect of any protected area established pursuant to this Agreement (ACNNR)

a) prepare a management plan and manage the area on the basis on this plan; (ACNNR)

b) establish, wherever appropriate, terrestrial or aquatic buffer zones that shall be located around protected areas and which, in the case of marine areas, may include coastal land areas or watersheds of rivers flowing into the protected area; in such buffer zones all activities that may have harmful consequences on the ecosystems that such areas purport to protect shall be prohibited or regulated and activities which are consistent with the purpose of the protected area shall be promoted. (ACNNR)

5. Contracting Parties shall, in respect of any protected area established pursuant to this agreement, endeavour to (ACNNR)

a) prohibit the introduction of exotic animal or plant species; (ACNNR)

b) prohibit the use or release of toxic substances or pollutant which could cause disturbance or damage to protected ecosystems or to the species they contain; (ACNNR)

c) to the maximum extent possible, prohibit or control any activity exercised outside protected areas when such an activity is likely to cause disturbance or damage to the ecosystems or species that such protected areas purport to protect (ACNNR)

6. Contracting Parties shall co-operate in the development of principles, objectives, criteria and guidelines for the selection, establishment and management of protected areas in the Region with a view to establishing a co-ordinated network of protected areas throughout the Region, giving particular attention to those of regional importance. An Appendix containing such principles, objectives, criteria and guidelines shall be drawn up in the light of the best scientific evidence as adapted to the conservation requirements of the Region and shall be adopted by a meeting of Contracting Parties. (ACNNR)

In addition to the establishment of the protected areas referred to in paragraph 3 of this Article, Contracting Parties shall promote, through the adoption of appropriate measures, the conservation of natural areas by private owners, community or local authorities. (ACNNR)

Article 14

Impact Assessment

1. The Contracting Parties undertake that proposals for any activity which may significantly affect the natural environment shall as far as possible be subjected to an assessment of their consequences before they are adopted, and they shall take into consideration the results of this assessment in their decision-making process. (ACNNR)

2. In those cases where any such activities are undertaken, the Contracting Parties shall plan and carry them out so as to overcome or minimize any

assessed adverse effects and shall monitor such effects with a view to taking remedial action as appropriate. (ACNNR)

Chapter 5

National Supporting Measures

Article 15

Scientific Research

Article 16

Education, Information, and Participation of the Public, Training

1. the Contracting Parties shall endeavour to promote adequate coverage of conservation and management of natural resources in education programmes at all levels (ACNNR)

2. They shall circulate as widely as possible information on the significance of conservation measures and their relationship with sustainable development objectives and shall, as far as possible, organize participation of the public in the planning and implementation of conservation measures. ... (ACNNR)

Article 17

Administrative Machinery Chapter VI

Article 18

International Co-operation

Co-operative Activities

Article 19

Shared Resources

c) as far as possible, make environmental assessments prior to engaging in activities with respect of shared natural resources which may create a risk of significantly affecting the environment of another sharing Contracting Party or the sharing Contracting Parties;

d) notify in advance the other sharing Contracting Party or the other sharing Contracting Parties of pertinent details of plans to initiate, or make a change in, the conservation or utilization of the resource which can reasonably be expected to affect significantly the environment in the territory of the other Contracting Party or Contracting Parties; (ACNNR)

...

Article 20

Trans frontier Environmental Effects

1. Contracting Parties have in accordance with generally accepted principles of international law the responsibility of ensuring that activities under their jurisdiction or control do not cause damage to the environment or the natural resources under the jurisdiction of other Contracting Parties or of areas beyond the limits of national jurisdiction. (ACNNR)

2. In order to fulfill this responsibility, Contracting Parties shall avoid to the maximum extent possible and reduce to the minimum extent possible adverse environmental effects of activities under their jurisdiction or control, including effects on natural resources, beyond the limits of their national jurisdiction. (ACNNR)

3. To that effect, they shall endeavour

a) to make environmental impact assessment before engaging in any activity that may create a risk of significantly affecting the environment or the natural

resources of another Contracting Party or the environment or natural resources beyond jurisdiction; (ACNNR)

4. Contracting Parties shall, in particular, endeavour to refrain from actions which might directly or indirectly adversely affect wildlife habitats situated beyond the limits of national jurisdiction, especially habitats of species listed in Appendix 1 or habitats included in protected areas. (ACNNR)

Chapter VII

International Supporting Measures

Article 21

Meeting of the Contracting Parties

Article 22-35 Administration of Agreement

As we, in BC Parks and BC Forest Service begin to work on implementing our components of B.C.'s protected areas under the aegis of the Commission on Resources and Environment, we will be mindful of this Declaration [the Caracas Declaration: Parks Protected Areas and the Human Future] and its implications. Our objective will be to have a system of protected areas which we are proud to present to the world.

Through this declaration the Provincial government has recognized that

- nature has intrinsic worth and warrants respect regardless of its usefulness to humanity
- this natural wealth is being eroded at an unprecedented rate, because of the rapid growth in human numbers, the uneven and often excessive consumption of natural resources, mistaken and socially harmful styles of development, global pollution and defective economic regimes, so that the future of humanity is now threatened;
- many people must modify their styles of living and the world community must adopt new and equitable styles of development, based on the care and sustainable use of the environment, and the safeguarding of global life-supporting systems (CD)

ACCORDINGLY, and bearing in mind the message of *Caring for the Earth: A strategy for Sustainable Living, The Global Biodiversity Strategy*. launched at this Congress, and the earlier messages of the World Conservation Strategy, the World Charter for Nature and the World Commission on Environment and Development, WE, the

The U

3.2. Conserving Biodiversity

The congress urgently requested that all countries urgently undertake surveys to identify additional sites of critical importance for conservation of biological diversity, and wherever possible, accord total protection to them. Harvesting should be relocated from primary to secondary forests and tree plantations in previously deforested areas; or - where this is not possible sustainable forest

harvesting systems which favour natural species diversity should be developed and introduced. p 8

3.3. Conservation on a regional scale

Protected areas have sometimes been seen as islands of nature and tranquility, surrounded by incompatible land uses. But the congress made it clear that such an "island mentality" is fatal in the long run. The congress recognized that it is unlikely that protected areas will be able to conserve biodiversity if they are surrounded by degraded habitats that limit gene-flow alter nutrient and water cycles and produce regional and global climate change that may lead to the final disappearance of these "island parks." Protected areas, therefore need to be part of broader regional approaches to land management. The term bioregion was used to describe extensive areas of land and water which include protected areas and surrounding lands, preferably including complete watersheds, where all agencies and interested parties have agreed to collaborative management.

recommendation 3

Global efforts to conserve biological diversity.

"The loss of biodiversity has reached crisis proportion and if present trends continue up to 25 % of the world's species may be sentenced to extinction or suffer severe genetic depletion in the next several decades, accompanied by equally significant and alarming degradation of habitats and ecosystems. This loss of biological diversity is impoverishing the world of its genetic resources, its species, habitats and ecosystems.

All species deserve respect, regardless of their usefulness to humanity. This Principle was endorsed by the UN Assembly when it adopted the World Charter for nature in 1982. The loss of the living richness of the planet is dangerous, because of the environmental systems of the world support all life, and we do not know which are the key components in maintaining their essential functions.

the It World Congress on national Parks and Protected Areas recommends that:

- a) governments make the protection of biological diversity, including species and habitat richness, representativeness and scarcity, a fundamental principle for the identification, establishment, management and public enjoyment of national parks and other protected areas;
- b) all countries urgently undertake surveys to identify additional sites of critical importance for conservation of biological diversity and wherever possible, accord total protection to them Harvesting should be relocated from primary to secondary forests and tree plantations in previous deforested areas; or — where this is not possible — sustainable forest harvesting systems which favour natural species diversity should be developed and introduced: p. 30

Recommendation 4:

entitled legal regimes for protected areas.

Protected areas require a mutually reinforcing system of international and national environmental law for their establishment, maintenance and management. International treaties establish a harmonized set of obligations

with regard to areas within national jurisdictions and activities having effect beyond national jurisdictional boundaries. These obligations must be reflected in national legislation; otherwise, the treaties cannot be implemented. In turn, innovative national legislation provides a basis and impetus for further international law. The dynamic interaction between the two levels is thus conducive to further progress. p. 31

() **THAT** in January of 1994, I made a presentation, at the IUCN Annual General Meeting, on Principle-based education

EXHIBIT

Principle-based education

In international documents there is expressed concern for "common security" issues, such as the destruction of the environment, the escalation of war, the violation of human rights the disregard for social justice and the perpetuation of inequity. Underlying this expressed concern have been fundamental principles which, if followed, could address this concern. Although there has often been and continues to be a convergence between stated concerns and fundamental principles, there is usually divergence between stated concerns/fundamental principles and actual actions. One reason could be that the international community is not using these principles as moral suasion to encourage the international community to act.

PRINCIPLES OF ACTION

The following principles have been extracted from a series of international documents, including Stockholm Convention 1972, the World Charter of Nature, 1992, and UNCED documents. and the Rights of the Child. These principles will be combined with those extracted from UN Declaration of Human Rights and international Covenants {diagram from Russow, J (1985), "A diagram of rights that are or are not protected through international documents"}. The delineation of principles is in progress. The proposed format will be the extracting of the principle from the documents, the naming of the principle, the abstract definition of the principle, and the citation from the international document that supports the principle.

- exploration of principle
- emergence of issues within principle
- actual cases related to principle
- application of principle to actual cases
- adjustment of principle in response to cases
- hypothetical case analysis
- application of principle to hypothetical cases
- adjustment of principle in response to hypothetical cases
- clarification of principle
- determination of action to support principle
- engagement in action
- justification of action

1. Precautionary principle

" Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation." (Rio Declaration, 1992).

Hypothetical case

There is a proposal to log the catchment area of a watershed where the community has its source of drinking water

Assertion of positive responsibility to improve the environment for present and future generations principle.

Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations (Principle 1) Declaration of the United Nations Conference on the Human Environment (1972)

Destruction of means of mass destruction principle

Man, and his environment must be spared the effects of nuclear weapons and all other means of mass destruction. States must strive to reach prompt agreement, in the relevant international organs, on the elimination and complete destruction of such weapons (Principle 26) Declaration of the United Nations Conference on the Human Environment (1972)

Avoidance of activities if adverse effects not fully understood principle

Activities which are likely to pose a significant risk to nature shall be preceded by an exhaustive examination; their proponents shall demonstrate that expected benefits outweigh potential damage to nature, and where potential adverse effects are not fully understood, the activities should not proceed (11 b) World Charter of Nature (1982)

Avoidance of irreversible damage to nature principle

Activities which are likely to cause irreversible damage to nature shall be avoided (11. a) World Charter of Nature (1982)

Hypothetical Case:

2. Responsible-care-linked-to-life-cycle principle

This principle involves the recognition that responsible care is dependent upon revealing of life cycle of products

Industry should be encouraged to develop application of a 'responsible care' approach by producers and manufacturers towards chemical products, taking into account the total life cycle of such products (Agenda 21, 19.51 b.)

Hypothetical case

The regulatory agency of atomic energy sets up a display at an international conference on education. In this display the agency states that Nuclear energy is the safe alternative to global warming

Empower community groups, non-governmental organizations and individuals to assume the authority and responsibility for managing and enhancing their immediate environment through participatory tools, techniques and approaches embodied in the concept of environmental care. (Agenda 21, 7.21. g)

3. Not-transferring-environmentally-harmful-activities or substances principle
States should effectively cooperate to discourage or prevent the relocation and transfer to other states of any activities and substances that cause severe environmental degradation or are found to be harmful to human health
(Principle 14, Rio Declaration)

Hypothetical case

A pesticide is restricted or banned in Canada; Canada exports this Chemical to Brazil

Canada at Rio made commitment

() **THAT** in 1994, at the IUCN Annual General Meeting, I worked on a resolution with the International Sierra Club, to condemn forest practices in BC and to call for the nomination of a network of old growth forests on Vancouver Island as a World Heritage site

EXHIBIT

Resolution passed by the IUCN General Assembly meeting at Buenos Aires, Tuesday, January 25, 1994

The IUCN (World Conservation Union) an organization representing 125 countries

passed a resolution calling for a change in forest practices and forest preservation policies in B.C.

The voting body of the IUCN is divided into two houses: one house with government representatives, and the other with non-governmental representatives.

At the 1994 meeting of the IUCN (World Conservation Union) the following resolution was passed:

by 124 countries with only one country abstaining: Canada.

19.72 REV2 North American Coastal Temperate Forests
(retyped with January 25 Amendments from the floor)

RECOGNISING that temperate coniferous forests, and especially rain forests, constitute a very rare type of ecosystem in the world, originally covering less than one-fifth of one percent of the earth's land surface, and that one half of the earth's original forest of this type occurs along the pacific Coast of North America from northwestern California to southeastern Alaska;

UNDERSTANDING that many endemic and unusual plants and animals occur only in these forests; and that in biomass productivity, the old growth forests (ancient forests) of this biome are unequalled anywhere;

AWARE that more than one half of the Earth's original coastal coniferous forests (ancient forests) have been logged, including more than 40 % of the ancient forests of this type on North America, and that few large unfragmented examples of this type of forest, other than in protected areas, exist outside of British Columbia and Alaska;

MINDFUL of the fact that such ancient forests on Vancouver Island and on the mid-coast of British Columbia are disappearing at a rapid rate as a result of practices that have, to date, not been ecologically sustainable;

ALSO, MINDFUL that past management practices have been controversial, while the US government has enacted legislation to ensure sustainable management of all forests, questions continue to arise;

UNDERSTANDING that the Raincoast Conservation Society, the Sierra Club, and the Western Canada Wilderness Committee have proposed a large network of protected areas, including conservation corridors, in areas of such ancient forests on Vancouver Island and the midcoast of British Columbia;

AWARE of the fact that none of the protected areas that Canada maintains in forest areas along the Pacific Coast have been designated as World Heritage sites under the provisions of the World Heritage Convention[s] and that these ancient forests may be of outstanding universal value;

The General Assembly of IUCN — the World Conservation Union, at its 19th Session in Buenos Aires, Argentina, 17-26 January 1994:

1. URGES the Government of Canada and the United States to properly manage the temperate coastal coniferous forests of the Pacific Coast of North America by establishing appropriate protected areas and by adopting ecologically oriented systems of forest management which can be permanently sustained and which protect biodiversity;

2. CALLS UPON the Governments of Canada and British Columbia to substantially expand the amount of land in networks of protected areas, with conservation corridors, on Vancouver Island and the midcoast of British Columbia, taking into consideration the recommendations of environmental groups active in the regions such as the Raincoast Conservation Society, the Sierra Club and the Western Canada

Resolution proposed by Michael McCloskey, Sierra Club USA, in collaboration with Joan Russow (B.C. Canada) member of the IUCN Commission on Education and Communication

BACKGROUND

() **THAT** in 1994 at the AGM of the IUCN Commission on Education and Communication, I presented a paper on "Principle-Based Education"
EXHIBIT

() **THAT** in 1994 at the IUCN Annual General Meeting, I worked with Greenpeace in drafting a resolution calling for a forest protocol to be added to the Convention on Biological Diversity in opposition to the Canadian Proposal for a Forest Convention -the Canadian Forest Company Proposal. The Forest Protocol resolution was passed at the Annual General Meeting by both the NGO and the Government House.

EXHIBIT

() **THAT** in 1994 at the IUCN Annual General Meeting, I made a presentation to the IUCN Commission on International Environmental Law on the need to place the proposed IUCN Earth Covenant in the context of environmental precedents;

() **THAT** in 1994 at the IUCN Annual General Meeting, I intervened at the congress of the IUCN Commission on International Environmental Law and described the failure of Canada in a Federal system to ensure that international obligations were implemented in the provinces, and I referred to Clayoquot injunction case

() **THAT** from 1992 to 1995 I co-taught a course at the University on Global Issues in the School of Environmental Studies

() **THAT** in 1994 JANUARY 17, I did an analysis of the 12% solution that was promoted by the BC government and industry. There was a false claim that the 12% solution arose from a UN document.

EXHIBIT:

1994 JANUARY 17

WHOSE SOLUTION IS THE 12% SOLUTION?

Industry is calling for 12% and no more!

This figure does not appear in the legally binding document the Biodiversity Convention (1992); nor in the globally agreed-to document, Agenda 21(1992); nor in a 1994 Resolution coming from the World Conservation of Nature (IUCN) (1994).

The "12% solution" was touted by the NDP as being a goal enunciated by the Brundtland report (1987); a report which consisted of recommendations but was never made into a legally binding document or into a globally agreed to document. The NDP party passed a resolution at its 1990 convention that

they undertook, if elected, to preserve 12% of the province in parks. This prescription or proscription has now been translated into saving 12% of Vancouver Island.

The 12 % solution has been attributed to the Brundtland report. Although as far as can be determined the only reference to this number is the following:

"Nearly 4 per cent of the Earth's land area is managed explicitly to conserve species and ecosystems..." (p. 147). (From Memo, Paul Senez)

There also appears to be a statement of condemnation coming from the World Conservation Union (IUCN) that only 5% of the world is saved in parks.

This percentage condemnation is then translated into a protection prescription:

"... a consensus of professional opinion suggests that the total expanse of protected area needs to be *at least tripled* if it is to constitute a representative sample of Earth's ecosystems." (p. 165-66) The World Commission on Environment and Development." (from Memo, Paul Senez)

Any mention of percentage was enunciated not as a goal but as a minimum. It should also be noted that several documents that have state endorsement have superseded any recommendation from the Brundtland Report which was essentially a report prepared to substantiate the holding of a UN conference on Environmental and Development; it was not a document that was voted on by any international body.

Now industry claims to have found another UN document that advocates 10 %. Stan Coleman in a press release issued February 10, commented on the industry sector's CORE recommendation: "the recommendation identified specific natural areas that increase the amount of protected areas on Vancouver Island to 12% — 2 % higher than the 10% protected areas recommendation made by the UN for all countries" In referring in the press release to the 12.03 % suggested for preservation by industry and other sectors, Stan Coleman failed to indicate that the preservation of low lying old growth in his proposal was increased from 5.6% to 6%, and that the rest of the percentage was not old growth.

When asked for the source of this 10%, Stan Coleman, the chair of a new conglomerate of forest industries "Forest Managers and Manufacturers, indicated that he was waiting for a FAX about it, and he would call me about it tomorrow (I had contacted his assistant about the source a few hours earlier)

Unfortunately, the proposed embodiment of this solution does not entail a significant increase in the protection of original or old growth.

A recent indication of international opinion related to the preservation of "North American temperate rain forests" was a resolution passed unanimously (with only one state abstaining, Canada) at the IUCN Annual General Meeting in Buenos Aires. In this resolution current forest practices were blamed for the destruction of the ancient forests, and there was a call upon the B.C. government to change its forest practices. There was also a

call to preserve networks of protected areas and conservation corridors, taking into consideration the recommendations of the Western Wilderness Committee and Sierra Clubs proposed networks on Vancouver Island. It should be noted that in both of the proposed network, Clayoquot Sound was included.

The notion of percentages related to preservation was brought up twice at the conference, and the notion was dismissed as not having any basis in any theory related to the protection of biodiversity. The notion of percentage was mentioned once in a contact group's discussion on a resolution on "North America Temperate Rainforest" and in the plenary discussion about a resolution on "Conservation for Biodiversity."

In the Contact group the chair of the Sierra Club of the United States, a biologist, a specialist in biodiversity who is a member of the IUCN Commission of Species Protection, and two representatives from park Canada and I were discussing the "temperate rainforest" resolution. When one of the members from Parks Canada suggested that we put in a preambular paragraph about the work that was being done in British Columbia, I stated that by commending the current work related to conservation we would be condoning the "12 % Solution." The response of the biologist was laughter and a comment that surely no country is still considering 12 % and that 12 % of land mass preserved has not basis in science. The Canadian government representatives did not support B.C.'s 12% solution.

The second time the question of percentages was raised at the IUCN General Meeting was in connection with a resolution on Conservation of Biodiversity. Initially in the resolution a reference had been made to percentages and when it was presented on the floor of the convention, several members raised their concerns that no percentage figure had any basis in science and that if a percentage were mentioned it could be used not as a minimum but as a limitation to preservation, and as a result of the discussion, the IUCN membership indicated that any reference to percentages should be left out.

Given the reluctance of current international documents to support the linking of percentage basis in

The NDP party, which as you know is the party still in power in B.C., passed a resolution at its 1990 convention that they undertook, if elected, to preserve 12% of the province in parks. This prescription or proscription has now been translated into saving 12% of Vancouver Island. Unfortunately, the proposed embodiment of this solution does not entail a significant increase in the protection of original or old growth. The infamous CORE (Commission of Resource and Environment) process has now prepared a majority report calling for 12.03 %.

The 12 % solution has been attributed to the Brundtland report. Although as far as I can discern the only reference to this magical number is the following:

"Nearly 4 per cent of the Earth's land area is managed explicitly to conserve species and ecosystems..." (p. 147).

There also appear to be a statement of condemnation coming from the IUCN that only 5% of the world is saved in parks.

This percentage condemnation is then is translated into a protection prescription:

"... a consensus of professional opinion suggests that the total expanse of protected area need to be at least tripled if it is to constitute a representative sample of Earth's ecosystems." (p. 165-66) The World Commission on Environment and Development.

() **Letter to Jeffery McNeely**
IUCN

EXHIBIT

Dear Jeffery,

I spoke with you in Victoria at your presentation and at the IUCN in June. Since 1990, I have been concerned with what has been referred to as the "12 % solution." There has then been circulated to support this "consensus" a statement by you in J. Mc Neely and K Miller National Parks Conservation and Development: The Role of Protected Areas in Sustaining Society, Proceedings of the World Congress on National Parks (Washington, DC: Smithsonian Institute Press, 1984)

I have pointed out that since that time in 1992 there has been the Caracas Convention and the publication on the proceedings edited by McNeely. and in it there is the criticism of the protection prescription based on percentages and stresses the need to...

- move away from "island protection"
- move from logging old growth to logging second growth

Also, since the Brundtland Commission there has been the Convention on Biological Diversity, and sections in Agenda 21 on Biodiversity, and combating deforestation. Unlike the World Commission on environment and Development, the Convention has been signed and ratified by Canada, and Agenda 21 has been adopted by the states that are members of the United Nations. In neither the Caracas Declaration nor the UNCED documents is the percentage prescription expressed. Percentages are only used as condemnation not as prescription for action.

Last night I attended a dinner where Andrew Petter, the new Minister of Forests, declared that B.C. was fulfilling it international commitment under the Brundtland report.

Joan Russow, ERA Ecological Rights Association, 502 Craigflower, Victoria, PH 604-380-2563. FAX 604-385-0195

() THAT in 1994 I wrote "Principle-based Education: an instrument of socio-political global change," and presented it at the Annual General meeting of the Commission on Education and Communication, IUCN World conservation Union, 1994), and submitted to triuniversity (University of British Columbia,

Simon Fraser University, and University of Victoria Publication); and to the Chair, Department of Social and Natural Sciences, Faculty of Education, University of Victoria

EXHIBIT

The awareness of the principles enunciated and statements made in this Charter, will hopefully make decision makers and citizens aware of the obligations that have been undertaken in the 50 years of the United Nations. In Beijing in September 1995 one month before the official 50th anniversary of the United Nations, states will have the opportunity to assert the political will to comply with and go beyond their obligations to a global solution.

Throughout the past 50 years the United Nations has undertaken obligations to address these issues; yet States within the United Nations have failed either to sign these international instruments, to ratify these instruments, or even when signed and ratified to enact the necessary legislation to enforce these instruments. On the eve of the 50th Anniversary of the United Nations, the states, members of the United Nations, shall undertake to sign what has not yet been signed, to ratify what has not yet been ratified, and to enforce what has not yet been enforced. Even the fulfilling of these obligations by signing, ratifying and enforcing will not be enough. If real change is to occur, the global community has to summon up the political will to fundamentally change.

PROMOTION OF TOLERANCE, PUBLIC AWARENESS AND UNDERSTANDING OF GLOBAL ISSUES THROUGH PRINCIPLE-BASED EDUCATION

Only the individuals and the institutional representatives that are promoting and demonstrating in their total operation adherence to socially equitable and environmentally sound development shall be involved in public education, and on decision making bodies.

PRINCIPLE BASED EDUCATION

A potential means of addressing the reduction of resolve in bringing about substantial global change through education (drawing upon the publication Russow, J. "A method of teaching human rights", 1985, and extended with the collaboration of David white)

For years, the international community through international documents has recognized the urgency of addressing issues related to environmental degradation, escalation of war and arms production, violation of human rights, and the inequitable distribution of resources. In these documents, principles can be extracted and a complex of principles presented as representing an expression of international concern.

In principle-based education the urgency of problem will be acknowledged, the international document addressing the urgency will be examined, and the principles in the different documents will be explored, and proposed international solutions offered through international law and obligations will be evaluated

In principle-based education students are encouraged to examine and to appreciate the full complexity and interdependence of global/local issues within a framework of internationally agreed to principles. The students are encouraged to investigate the components of these agreed to principles and to analyze the role of science and technology in the fulfillment or violation of these principles.

The emphasis in this approach is on becoming knowledgeable about the principles and their application, on investigating the implications of these principles, on analyzing and synthesizing information on current issues in the light of these agreed to principles, on clarifying the role of science and technology in relation to these principles, and on proposing a range of possible solutions to practical problems emerging from the issues. The students will be encouraged to investigate local issues within This framework of globally adopted principles.

This approach entails (1) examining principles enunciated in primary source material (international documents);(2) examining the role of science and technology in local and global issues (3) compiling actual cases studies and hypothetical case studies; (4) engaging in analytical processes of issue-principle analysis drawing upon a wide range of processes in creative and critical thinking (5) investigating a wide range of local and global concerns (6) thinking about the complexity and interdependence of issues within the framework of international principles (7).proposing solutions and resolutions based on the full examination of the principles and issues.(8) integrating themes, principles and issues, and linking these with science and technology (9) Determining appropriate moments for integrating issues into the science curriculum (10) developing lesson plans and educational materials based on issue-principle analysis (11) applying scientific knowledge global and local issues; (12) Determining the linking of issues and principles to "organizers" within the science curriculum such as "changes in the Environment" and "Ecology and resource management" (13) Encouraging the development of a responsible attitude towards local/ global issues. (14) Fostering the working cooperatively and independently

ISSUES-URGENCY- PRINCIPLES- PRINCIPLES OF ACTION- ACTION- RESPONSIBILITY

Principle-based framework

At the international Conference on Environment and Development (UNCED), important principles were established in the globally adopted documents. These principles have been linked with previously adopted principles related to human rights and peace issues as a basis for principle-based education: Underlined name of international agreement that addressed the issue
A preliminary analysis of the following international instruments and documents has been completed by Joan Russow. The documents include the following:

- (i) legally binding International Conventions, Treaties, Covenants and Declarations
- (ii) Globally adopted UN documents and resolutions
- (iii) Globally adopted NGO documents and resolutions

(See Appendix I for a list of international instruments that could be used)

PRINCIPLES FROM THE DOCUMENTS ADDRESS THE FOLLOWING ASPECTS OF GLOBAL ISSUES.

- Preserving, conserving and protecting the Ecosystem
Preventing pollution: nature of "environment" technology
- Invoking precautionary and anticipatory approach related to scientific certainty
Ensuring environmental assessment reviews: Role of scientific evidence
- Calling for Life cycle analysis: Examination of environmental effects from the production, refinement, consumption, and disposal of substances
- Affirming Non-transference of harmful substances or activities from one state to another (this would include toxic, hazardous and atomic wastes)

These issues will be integrated with international principles related to

Eradicating poverty
Eliminating discrimination
Ensuring gender equity
Guaranteeing equality before the law
Respecting Intergenerational equity (the rights of future generations)
Undertaking the positive duty to protect indigenous lands
Recognizing Positive duty to protect natural heritage
Phasing out use of non-renewable resources
Eliminating weapons of mass destruction

PRINCIPLE-BASED EDUCATIONAL APPROACH

Rationale:

In 'principle-based education,' 1 principles related to preventing (i) the destruction of the environment, (ii) the escalation of war, (iii) the violation of human rights, and (iv) the perpetuation of inequity and social injustice have been extracted from international documents. These internationally endorsed principles become the foundation for an educational program. Often in "education about issues," in the name of objectivity, a "both-sides" approach is advocated. Issues are perceived to reflect different values, and because of this perception, all opposing views are considered to being equally legitimate. In this "both-sides" approach in the classroom students are often encouraged to explore positions which may be in contradistinction to principles that have been endorsed by the global community.

1 "Principle-based education" was introduced in 1985 in Russow, J. " A Method of teaching Human Rights;" and expanded in Russow, J and D White. Global/local Issues through principle-based education

() THAT in January 1994, I submitted a proposal for criteria for the GEF fund harmonizing upward of the playing field. striving to ensure that the global targets shall draw upon the highest possible equitable and ecological

standards

GEF is in the unique position to become a leader in developing the highest possible equitable and ecological standards and technical regulations, and in promoting the highest possible global level playing field through legally binding mandatory standards and technical regulations.

There was no criteria established related NGO's source of other funding such as corporate funding

Ian Johnson

GEF Secretariat

FAX 202-522-3240

January 20, 1994

Attention: Ian Johnson

Please find enclosed

a revision of Criteria for NGO involvement in the GEF

Joan Russow

Chair, International Affairs Caucus

British Columbia Environmental Network

CRITERIA FOR NGO SELF-SELECTION TO COUNCIL MEETINGS

It is important to ensure that through the development of an appropriate definition of NGOs, private industry with a mandate for self-promotion will not be officially designated as NGOs for the GEF Council meetings. Thus, they should not be permitted to be at the meetings as attendees or observers with NGO accreditation. Without a clarification of the distinction between genuinely non-profit non-governmental organizations representing public constituencies and profit-making private industry groups with a mandate of self-promotion, the legitimate participation of NGOs in the GEF will be brought into question.

The first step should be to select an NGO Selection Steering Committee composed of NGOs (and members of the GEF Secretariat) using a set of criteria developed by NGOs and approved by the Council. This Committee would be given the responsibility of selecting NGOs, according to the approved criteria, for participation in GEF Council meetings as attendees or observers.

SUGGESTED CRITERIA FOR SELECTION OF NGOS

* Criteria for selection could be based on the commitment, expressed through mission statements, to the promotion of any or all of the following: the preservation of nature, socially equitable and environmentally sound development, the protection of human rights, the attainment of social justice, and peace.

* The NGOs would also have to demonstrate that their practices and

projects reflect their mission. No funding source of the NGOs, no funding of projects by the NGOs, or no project supported by the NGOs should have compromised the promotion of preservation of nature and socially equitable and environmentally sound development, the protection of human rights, and the attainment of social justice, and peace. In particular, no funding for the NGO should be received from the “natural resource extraction industries , or from the production of toxic, hazardous or atomic waste industries”, or other industries Although every activity has an impact on the environment, some are using more environmentally sound technologies than others and have a genuine concern for the environment. In addition, the NGO should be required to reveal an honest assessment of the interests that the NGO is serving

* The NGOs should be required to fully disclose their sources of income, including a proportional breakdown of sources. In addition, they should provide full public disclosure of funding sources and activities and projects.

* The NGOs should have to demonstrate that since their inception their organization has not been using any “conditional funding or aid” in any part of the world in order to proselytize a particular religious belief system. In particular no funding should be dependent on the explicit or implicit requirement of conversion. In addition, the NGOs should have to demonstrate that since their inception their organization has not been using the distress of others to facilitate the proselytizing of a particular religious belief system

* All NGOs that participate should undertake to endorse a foundation Charter or statement that draws upon international legal obligations in areas of human rights, equity, environment and peace, and upon additional recommendations such as those agreed to in the documents emanating from the UNCED Prep Coms such as the Women’s Action Agenda for UNCED or documents from the Global Forum, such as the NGO Treaties, .

* All NGOs that participate should have to demonstrate that nothing in their sphere of activity and supported projects or associated funding foundations or institutions could contribute to the degradation of the environment, the violation of human rights, the escalation of war, or the denial of equity or social justice.

* Criteria for selection should take into consideration the areas of expertise and experience related to socially equitable and environmentally sound development, the promotion of peace, and the protection of human rights and equity, the need for regional representation, a balance of international national /local representation,

* The comments and proposals for NGO participation and the Draft criteria for NGO self-selection should be solicited and circulated prior to the third Council meeting in January, 1995. Interim criteria shall then be established at the January meeting and then circulated to the wider NGO community for input before the criteria shall be finally adopted. The process adopted ought to have an appeal to the plenary process.

NGO PARTICIPATION IN THE PROCESS

NGOs must be able to participate in not just the application but also the formulation of all terms of reference for the GEF.

GEF CONSULTATIONS

Members of the Council should have to demonstrate that they have not

in any way contributed to the degradation of the environment, the violation of human rights, the escalation of war (through the development, production or distribution of weapon parts or weapons) or to the denial of equity.

NGO involvement in the GEF in the form of consultations does not constitute meaningful participation if established principles are not in place. To establish a principle base for the deliberations of the GEF Council, the GEF could consider the following principles:

PRINCIPLES

The fundamental principle of the GEF should be the promotion of socially equitable and environmentally sound development.

Principles are often compromised with the current roundtable approach. The GEF consultation process should reflect not an arena of competing vested interests of multiple stakeholders the roundtable approach but a coming together and collaboration of individuals and representatives with varying levels of experience and expertise, committed to addressing the urgency of the global situation.

Prior to setting up the GEF Council, the Council should consider as a minimum the adherence to international obligations. The GEF Council shall strive to abide by and be founded upon principles that have already been enunciated either through international customary law, International legal binding agreements, or globally adopted resolutions. [See draft document entitled Charter of Socially Equitable and Environmentally Sound Development; Rights and Responsibilities]

In cases where the international standards are too low, the highest national standards shall prevail. No state with high standards related to the protection and preservation of the environment, the protection of human rights, and the attainment of social justice and equity, should ever be made to compromise these standards by being encouraged to "harmonize downward."

One of the roles of the GEF Council could be to ensure that financial support coming from the GEF is dependent on a demonstration of state and donor compliance with international obligations.

The GEF Council should also ensure the following as the basis for the establishment of the Council:

* The GEF Council shall ensure that no state relaxes its environmental standards, technical regulations, human rights protection, or social justice and equity provisions to attract financial benefit.

*The GEF Council shall ensure states shall prevent the relocation and transfer to other states of any activities and substances that cause severe environmental degradation or are found to be harmful to human health. (Rio Declaration). Even if the recipient state has granted permission for this transfer.

* The GEF Council shall recognize the importance of the contribution of Indigenous peoples, and shall recognize that the transfer of ecologically sound technology from the South to the North might assist the North to live within the limits of the ecosystem.

* The GEF Council shall acknowledge that the solution to global problems lies in the serious reduction of consumption of the North rather than in the transference of consumptive patterns to the South, and in the transfer of socially equitable and environmentally sound development.

*The GEF Council shall encourage high enforceable standards and prevention technology that does it right the first time rather than low emission standards coupled with rectification or mitigation technology that attempts to address previous errors.

* In all activities, the anticipatory and precautionary principle shall prevail.

* The GEF Council shall endorse the reverse onus" principle which affirms that it is the proponent of an intervention into the ecosystem that must demonstrate the safety of the intervention rather than the opponent of an intervention, having to demonstrate harm.

NOTE: A Charter of Socially Equitable and Environmentally Sound Development: Rights and Responsibilities is currently being prepared, and is available from the address in the covering letter.

() **THAT** I had input into the 1994 BC CEPA

EXHIBIT

1994 INPUT INTO
PUBLIC INVOLVEMENT
B.C. ENVIRONMENTAL PROTECTION ACT FOLLOW-UP TO
CONSULTATION ON FEB 19, 1994
3 Who is the "Public"

While a definition for the term "public" is not provided in CEAA, guidelines will have to be developed to determine who constitutes the "public" for purposes of projects and activities outside of Canada. In developing these guidelines, consideration will have to be given to a number of broad issues including: the sovereignty of foreign nations, the spirit and intent of CEAA, the widely differing institutional capabilities and socio-political context of recipient countries, international agreements and arrangement to which Canada is party, timeliness and cost. These suggest the need for a definition rigorous enough to reflect the principles that underline CEAA, yet sufficiently flexible to be relevant in a variety of circumstances.

- to address the issue of "who is the 'public'" the government could bring together informed and concerned members of the public, drawing upon a wide range of expertise and experience, as well as upon the local members of the

community that are concerned about humanitarian development. In no way should the involvement of the public be based on the promotion of particular vested interests. A distinction could be made between vested interest for individual gain and public concern for the commons. The current round table process which sets up an arena of competing interests through "multistakeholders" rarely brings together the people that have a larger vision of comprehensive solution for the commons.

- To ensure that the "public" is involved in establishing the terms of reference and throughout the project

[all contained in UNCED documents].

in 1983 the science council of Canada made an important distinction between a "reasoned outcome" and a "negotiated outcome"; the establishment of standards should not be part of a negotiated outcome.

- There must be a continuous vigil on substance. Perhaps given that we do not understand the long-term synergistic effects or the long-term effect of combinations. Introduction of no new chemicals should become a policy. An assumption is often made that the effects are additive or independent rather than exponential or....

- The problem of limitation of knowledge must be recognized. often scientists are not capable of anticipating impacts because they don't even know what they are looking for and consequently are not able to find it. For example, CFCs were initially considered to be non-toxic, not bioaccumulation, and were hailed as the solution. no one would have anticipated the problem with the ozone.

See Financial Administration Act see act schedule III re CEPA 54)

Plain text: original draft document of the proposed BC Environment Protection Act, February, 10, 1994

Italics: Sections or sentences that should be left out

Italics and outline Notwithstanding case

Underlined suggestions from international or national documents, such as CEPA

Bold and underlined: additions from other NGO documents

Bold (September 27) suggestions of modification of documents such as CEPA

Bold (February 19, 1994) suggestions that were presented to the meeting held in Vancouver

Bold (February 20, 1994) suggestions added from the following day

B.C. ENVIRONMENTAL PROTECTION ACT

DECLARATION

It is hereby declared that the preservation and the protection of the environment is essential to the well-being of Canada and British Columbia (CEPA)

PREAMBLE

• Whereas the presence of *Toxic substances contaminants* in the environment is a matter of national and provincial concern.

• **Whereas the diminution of ecosystems and the release of contaminants into ecosystems has occurred**

• Whereas the presence of toxic substances, once introduced into the environment, cannot always be contained within geographic boundaries (CEPA)

• Whereas the Government of Canada, and the Government of British Columbia in demonstrating leadership should establish national and provincial environmental quality objectives, guidelines and codes of practice, and enforceable technical regulations.
part 1.

• Whereas Canada must be able to fulfill its international obligations in respect of the environment: (CEPA)

DEFINITIONS

NOTE THAT THE DEFINITIONS IN KABEL FONT ARE FROM THE BACT DOCUMENT

Aboriginal government

Administrator means the administrator of Environmental Emergency Services Coordination Office (BCEPA)

Air means the atmosphere but does not include the atmosphere inside
(a) an underground mine, or
(b) a place or category of places exempted by order of the Lieutenant Governor in Council

Adverse effect

means any effect that causes, has caused or contributed to or is likely to cause or contribute to significant damage to [the ecosystem, or loss or reduction of biodiversity, or elimination of carbon sinks] or loss of use of the environment and includes pollution and the effects of an environmental accident (BCEPA).

(a) any significant and widespread effect which any reasonably be anticipated to impair wildlife, aquatic life, *natural resources* or environmental quality, or
b) any effect that results in or contributes damage to the environment (Arizona} BCEPA)

Ambient criteria, or environmental quality criteria

refers to levels of contaminants in the environment that must be zero use, production, and release in all cases where a toxic substance is persistent or bioaccumulative. It also applies when a substance will generate persistent or bioaccumulative toxic byproducts or breakdown products during its

productions, use or disposal (zero Toxics Alliance Statement of Principles) that must not be exceeded to protect the [ecosystem — water, air, sediment, soil or biota) and] the use of the air, water or soil, human health and the health of the environment. The criteria have no legal standing for enforcement purposes.

The Framework of mandatory standards and technical regulations will have legal standing so that the mandatory standards and technical regulations will be enforceable, and will give incentive to the development of BEST,

Air contaminant means any solid, liquid, gas or odor or combination of any of them that, if emitted into the air, would create or contribute to the creation of air pollution (CEPA)

Air contaminant means a substance that is emitted into the air and that
(a) injures or is capable of injuring the health or safety of a person
(b) injures or is capable of injuring property or any life form
(c) interferes or is capable of interfering with visibility
(d) interferes or is capable of interfering with the normal conduct of business
(e) causes or is capable of causing material discomfort to a person, or
(f) damages or is capable of damaging the environment (CEPA)

Air pollution means a condition of the air, arising wholly or partly from the presence therein of one or more air contaminants, that

- (a) endangers the health, safety or welfare of persons
- (b) interferes with normal enjoyment of life or property
- (c) endangers the health of animal life, or
- (d) causes damage to plant life or to property: (BCEPA)

(Ambient air or water quality

refers to the overall or general condition of air or water in a region outside the zone of influence of discharges in contrast to local conditions which may be related to a specific source of contamination. (Water Management Division, Principles for Preparing Water Quality Objectives in B.C, 1986)

Authorization

means a permit, approval, licence, pollution prevention plan, operational certificate, order, certificate, pest management plan, certificate of compliance, conditional certificate of compliance, approval in principles (BCEPA)

Analyst means a person designated by the executive director under section (19.5) (BCEPA)

Analyst means a person or a member of a class of persons designated as an analyst under subsection 99(1)

Biological matter means anything which consists of or includes

- (a) tissue or cells (including gametes or propagules) or subcellular entities, of any kind, capable of replication or of transferring genetic material or
- b) genes or other genetic material, in any form, which are so capable, and it is immaterial, in determining if something is or is not any organism or biological matter, whether it is the product of natural or artificial processes of

reproduction and , in the case of biological matter, whether it has ever been part of a whole organism (BCEPA)

Biotechnology

means the application of science and engineering in the direct or indirect use of living organisms or parts or products of living organisms in their natural or modified forms. (CEPA)

Bioaccumulation

means the increase in levels of toxic substances in an organism over time due to continued exposure. This can only happen if the substances do not break down quickly and are essentially stored in some part of the organism. (Fox). Bioconcentration of a biologically active contaminant as it moves up the food chain should also be considered under “bioaccumulation.” DDT in water could be present in PPB but as it moves up food chain in the top consumer it could appear as parts per million or even greater.

Biodiversity”

is defined as “the variability among living organisms from all sources including, *inter alia*, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part; this includes diversity within species, between species and of ecosystems (Convention on Biological Diversity, UNCED, 1992)

Biomedical waste means

- (a) a substance that is prescribed as a biomedical waste by the Lieutenant Governor in Council, and
- (b) Where the Lieutenant Governor in Council prescribes circumstances in which a substance is

Carbon sinks

can be organic as in old growth forests or inorganic as in sedimentary rock

sinks and reservoirs of greenhouse gases, including biomass, forests and oceans, as well as other terrestrial, coastal and marine ecosystems. (Framework Convention on Climate Change, 1992)

Conservation means the planning, management and implementation of an activity with the objective of protecting the essential physical, chemical and biological characteristics of the environment against degradation (BCEPA)

Consumer means a user or consumer of a product, substance, or material, but does not include the producer of the product, substance or material

Contaminant

is any solid liquid gas, odor, heat, sound, vibration radiation or combination of any of them resulting directly or indirectly from human activities that may cause an adverse effect. (draft regulation for clean Air Program, 1990)

Contaminated soil means

- (a) any soil sediment that is prescribed as a contaminated soil by the Lieutenant Governor in Council and
- (b) where the Lieutenant Governor in Council prescribes circumstances in which a soil or a sediment is a contaminated soil, a soil that is present in those circumstances (BCEPA)

Contingency plan means a plan which documents preparations and procedures for managing environmental accidents, including

- (a) a prior assessment of the potential hazard
- (b) predictions of the probable effects of an environmental accident
- (c) an assessment of the health and environmental costs of an environmental accident
- (d) measures to minimize risk
- (e) shut down procedures
- (f) communication networks to be used
- (g) notification procedures for the public and response agencies including
 - i) police departments in the vicinity
 - ii) fire departments in the vicinity
 - iii) emergency response teams
 - iv) ambulance and medical services
 - v) federal and provincial governments and local authorities
 - h) evacuation procedures for employees and the public
 - i) activities to protect human health
 - J) abatement, control and containment measures to minimize adverse effects
 - (k) inventories of equipment available for spill response and cleanup
 - (l) any other items prescribed by regulation (BCEPA)

Criteria means numerical limits or narrative statements approved by the executive director for application province wide and used as general guidance in setting site specific standards (BCEPA)

Criteria (objective?)

means numerical limits or narrative statements with respect to substances which provide policy direction on a provincial basis in the setting of objectives and standards. (BCEPA) [BACT document]

Decision means

- (a) the making of or refusal to make an order
- (b) an exercise of, or refusal to make a power
- (c) the issue, amendment, renewal, suspension, refusal or cancellation of an authorization, not including a regulation or a bylaw, or
- (d) the inclusion of any requirement or condition in an authorization, not including a regulation or a bylaw by manager, director or district director (BCEPA)

Director (BCEPA)

Discharge

the release into the air, land, water, soils, and sediment of substances

Ecosystem

is defined as "Ecosystem" means a dynamic complex of plant, animal and micro-organism communities and their non-living environment interacting as a functional unit. (Convention on Biological Diversity, UNCED, 1992)

Effluent means a substance that is discharged into water or onto land and that

- (a) injures or is capable of injuring the health or safety of a person
- (b) injures or is capable of injuring property or any life form
- (c) interferes or is capable of interfering with visibility in water
- (d) interferes or is capable of interfering with normal conduct of business
- (e) causes or is capable of causing material physical discomfort to a person or
- (f) damages or is capable of damaging the environment (BCEPA)

Environment

means the components of the earth and includes:

- (a) air, land, water, sediment, soils
- (b) all organic and inorganic matter, including living organisms such as humans and non-humans
- (c) the interacting ecological systems that include components referred to in subclauses (a) and (b)

Environment means the components of the Earth and includes

- (a) air, land and water
- (b) all layers of the atmosphere
- (c) all organic and inorganic matter and living organisms, and
- (d) the interacting natural systems that includes components referred to in Paragraphs (a) to (c) (CEPA) also (BCEPA)

Environmental accident and Emergency Fund means

Minor amendment

means an amendment to a permit or approval for any of the following purposes:

- (a) a change of ownership or name;
- (b) a change of legal address or mailing address;

Federal lands

means

land that belong to Her Majesty in right of Canada or in respect of which Her Majesty in right of Canada has power to dispose and all waters on and air above such lands CEPA 52, a)

Those submarine areas not within a province, adjacent to the coast of Canada and extending throughout the natural prolongation of the land territory of Canada to the outer edge of the continental margin or to a distance of two hundred nautical miles from the baselines from which the breadth of the territorial sea of Canada is measured, whichever is the greater, and the water and air above those submarine areas (CEPA 52 b)

...

h) a work or undertaking that, although wholly situated within a province, is before or after its execution declared by Parliament to be for the general

advantage of Canada or for the advantage of two or more of the provinces (CEPA 52)

Fuel means any form of matter that in its primary use is combusted or oxidized for the generation of energy; (CEPA)

Hazardous waste

For the purposes of subsection (43.3) and sections 44 and 45 “hazardous waste means

(a) any dangerous goods, within the meaning of the Transportation of Dangerous Goods Act, that are a waste, within the meaning of the regulations made under that Act: or

(b) any substance specified on the List of Hazardous Wastes Requiring Export or Import Notification in Part III of Schedule II (CEPA)

Major amendments

any amendment to a permit or approval which is not a minor amendment, as defined (Public Notification Regulation, May 1994)

THE CHANGES BELOW SHALL ALL BE DESIGNATED AS MAJOR AMENDMENTS; TOO MUCH DISCRETIONARY POWER GIVEN TO MANAGER

c) a decrease in the authorized quantity of the discharge, emission, or stored material;

(d) and increase in; the authorized quantity of the discharge, emission or stored material that does not exceed 10% of the authorized quantity.

(e) a change in the authorized quality of the discharge, emission or stored material such that, in the opinion of the manager, the change has or will have less impact on the environment;

(f) a change in a monitoring program

(g) a change to the works, method of treatment or any other condition of a permit or approval such that, in the opinion of manager, the change has or will have less impact on the environment. (Public Notification Regulation, May 1994)

Minister or Ministers

“minister” refers to Minister of the Environment (CEPA)

“ministers” refers to Minister of the Environment and Minister of Health and Welfare

Nutrients

means any substance or combination of substances that, if added to any waters in sufficient quantities, provides nourishment that promotes the growth of aquatic vegetation in those waters to such densities as to

a) interfere with their use by human beings or by any animal, fish or plant that is useful to human beings or

Objective

means numerical limits or narrative statement with respect to substances which provide policy direction for application in specified regions, airshed or watersheds used in the setting of standards.

Persistent

means the property of a substance to resist degradation or decomposition in the environment (Fox)

Pollutant

includes not only chemicals but also heat, light and electro-magnetic radiation thermal discharges

Polluting substance

means any substance alone or in combination with other substances that causes or is capable of causing pollution if it were to escape into the environment

Pollution

means the presence in the environment of a substance or an activity that

- (a) substantially alters the environment,
- (b) impacts on the functioning of the ecosystem substantially or may impair the equitable and ecologically sound use of the environment *impairs the usefulness of the environment or*
- (c) *cause a standard to be violated (BCEPA)*

or contributes to the diminution of the ecosystem by extracting substances that could cause the lessening of the functioning of the ecosystem

Pollution prevention

means to avoid the creation of polluting substances or to eliminate the release of these substances to the environment through a *hierarchy of activities including:*

The following is a list of prevention measures that should be addressed concurrently:

1. Applying the principles of pollution prevention such as the precautionary and the anticipatory principles
2. The prevention of the use, generation and release of any substance into the environment in such a manner or quantity as to cause pollution (Pollution Protection Act)
3. The adoption of BEST — technologies that emphasize "protecting, conserving and sustaining the environment from the beginning, and thus avoiding the cycle of rectification of error.
4. The adoption of the "cautionary principle," which can be expressed as follows:
Every proponent of an intervention in the ecosystem must demonstrate that the intervention will not cause harm to the environment or will not create ecologically unsound wastes

5. the elimination of the use of polluting substances
6. The substitution of polluting substance with non-polluting substances that themselves may not become a polluting substance through concentration imbalance
7. The elimination and reduction in the generation of polluting substances
8. The elimination of, and reduction in, the generation of polluting by products;
9. the reduction and phasing out of non-renewable resources in the extraction of resources, the production of substances, and the disposal of wastes
10. exclusion of substances of acute toxicity

Pollution prevention means to avoid the creation of polluting substances or to eliminate the release of these substances to the environment through a hierarchy of activities including:

- (a) avoidance, elimination or substitution of polluting products;*
- (b) reduction in the use of pollution products;*
- (c) elimination of, and reduction in, the generation of polluting by products;*
- (d) reuse and recycling of polluting by-products;*
- (e) recovery of energy from polluting by-products; and if necessary,*
- (f) treatment and containment of pollution residual by-products;*
- (g) remediation of polluting residual by-products.*

Precautionary principle

Where a substance has been specified on the Priority Substances List for a period of five years and the Ministers have not yet assessed whether the substance is toxic or capable of becoming toxic, any person may file a notice of objection with the Minister requesting that a board of review be established under section 89
capable of becoming toxic

Product stewardship

means the responsibility of producers for demonstrating that the introduction of a substance or activity will not have harmful ecological consequences *sound environmental stewardship of products* from the point of design or extraction to the point of final use and/or disposal. (Municipal Waste Reduction Branch)

Release includes discharge, spray, inject, inoculate, abandon, deposit, spill, leak, seep, pour, emit, empty, throw, dump, place and exhaust (CEPA) significant amendment (CEPA)

Remediation means action to eliminate, limit, correct, counteract, mitigate or remove any substance or the negative effects on the environment or human health or any substance and includes, but is not limited to

- (a) preliminary site investigations, detailed site investigations, analysis and interpretation including tests, sampling, surveys, data evaluation, risk assessment and environmental impact assessment;
- (b) evaluation of alternative methods of remediation;

- (c) preparation of a remediation plan, satisfactory to the manager, including a plan for any consequential or associated removal of soil or soil relocation from the site;
- (d) implementation of a remediation plan;
- (e) monitoring, verification and confirmation of whether the remediation complies with the remediation plan, applicable standards and requirements imposed by the manager
- (f) other actions that the Lieutenant Governor in council may prescribe (BCEPA)

see above under minor amendment)

Substance

means any product, by-product or waste

Substance means any distinguishable kind of organic or inorganic matter, whether animate or inanimate, and includes

- (a) any matter that is capable of being dispersed in the environment or of being transformed in the environment into matter that is capable of being so dispersed or that is capable of causing such transformations in the environment
- (b) any element or free radical
- (c) any combination of elements of a particular molecular identity that occurs in nature or as a result of a chemical reaction, and
- (d) complex combinations of different molecules that originate in nature or are the result of chemical reactions but that could not practicably be formed by simply combining individual constituents,
- and except for the purpose of sections 25 to 32 includes
- (de) any mixture that is a combination of substances and does not itself produce a substance that is different from the substances that were combined
- (f) any manufactured item that is formed into a specific physical shape or design during manufacture and has, for its final use, a function or functions dependent in whole or in part on its shape or design and
- (g) any animate matter that is or any complex mixtures of different molecules that are contained in effluents, emissions or wastes that result from any work undertaking or activity; (CEPA)

Substance includes

- (a) any odour, sound vibration heat, electricity, electromagnetic radiation or form of energy
- and
- (b) and genetically modified organism (BCEPA)

Sustainability

means the preservation/protection of nature and the equitable and ecologically sound use, *development and protection* of natural *and physical* resources

which enable people to meet their needs and the needs of the ecosystem without compromising the ability of future generations to meet their needs and the needs of the ecosystem, and includes the following considerations.

(a) the maintenance and enhancement of the life-supporting capacity of the environment,

(b) the efficient management of natural and physical resources.

the preservation of ecological heritage

(c) the use, development or protection of natural and physical resources in a way which provides for the social, economic and cultural needs and opportunities of present and future residents,

the preservation/protection of nature and the equitable and ecologically sound use of nature in consultation with indigenous representatives from the inherent indigenous governmental bodies in the areas

(d) where the environment could be *is* modified by human activity, and where there could be a possibility of irreversible damage, the adverse effects of irreversible change are fully recognized then the activity shall not proceed

and avoided or mitigated to the extent practicable.

(e) the use, development or protection of renewable natural and physical resources so that their ability to yield long term benefits is not endangered. (BCEPA) through ecologically unsound and unsafe practices, and through culturally inappropriate practices.

Sustainability means the use, development and protection of natural and physical resources in a way, or at a rate, which enables people to meet their needs now without compromising the ability of future generations to meet their own needs, and includes the following considerations

(a) the efficient management of natural and physical resources

(b) the maintenance and enhancement of the life-supporting capacity of the environment

(c) the use, development or protection of natural and physical resources in a way which provides for the social, economic and cultural needs and opportunities of the present and future residents,

(d) where the environment is modified by human activity, the adverse effects of irreversible change are fully recognized and avoided or mitigated to the extent practicable

(e) the use, development or protection of renewable natural and physical resources so that their ability to yield long term benefits is not endangered; [the above definition of 'sustainability' is derived from the NZ Resource Management Act] BCEPA [note not derived from environmental legislation]

Toxicity

is the potential or capacity of a material of being harmful to the health of a living organism. (Fox)

NOTE THAT TOXICITY SHALL BE THE GENERIC TERM AND WOULD INCLUDE DISCHARGES THAT WOULD NORMALLY BE ADDRESSED UNDER HAZARDOUS AND ATOMIC WASTES

Toxic [defined in article 11]

A substance is toxic if it is entering or may enter the environment in a quantity or concentration or under conditions

- (a) having or that may have an immediate or long-term harmful effect on the environment
- (b) constituting or that may constitute a danger to the environment on which human life depends or
- (c) constituting or that may constitute a danger in Canada **to ecosystem or** to human life or health

Transition reaction intermediate

means a substance that is formed and consumed in the course of a chemical reaction (CEPA)

Waste includes

- (a) air contaminants
- (b) litter,
- (c) effluent,
- (d) refuse,
- (e) biomedical waste
- (f) special wastes
- (g) contaminated soil, and
- (h) any other substance prescribed by the Lieutenant Governor in Council, whether or not the type of waste referred to in paragraphs (a) to (e) or prescribed under paragraph (f) has any commercial value or is capable of being used for a useful purpose BCEPA

Waste stream management license (BCEPA)

water means water as defined in the Water Act and [the Water Resource Preservation and Protection Act] includes marine waters under the jurisdiction of the province, groundwater and ice (BCEPA)

White goods mean stoves, refrigerators, freezers, washers, dryers, dishwashers and similar appliance (BCEPA)

“Works” includes

- (a) a drain, ditch, sewer and waste disposal system including a sewage treatment plant, pumping station and outfall
- (b) a device, equipment, land and a structure that
 - (i) measures, handles, transports, stores, treats or destroys waste or a substance that is capable of causing pollution, or
 - (ii) introduces into the environment waste or a substance that is capable of causing pollution
- (c) an installation, plant, machinery equipment, land or a process that causes or may cause pollution or is designed or used to measure or control the introduction of waste into the environment or to measure or control a substance that is capable of causing pollution, or
- (d) an installation, plant, machinery, equipment, land or a process that monitors or cleans up pollution or waste

Zero use 1.

zero use, production, and release of persistent and /or bioaccumulative toxic substances in the environment, workplace and home. Zero does not mean below some arbitrary level, or even beneath the level of detection. Zero means Zero. (Zero toxicity Coalition, July. 1994)

COMMENTS

Purpose of the Act

1. The purpose of this Act is to provide for the protection, conservation and sustainability of the environment by

ensuring that the full costs of pollution as reflected in a growing body of scientific evidence documenting pervasive health and environmental impacts must be considered rather than just the cost of implementing emission reduction measures (adapted from Resolution to support the ozone transport commission petition to the US EPA)

(a 0) ensuring that every form of life is unique, warranting respect regardless of its worth to man [humans], and to accord other organisms such recognition's, man [humans] must be guided by a moral code of action (World Charter of nature)

(b) identifying, preserving and preventing the loss or reduction of Biological Diversity

[wording in part from the Convention on Biological Diversity]

(b 1) mitigating climate change by addressing anthropogenic emissions by sources and removals by sinks of all greenhouse gases not controlled by the Montreal Protocol, and measures to facilitate adequate adaptation to climate change [wording from the Climate Change Convention]

(c) Achieving the goal of zero pollution in the Province

(d) protecting the environment by the application of the precautionary principle where there is a threat of serious or irreversible damage, **lack of full scientific certainty should not be used as a reason for postponing measures to avoid or minimize such a threat (from the Biodiversity Convention)**

(d 1) Activities which are likely to pose a significant risk to nature shall be preceded by an exhaustive examination; their proponents shall demonstrate that expected benefits outweigh potential damage to nature, and where potential adverse effect are not fully understood, the activities should not proceed (World Charter of Nature)

(e) applying the principles of pollution prevention as the foundation of environmental protection

[from definition of "pollution prevention"]

(a 0) _ the prevention of the use, generation and release of any substance into the environment in such a manner or quantity as to cause pollution [repeated from 41 1)

(a0) the adoption of "prevention technologies — technologies that emphasize "protecting, conserving and sustaining the environment from the beginning, and thus avoiding the cycle of rectification of error.

(a1) ..no product introduced into the environment will be hazardous; the onus of proving the non-hazardous nature of the product will be on the introducer of this new type of product

(a) the elimination of the use of polluting substances

(b 0) the substitution of polluting substance with non-polluting substances

(b) the substitution of polluting substances with less polluting substances

(c) the reduction in the introduction and use of **[non-renewable]** resources and polluting substances

(d) the elimination and reduction in the generation of polluting substances

[e, f, g removed because not deemed appropriate for prevention; Discussion Environmental Group, February 19]

participating in the established [National/provincial] advisory committee for national action and cooperative action in matters affecting the environment for the purpose of avoiding conflict between and duplication in, federal and provincial regulatory activity (S5 CEPA)

(f0) Confirming the responsibility of government to set up a non-vested interest board or panel with varying levels of expertise and experience to do "arms-length" research into the true environmental impacts of substances and activities by carrying out "life cycle analysis" (recommendations from various chapters of UNCED Agenda 21) (Suggested Environment meeting, February 19)

(f) Confirming the responsibility of producers for sound environmental stewardship of products through all phases of a product's life;

(g) ensuring the comprehensive and integrated consideration of environmental and socioeconomic effects in public policy-making in British Columbia. [Deemed to be inconsistent with the overriding purpose of the Act]
Ensuring that in all decisions made about the environment that the ecosystem be given primacy (Suggested Environment meeting, February 19)

(h0) International obligations must be fulfilled as being not the maximum but the minimum standards to follow (proposed, Discussion, February 19)

(h) Recognizing that British Columbia residents have an interest in **and a responsibility of minimizing their impact upon** the regional, national and **global environment** and global environmental well-being (**Suggested Environment meeting, February 19**)

(i) using the knowledge and experience of British Columbia residents in the formulation of decisions affecting the environment,

Requiring to report

Where there occurs or is a reasonable likelihood of a release into the environment of a substance specified on the List of Toxic Substances (36) in Schedule 1 in contravention of a regulation made under section 34 or an order made under section 35,[[of substance in contravention of a regulation made under section 54, 57.1] any person described in subsection (2) shall, as soon as possible in the circumstances

... Report the matter to an inspector or to such person as is designated by regulation (CEPA 36.1 a)

Requirement to take emergency measures

Take all reasonable emergency measures consistent with public safety to prevent the release or, if it cannot be prevented to remedy any dangerous condition or reduce or mitigate any danger to the environment or to human life or health that results from the release of the substance or may reasonably be expected to result if the substance is released; and

Take all reasonable emergency measures consistent with public safety to prevent or eliminate any dangerous condition or reduce or mitigate any danger to the environment or to human life or health that results from the release or may reasonably be expected to result if the substance is releases; and (CEPA 57 1.b)

(c) make a reasonable effort to notify any member of the public who may be adversely affected by the release or likely release

Where any person fails to take any measure required under subsection (1) an inspector may take those measures, cause them to be taken or direct any person referred to in subsection (2) to take them (36.5)

Polluter pays

(j) confirming the responsibility of polluters to pay for the costs of their actions **(also recommended in Agenda 21) but also recognizing that no pecuniary payment of costs for environmental destruction can ever fully redress the loss to the environment, and reaffirming that the prevention of pollution and environmental destruction should be by using "prevention technologies"**

Her Majesty in right of Canada may recover the costs and expenses of and incidental to taking any measures under subsection 36.5 from

(a) any person referred to in paragraph 36 (2) (a) and
(b) any person referred to in paragraph 36 (2) (b) to the extent of the person's negligence in causing or contributing to the release. (CEPA 39.)

Her Majesty in right of Canada may recover the costs and expenses of and incidental to taking any measures under subsection 57 (4) from

(a) any person referred to in paragraph 57 (2) (a) and
(b) any person 's negligence in causing or contributing to the release (CEPA 60 1)

the costs and expenses referred to in subsection (1) shall only be recovered to the extent that they can be established to have been reasonably incurred in the circumstances (CEPA 60 2)

A person referred to in paragraph 57 (2) (B) shall not be held liable under subsection (3) to an extent greater than the extent of the person's negligence in causing or contributing to the release. (CEPA 60.4)

57 (2) any person who a0 owns or has charge of a substance immediately before its initial release or its likely initial release into the environment; or (b) cause of contributes to the initial release or increases the likelihood of the initial release. (CEPA)

(k) ensuring that every activity or substance that could prevent the protection, conservation and sustainability of the environment will be included under this Act, regardless of whether the activity or substance is presumed to be covered under another Act (proposed, February 19)

(l) ensuring that no citizen will be prosecuted for advocating or acting to promote the purposes of the act (Suggested, February 19)

(m) promoting the research into the development and introduction of renewable, non-polluting (protection technologies)

(n) ensuring that compensation can never be used as reason for not exercising the duty under the act to protect, conserve and sustain the environment (proposed, Discussion, February 19)

(o) agreeing that any compensation given shall be assessed on the basis of past environmental performance and environmental costs and subsidies, and that any awarded money shall be (used by the compensated party to create employment within B.C.) placed in a job creation fund (Suggested, Discussion, February 20)

(p) ensuring the maintenance and enhancement of the quality of the environment (moved from section 2.a, February 20)

2. To achieve the purposes of this Act, all persons who exercise functions and powers under this Act shall have regard to the importance **of the purposes of this act** ((proposed, February 20)

(a) the maintenance and enhancement of the quality of the environment

(b) the actual or potential effect of an activity or natural process on the whole of the environment, including its actual or potential effect on the health and safety, and the economic, cultural and social well-being of people and communities

(c) the potential costs and benefits of any objective, policy, or proposal to the environment

[The above principles clause is derived from the NZ Resource Management Act]

PURPOSE:

- To establish a framework for the setting of province-wide enforceable mandatory standards and technical regulations designed to ensure the preservation and protection of the environment and the equitable and ecologically sound use of resources, for present and future generations, taking into consideration the advice of indigenous representatives from the inherent indigenous governmental bodies in the area
- to extend this framework to address not only the discharge of substances into the ecosystem but also the diminution of the ecosystem through extractive practices that could cause the reduction or loss of biodiversity or the elimination of carbon sinks. The substances discharged could be toxic or non-toxic. Toxicity has been defined as the potential or capacity of a material of being harmful to the health of a living organism (Fox) (biosphere). Non-toxic substances can through impacting on the non-living environment cause environmental degradation which subsequently causes harm to the biosphere (Agents of ecological degradation). For example, CFC's are not deemed toxic yet through causing depletion of the ozone layer cause harm to living organism. In addition, there are substances that are themselves naturally occurring and harmless but become harmful to the environment when through anthropogenic activity they are increased or decreased in proportional concentration (re concentrated substance—created through imbalance in biogeochemical cycles).
- to apply principles that will enable the setting of high mandatory standards and technical regulations and that will encourage the development and implementation of prevention technology— ecologically sound technology or environmentally benign technology (Benign Ecologically Safe/Sound Technology/Techniques—BEST). BEST is based on the true invocation of International principles, such as the precautionary principle, anticipatory principle, environmental assessment principle, life cycle analysis principle, responsible care principle, cradle to grave principle, polluter pay principle, recognition of inherent worth of nature principle. BAT in contrast to BEST may not necessarily be benign or ecologically sound. In the event that there is

no BEST which can prevent the release of persistent or bioaccumulative toxics then the extractive or productive activities which produce the product or substance process should be changed; the activities and product phased out/outlawed, or the demand for the product reduced through public education. In this case, the industry involved shall be assisted in the conversion to alternative processes or products involving BEST.

- to ensure that proposed technologies that appear to be ecologically sound such as closed-circuit technologies are evaluated in the context of the full life cycle analysis within the environmental context. The environmental context involves examining the potential impact of supplemental industrial activities in the relevant impact area. Often a technology will be presented as being ecologically sound because it is closed circuit; however, it could be that, because of the reliance on other resources such as water, the problem could be compounded by the presence of contaminants in the water through the activities of adjacent industries. For example, in a proposed closed-circuit operation the required water is drawn from a source contaminated by the precursor elements to the formation of dioxins; the proposed closed-circuit operation by using catalysts such as copper and nickel along with heat, could cause dioxins to be formed and emitted through the air. It would consequently not be enough to claim that a system is a closed system to justify as an appropriate technology, if the closed system itself is dependent upon potentially adverse transformation processes within the larger environmental context.
- to ensure that a mass balance calculation—a measurement of all of the input material/ a measurement of all the output including the finished products and emissions is carried out.
- to ensure that industry will be held responsible for past ecological harm and past health effects caused through contaminated discharge, and that when in documents there is a provision for carrying out a “clean-up of major long standing environmental and work place health problems” it will apply to past damage to the environment and to the workforce, as well as to past off-site damage to the ecosystem and to human health.
- to ensure that the setting up of Provincial Task Forces to assess past health effects of contaminated discharge does not affect citizens’ rights to sue industry for the health effects caused from the contaminated discharge and emissions.
- to ensure that obligations are undertaken in good faith, that the reduction in contaminants will be in areas where they will have impact, and to ensure the implementation of the “greatest impact reduction principle.” Often when regulations are put in place for reduction, governments follow the path of least resistance. For example, in the reduction of CFC’s the regulations are applying for the reduction in production to refrigerators and car air conditioners (R12) and not applying to industrial uses(R12).

- to ensure that the public is presented with the real alternatives: the convenience product and contaminants in the ecosystem, and health impacts or less convenient product and no contaminants in the ecosystem and no health impacts.
- to ensure that compliance with high enforceable mandatory standards and technical regulations, and that adoption of BEST, will not place B.C. industry at a disadvantage because of an “uneven playing field.”
- to ensure that there is a provision for the transference of funds from federal and provincial discretionary budgets, such as the federal military budget to assist industry in its compliance, and conversion to BEST.
- to undertake to assist industry in the phasing out of ecologically unsound practices and substances and in the conversion to ecologically sound practices and substances.
- to reevaluate federal and provincial (Ministry of Employment and Investment) “commercial assistance” designed to bolster employment in ecologically unsound industries through the purchase of “equity shares”, “fee concessions” the “job Protection Act” (1991) or “job Protection Commission” (1992). Often government funding is designated for attempted mitigation of the adverse environmental effects rather than through the development of BEST.
- to similarly assess the value of maintaining the production of a product through an ecologically unsound process in one province when a similar product can be produced in an ecologically sound way in another province. For example, Flax stalks — ideal for the production of paper, are being burned in Saskatchewan, while B.C. continues to reduce biodiversity in the forests and to pollute the waters in the production of paper.
- to reassess current government targets in the light of recent zero emissions recommendations, and in the light of the recent EPA findings.
- to consult with non-vested interest (i.e. financial interest) members of the public with a wide range of expertise and experience during all levels of the development of the framework, including the determination of the terms of reference and thought all states and stages of the process of developing the Framework.
- to take into consideration when evaluating BEST, the land base from which the resources are extracted such as the extraction of resources from indigenous territories beyond the treaty frontier.
- to ensure that the ecosystem is given primacy through ecological preservation and equitable and ecologically sound use of resources, and that indigenous representatives from the inherent indigenous governmental bodies in the area are consulted.

- to ensure that the ecological rights of present and future generations are protected

purpose

The purpose of this policy is to establish a framework for setting province-wide discharge criteria and standards designed to protect the environment, to integrate environmental, economic, social considerations and to ensure that sustainability is achieved.

SCOPE

(1) For the purposes of this Act, introduction of a substance into the environment means depositing the substance on or in or allowing or causing the substance to flow or seep on or into any land or water or allowing or causing the substance to be emitted into the air and includes indirect means of introduction into the environment

(1*) For the purpose of this Act, the impact of an activity on the environment means the engaging in any activity which could prevent the protection, conservation and sustainability of the environment will be included under this Act, regardless of whether the activity or substance is presumed to be covered under another Act (proposed, February 19)

2. Except where this Act or the regulations specifically provides to the contrary, this Act applies to the whole environment of British Columbia **{The onus of proof for exclusion from the Act must reside in the proponent for exclusion (proposed, February 20)}**

3. Where there is a conflict between this Act and international obligations the higher or greater ecological principles of the two shall apply.

Where there is conflict between this Act, its regulations or an authorization under this Act and any other act or regulations there under, this Act its regulations and authorizations issued or subsisting under this Act apply, **except when provisions in other Acts or regulations contribute to the fulfillment of the purposes of the Environmental Protection Act better than those contained in this Act**

- (a) *where this Act or its regulations provide to the contrary, or*
(b) *as may be prescribed by the Lieutenant Governor in Council*

4. Nothing in the Soil Conservation Act shall be taken to prevent the establishment within a local authority of any facility for the disposal of waste in accordance with this Act **providing that the establishment is deemed to fulfill the purposes of the Environment Protection Act. (Proposed, February 20)**

5. *The Crown is bound by this Act, except where this Act or the regulations specifically provide to the contrary*

MINISTRY OF ENVIRONMENT, LANDS AND PARK

4. (1) There shall be a ministry of the public service of the Province called the Ministry of Environment Lands and Parks

(2) the minister shall preside over the ministry and be responsible to the lieutenant Governor in Council for the direction of the ministry

Delegating power

The minister may in writing delegate to any person representing

- the government
- a government agency
- the government of Canada
- an aboriginal government or
- a local authority
- any power or duty conferred or imposed on the minister under this act.

FUNCTIONS AND POWERS OF THE MINISTRY AND OF THE GOVERNOR IN COUNCIL

Administering crown lands

Shall administer the Crown land resource of the Province (BCEPA 6.2.i)

Setting up Advisory committees

5. (1) for the purpose of carrying out their duties under this Act, the Ministers or either Minister may

(a) establish advisory committees to report to the Ministers or either Minister

For the purpose of establishing a framework for national action and taking cooperative action in matters affecting the environment and for the purpose of avoiding conflict between, and duplication in , federal and provincial regulatory activity, the Minister shall, in cooperation with the governments of the provinces, establish a federal-provincial advisory committee to advise the Minister on

(CEPA 6.1)

regulations proposed to be made under paragraph 34.... (CEPA 6.1.a)

other environmental matters that are of mutual interest to the federal and provincial government and to which this Act relates (CEPA 6.1.b)

the Minister shall include in the annual report required by section 138 a report of the activities of the federal-provincial advisory committee (CEPA 2)

The minister may establish advisory committees and retain experts to report to the minister with respect to

(a) the content and administration of this Act and (BCEPA 9 la)

(b) any of the policies, programs, services or other matters under the minister's administration [from Alberta] [new] (BCEPA 9 l b)

When establishing an advisory committee under subsection (1) the minister may specify the functions that the committees and experts are to perform, and

the manner and time period in which those functions are to be performed (BCEPA 9.2)

the report of a committee established or an expert retained pursuant to subsection (1) including the recommendations and reasons for them, shall be made public in a prescribed manner (BCEPA 9.3)

A person serving on a committee or an expert retained shall, while performing his or her duties, be paid for reasonable traveling and living expenses or a reasonable allowance in respect of them as fixed by the Lieutenant Governor in Council, and may be paid remuneration as the minister determines (

Maintaining liaisons

may as the representative of the government, maintain continuing liaisons with

- (i) the Government of Canada and agencies of that government
- (ii) the governments of other provinces and agencies of those governments
- (iii) the government of states of the United States of America and agencies of those governments, and
- (iv) local authorities in British Columbia (BCEPA 6 I)

Integrating with other Ministries

The minister shall, in recognition of the integrated relationship between human health and the natural environment, co-operate with and assist the Minister of Health in promoting human health through environmental protection [from Alberta]

For the purpose of carrying out the functions and duties of the Minister of National Health and Welfare related to preserving and improving public health under this Act, the Minister of National Health and Welfare shall formulate objectives, guidelines and codes of practice with respect to the elements of the environment that may affect the life and health of the people of Canada (CEPA 9.1)

In carrying out the responsibilities conferred by subsection (1), the Minister of National Health and Welfare may consult with the governments of the provinces; and (CEPA 9.2.a)

Entering into agreements

The minister may on behalf of the government enter into agreements and partnerships relating to any matter pertaining to the environment with The government of another jurisdiction or a ministry or agency thereof

An aboriginal government (BCEPA 7.a)

a local authority (BCEPA 7.b)

a government agency (BCEPA 7.c)

any person (BCEPA 7d)
[from Alberta]

The minister with the approval of the lieutenant Governor in council may enter into agreements with the federal government with respect to the administration of this Act, the Canadian Environmental Protection Act, the fisheries Act or any other federal enactment of the purpose of protection of the environment ((BCEPA 17.1)

Notwithstanding subsection (1), the minister shall not enter into a equivalency agreement under the Canadian Environmental Protection Act unless the agreement contains a declaration that the Government of Canada will require the provisions of this Act and the regulations to be complied with at all federal facilities and activities including activities undertaken on federal land owned or leased by the Crown in the right of Canada by persons other than agents of the federal government (BCEPA 17.2)

Transferring of administration

The minister may, after appropriate consultation and with the consent of a part listed in (a) to (d) transfer the administration of a provision of this Act to another minister of the government (BCEPA 13 a)

- a government agency (BCEPA 13b)
- an aboriginal government (BCEPA 13 c)
- a local authority (BCEPA 13d)

and may specify the terms and conditions including the collection of fees and taxes by which the transfer is made and may appoint officials to be responsible for the administration of the provision transferred.
(BCEPA 13) Adapted from Alberta draft.

Designating officials

Subject to the Public service Act, the minister may designate an executive director who shall administer that Act and regulations (BCEPA 19.1)
... 19.12

Establishing guidelines

For the purposes of carrying out the Minister's duties and functions related to the quality of the environment, the Minister may, with the approval of the Governor in Council, establish guidelines for use by departments, boards and agencies of the Government of Canada and, where appropriate, by corporations named in Schedule III to the Financial Administration Act and federal regulatory bodies in the exercise of their powers and the carrying out of their duties and functions. (CEPA 53)

making regulations

The Governor in Council may, for the purposes of section 46

No person shall produce or import for use or sale in Canada or sell or offer for sale any fuel that

contains an element component or additive in a concentration or quantity that exceeds the concentration or quantity prescribed with respect to that element, component or additive in relation to the fuel; or make regulations

Prescriptions

Prescribing with respect to any fuel or fuel used for any purpose, the concentration or quantity of any element, component or additive that in the opinion of the Governor in Council, if exceeded, would, on the combustion of the fuel in ordinary circumstances, result in a significant contribution to air pollution. (CEPA 47 a) ...

Where no other Act of Parliament expressly provides for the making of regulations that result in the protection of the environment and apply to federal works or undertaking or federal lands, the governor in Council may, on the recommendation of the Minister and with the concurrence of the minister of the Crown who has the administration and control of or duties and functions in relation to those works, undertakings or lands make regulations applicable thereto for the protection of the environment (CEPA 54 1)

The Governor in Council may, on the recommendation of the Minister make regulations prescribing
limits on the release of emission and effluents; by departments, boards and agencies of the Government of Canada and where appropriate by corporations named in Schedule III to the Financial Administration Act (CEPA 54 2 b)

Requiring analyses... relating to the environment that is or is likely to be affected by the work

the Minister may require from any person who carries on, or proposes to carry on, any federal work or undertaking or any activity on federal lands such plans, specifications, studies, procedures, schedules, analyses, samples or other information relating to the work, undertaking or activity together with such analyses, samples, evaluation, studies or other information relating to the environment that is or is likely to be affected by the work, undertaking or activity (CEPA 56)

preventing of pollution and protecting of environment

the Ministry, under the direction of the minister, is responsible for the **preservation** protection, enhancement and administration of all matters relating to the environment (BCEPA 6.1)

Establish, operate and maintain a system of environmental quality monitoring stations CEPA 1 (a)

Collect, process, correlate and publish on a periodic basis data on environmental quality in Canada from environmental quality monitoring stations and from any other appropriate source CEPA 1(b)

Prohibiting export and import of toxic substances and Waste Materials

The Governor in Council may, on the recommendation of the Ministers, make an order adding to the List of Prohibited Substances in Part 1 or Schedule II any toxic substance the use of which is prohibited in Canada by or under an Act of Parliament and may, in the same manner, delete any toxic substance from that List. (41 a i)

No person shall export any toxic substance specified on the List of Prohibited Substances in Part 1 of Schedule II except *for the purpose of destroying the substance or complying with a direction under sub-paragraph 41 (b) (ii)*

States should effectively cooperate to discourage or prevent the relocation and transfer to other States of any activities and substances that cause severe environmental degradation or are found to be harmful to human health. (principle 14, Rio Declaration, UNCED)

Adding to list of Toxic Substances requiring Export Notification

Adding to the List of Toxic Substances requiring Export Notification in Part II of Schedule II any toxic substance where the Governor in Council is of the opinion

that

the uses of the substance are substantially restricted by or under an Act of Parliament, and CEPA 42 (i)

The Minister shall compile a list, to be known as the List of Toxic Substances Authorities and the List shall specify each country in respect of which a notice is required under subsection (3) and the authority, body or person to whom the notice shall be given. CEPA 42 (2)

A person shall give notice of the proposed export of a substance specified on the List of Toxic Substances Requiring Export Notification in Part II of Schedule II, where the person proposes to export the substance to a country specified on the list of Toxic Substances Authorities and the export of the substance by that person is to be for the first time after (CEPA 43 3)

...

Adding to list of hazardous wastes

Adding to the List of Hazardous Wastes Requiring Export or import Notification in Part III of Schedule II any substance that, in the opinion of the Governor in Council, is a hazardous waste and may, in the same manner, delete any substance from that List. (CEPA 43

Conducting research

- conduct research and studies relating to the nature, transportation, dispersion, effects, control and abatement of environmental pollution and provide advisory and technical services and information related thereto: (c)
- conduct research and studies relating to environmental contamination arising from disturbances of ecosystems by human activity, and CEPA d (i)

- changes in the normal geochemical cycling of toxic substances that are naturally present in the environment CEPA1 (d) (ii)
- formulate comprehensive plans and designs for the **prevention**, control and abatement of environmental pollution and establish, operate and publicize demonstration projects and make them available for demonstration (CEPA)
- may undertake, commission and coordinate environmental studies, base mapping and related photographic and survey control functions (BCEPA 6.2. e)
- may compile, study and assess information related to the environment for the purpose of better carrying out the minister's functions and responsibilities under this or any other act with a view to providing that information to ministries of the government, government agencies and the public (BCEPA 6.2.m)
- may participate in and coordinate research projects related to matters pertaining to the environment (BCEPA 6.2.n)
- may maintain a library consisting of publications and other information related to matters pertaining to the environment (BCEPA 6.2o)

Remedial measures principle

Where, in respect of a substance or a product containing a substance, there is a contravention of this Part or any regulation made under this Part, the Minister may, in writing,

Requirement to give public notice

(a) direct any manufacturer, processor, importer retailer or distributor of the substance or product to take any or all of the following measures.
-give public notice in a manner directed by the Minister of any danger to the environment or to human life or health posed by the substance or product (CEPA 40 a i)

Direct any manufacturer, processor, distributor, importer or retailer of the substance or product to take any or all of the following measures:

(i) replace the substance or product with one that does not pose a danger to the environment or to human life or health (i)

Accept the return of the substance or product from the purchaser and refund the purchase price, or (ii)

any other measures for the protection of the environment or of human life or health. (CEPA 40.b iii)

Publishing information

publish or otherwise distribute or arrange for the publication or distribution of

(i) pertinent information to inform the public in respect of all aspects of the quality of the environment, including **the prevention** and the control and abatement of environmental pollution and Report on the state of the Canadian environment to be prepared on a periodic basis

Minister may in exercising the powers conferred by paragraphs (1 B to (e) act alone or in cooperation with any government, government department or agency, institution or person and may sponsor or assist in any research, studies or planning and development by a government institution or person in relation to the quality of the environment or **the prevention** the control or abatement of environmental pollution (7.3 CEPA)

Developing and distributing educational materials

May unilaterally or in co-operation with other ministries of the government and government agencies, develop, publish and distribute educational materials with respect to the environment and shall co-ordinate, develop and deliver educational programs and services to assist British Columbians to better understand the environment and become responsibly involved in the protection and stewardship of the environment (BCEPA 6.2.p)

Organizing conferences

Organize conferences of individuals, and groups reflecting a wide range of expertise and experience

Representatives of industry and labour, provincial and municipal authorities and any interested persons described in paragraph a (CEPA 8.3.b)
individuals, and groups reflecting a wide range of expertise and experience

Formulating of objectives

Shall encourage the maintenance of an optimum quality environment through specific objectives for the management protection and conservation of land, water, air, plant life and animal life, in the Province (BCEPA 6.2.a))

For the purpose of carrying out the Minister's functions and duties related to the quality of the environment, the Minister shall formulate
(a) environmental quality objectives specifying goals or purposes toward which an environmental **pollution prevention and control** effort is directed, including goals or purposes stated in quantitative or qualitative terms; (CEPA 8.1a.)

(b) environmental quality guidelines specifying recommendation in quantitative or qualitative terms to support and maintain particular uses of the environment (CEPA 8.1b.)

(c) release guidelines recommending limits, including limits expressed a concentrations or quantities, for the release of substances into the environment from works, undertakings or activities; and (CEPA 8.1c)

May plan, design, construct, operate and maintain works and undertakings for the management, protection or enhancement of the environment, or for any other purpose of function assigned by the Lieutenant Governor in Council, (BCEPA 6.2.h)

The minister, or a person designated by the minister, after engaging in such public consultation as the minister considers appropriate, may develop guidelines, codes, criteria, objectives and standards for emissions, discharges, storage, and ambient environmental quality in qualitative or quantitative terms for management areas in all or part of British Columbia to promote the protection and stewardship of the environment [from Alberta] undertaking inventories

Establishing management areas

“For the purposes of subsection 1 the minister may establish management areas in accordance with the regulations providing for land use” (BCEPA 11.1)

“...*may shall* undertake inventories and prepare plans for the effective management, protection and conservation of the environment” (BCEPA 6.2.d)

“...**preservation of nature**, conservation of natural resources and sustainable development” (CEPA 8.2 d)

“The minister shall give due consideration to public input that he or she has received in developing objectives and regulations policies under subsection 1” (BCEPA 11.3)

In carrying out the responsibilities conferred by subsection (1) the Minister may consult with the government of any province, any government department or agency or any person interested in the quality of the environment or the control or abatement of environment of environmental pollution; and (CEPA 8.3.a)

Criteria, objectives, standards and regulations developed under subsection (1) shall be made available to the public in accordance with the regulations

organize conferences of **individuals, and groups reflecting a wide range of expertise and experience representatives of industry and labour, provincial and municipal authorities and any persons interested** in the preservation and improvement of public health. (CEPA 9.2.b)

Establishing Priority Substances List

Ministers shall compile and may amend from time to time a list, to be known as the Priority Substances List, and the List shall specify substances in

respect of which the Ministers are satisfied priority should be given in assessing whether they are toxic or capable of becoming toxic (CEPA 12.1)

Ministers shall publish in the Canada Gazette the Priority Substances List and any amendments to the list (CEPA 12.2)

Establishment of priority list

For the purpose of establishing the Priority Substances List, the Ministers may consult the governments of the provinces **individuals, and groups reflecting a wide range of expertise and experience** members or representatives of any labour group or industrial sector, associations or persons concerned with environmental and health matters and any other persons (CEPA 12.3)

The Ministers shall consider a request filed under subsection (4) and within ninety days after the request is filed the Minister shall inform the person who filed the request of how the Minister intends to deal with the request and the reasons for dealing with it in that manner CEPA 12.5)

Determining of toxicity

For the purpose of assessing whether a substance is toxic or is capable of becoming toxic, or for the purpose of assessing the need for measures to control a substance, either Minister may

Collect data and conduct investigations respecting (a)

The nature of the substance (i)

the presence of the substance in the environment and the effect of its presence on the environment or on human life or health (ii)

the extent to which the substance can become dispersed and will persist in the environment (iii)

The ability of the substance to become incorporated or accumulate in biological tissues or to interfere with biological processes (iv)

methods of controlling the presence of the substance in the environment (v)

methods for testing the effects of the presence of the substance in the environment (vi)

development and use of alternatives to the substance (vii)

quantities used and disposal of the substance, and (viii)

methods of reducing the amount of the substance used, produced or released into the environment (ix)

Developing economic mechanisms

-”may in co-operation with other ministries of the government develop and implement economic and financial instruments and market-based incentives to achieve environmental protection to achieve environmental quality goals and provide methods of financing programs for environmental purposes in a cost-effective manner, and...” (BCEPA 6.2 q)

“The Minister may, in accordance with the regulations, establish programs and other measures for the use of economic and financial instruments and market-based approaches including, without limiting the generality of the foregoing”

emission trading (BCEPA 14.1.a)

incentives (BCEPA 14.1.b)

subsidies (BCEPA 14.1.c)

deposits and refunds (BCEPA 14.1d)

taxes (BCEPA 14.1.e)

emission effluent and waste disposal fees (BCEPA 14.1.f)

differential levies (BCEPA 14.1.g)

product charts and (BCEPA 14.1.h)

grants ... and contributions (BCEPA 14.1i)

Encouraging recreation

-“shall encourage outdoor recreation. establish parks and conserve the natural scenic and historic features of the Province” (BCEPA, 6.2.j)

Monitoring

(d) environmental codes of practice specifying procedures, practices or release limits for environmental **protection, pollution prevention, control** relating to works, undertakings and activities during any phase of their development and operation including the location design, construction, start-up, closure, dismantling and clean-up phases and any subsequent monitoring activities. (CEPA 8.1d.)

-shall monitor, assess and report to the Lieutenant Governor in Council on general environmental conditions in the Province (6.2.d)

the objectives, guidelines and codes of practice referred to in subsection (1) shall relate to the environment (CEPA 8.2a)

recycling, reusing, treating, storing or disposing of substances or reducing the release thereof into the environment; (CEPA 8.2 b)

works, undertakings or activities that affect or may affect the environment; or (8.2 c)

Designating laboratories

The minister may designate laboratories as approved laboratories that may conduct laboratory analyzes for the purposes of this Act (BCEPA 15.1)

Enforcing safety standards

shall administer and enforce safety standards respecting recreational activities and services on Crown land

Ordering an inquiry

“The minister may order an inquiry with respect to the environment whenever he or she considers it necessary” (BCEPA 8.1.)

-“for the purpose of an inquiry ordered under subsection (1) the minister or a person appointed by the minister to hold the inquiry has the powers, protection and privileges of a commissioner under section 12, 15 and 16 of the Inquiry Act” (BCEPA 8.2.)

“A person appointed under this subsection shall conduct the inquiry in accordance with terms of reference and any procedural guidelines for the inquiry specified by the minister ”(BCEPA 8.3.)

“An inquiry may be ordered under subsection (1) with respect to the socio-economic considerations of an environmental issue.” (BCEPA 8.4.)

“An inquiry may be ordered under subsection (1) with respect to the socio-economic considerations of an environmental issue” (BCEPA 8.4.)

CHECK: THIS SECTION FOLLOWS S7 OF THE ENVIRONMENTAL MANAGEMENT ACT

Planning in event of environmental accident

“...shall plan, coordinate, implement and manage a program to protect the welfare of the public in the event of an environmental accident or emergency” (BCEPA 6.2.h)

INDIVIDUAL INITIATIVE

Any person may file in writing with the Minister a request that a substance be added to the Priority Substances List and the request shall state the reasons for adding the substances to the List. (CEPA 12.4)

Where the Ministers make an assessment referred to in subsection (1) and decide not to recommend that the substance be added to the List of Toxic Substances in Schedule 1, any person may, within sixty days after publication of the decision in the Canada Gazette file a notice of objection with the Minister requesting that a board of review be established under section 89 stating the reason for the objection. (CEPA 13.2)

Where a substance has been specified on the Priority Substances List for a period of five years and the Ministers have not yet assessed whether the substance is toxic or capable of becoming toxic, any person may file a notice of objection with the Minister requesting that a board of review be established under section 89 (CEPA 14)

Additional powers

“In addition to other powers vested in the Minister, the ministry, in respect of the ministry all the powers, duties and authorities had and exercisable by the officers mentioned as the Commissioner of Lands and Surveyor General, the Chief Commissioner of Lands and Surveyor General, the Chief Commissioner of Lands and Works and Surveyor General and the Surveyor General, in an Act, ordinance or proclamation passed or made in the former Colonies of British Columbia and Vancouver Island.” (BCEPA 6.3)

NOTE IN SOME CASES PROVISIONS IN CEPA HAVE BEEN TAKEN OUT OF THE BCEPA DOCUMENT AND PUT INTO THE B.C. ENVIRONMENTAL BILL OF RIGHTS: Part 2 THE UNIQUE SECTION WILL BE MARKED IN OUTLINE

Environmental Bill of Rights

Public Trust

30. (1) Every resident of British Columbia has a right to protect the environment and the public trust from any pollution, impairment or destruction

(2) The government, as trustee, has a duty to conserve and protect the environment of British Columbia

3. Citizens of British Columbia have the right to have the environment conserved and protected (Suggested Environment meeting, February 19)

4. Citizens of British Columbia have to right to expect that no person shall use **generate or release**, waste or recyclable maters, or any other substance **(including fugitive gas or leachate)** into the environment in such a manner or quantity as to cause pollution

[moved from 41 (1) (Suggested Environment meeting, February 19)

5. Citizens of British Columbia have the right to expect that the government will live up to its obligations (Doctrine of Legitimate Expectation)

6. Present and future generations of British Columbia have the right to an ecological heritage (Suggested Environment meeting, February 19)

7. ensuring that no citizen will be prosecuted for advocating or acting to promote the purposes of the act (Suggested Environment meeting, February 19)

Right to request that a substance be added

Any person may file in writing with the Minister a request that a substance be added to the Priority Substances List and the request shall state the reasons for adding the substances to the List. (CEPA 12.4)

Where the Ministers make an assessment referred to in subsection (1) and decide not to recommend that the substance be added to the List of Toxic Substances in Schedule 1, any person may, within sixty days after publication of the decision in the Canada Gazette file a notice of objection with the Minister requesting that a board of review be established under section 89 stating the reason for the objection. (CEPA 13.2)

Where a substance has been specified on the Priority Substances List for a period of five years and the Ministers have not yet assessed whether the substance is toxic or capable of becoming toxic, any person may file a notice

of objection with the Minister requesting that a board of review be established under section 89 (CEPA 14)

Right of action

31. (1) The Attorney General or any resident of British Columbia may commence an action in the Supreme Court against any person who has polluted or otherwise degraded the environment and the public trust or who is likely to do so.

2. A person may commence an action under subsection (1) without having to establish that there is, has been or is likely to be an infringement of an authorization issued under this Act or an approval, permit, licence, standard, regulation, rule or order issued by or under an Act listed in Schedule A.

3. A person who commences an action under subsection (1) shall provide notice of the proceedings to the Attorney General and the Minister.

4. This section does not abrogate those common law rights that would normally be available to a plaintiff to commence an action.

5. the need for intervener funding

Standing

32 A person may commence an action under section 31 without having to show that he or she has

(1) any greater or different right, harm or interest than any other person; or

(2) any pecuniary or proprietary right or interest in the subject matter at issue.

Burden of proof.

33.

(1 a) Every proponent of an intervention in the ecosystem must demonstrate that the intervention will not cause harm to the environment or will not create ecologically unsound wastes

If the proposal involves anything that could be hazardous, 0 emissions and waste must apply; if the proposal involves lowest achievable discharge rate should apply (February 19, discussion)

(1 b) the plaintiff shall establish a prima facie case showing that **the defendant's proposed activities are likely to pollute or degrade the environment**

(1) the plaintiff shall establish a prima facie case showing that the defendants' activities have polluted or degraded the environment or is likely to do so

(1 c. In a prosecution for a contravention the burden of proving compliance is on the defendant [Section 46, ss 4]

2. Where a prima facie case under subsection (1) is established, the defendant may rebut the prima facie case by showing that there is no feasible and prudent alternative to the defendant's action

[If so, there must be some criteria for determining feasible and prudent alternatives in the light of the purpose of the Act; "providing prevention, conservation and sustainability of the environment" determined by an

advisory, non-vested interest board or panel with representation from varied areas of expertise and experience]

3. *"It is a defence to an action commenced under this Act that the defendant's action is authorized under this act or an Act listed in Schedule A, unless the plaintiff can establish, on balance of probabilities, that the standard is inadequate to protect the environment and that the defendant's action has caused, or is likely to cause, severe or irreparable contamination or degradation of the environment.*

The burden of proof must be on the defendant to demonstrate that the defendant's action has not caused or is not likely to cause, severe or irreparable contamination or degradation of the environment"
(Discussion, February 19)

Limitation Period

34. The limitation period for an action under section 31 of this Act is postponed and time does not commence to run until the plaintiff becomes aware, or ought reasonably to have become aware, of the identity of the defendant and of the material facts surrounding the claim

Appointment of minister's environmental mediator

"37 (1) Subject to section 140, the Minister may, *Where he or she deems it advisable where it is deemed advisable* and where the conflicting parties concur, appoint an environmental mediator acceptable to the parties to mediate between persons involved in an environmental conflict.

(2) when a mediator is appointed under subsection (1), the mediator shall, within 6 weeks after completion of the mediation, report to the results of the mediation to the Minister and the parties

38 (c) award damages to (iv) any person who has a concern for the environment

39 ...licence, standard, regulation, rule or order issued under an Act listed in Schedule A affects **the environment** and rights of a person, **any** person shall be furnished with a written statement of the decision setting out....**(c) any dissenting opinions should be made public"** **(Discussion, February 19)**

Freedom of information [SHOULD BE ADDED]

under the guise of client/solicit relation or confidentially shall not prevent the revealing, disclosing information about any actions that could have [wording from purpose]

40. Whistleblower protection

(1) for the purposes of this section "employee" includes

(a) a person, including a deceased person, in receipt of or entitled to payment for labour services performed for another

(b) a person whom an employer allows, directly or indirectly, to perform work or service normally performed by an employee, and

(c) a person being trained by an employer for the purpose of the employer's business.

Where a person has knowledge of the occurrence or reasonable likelihood of a release into the environment of a substance specified in the List of Toxic Substances in Schedule 1, 37 [but the person is not required to report the matter under this Act, the person may report any information relating to the release or likely release to an inspector or to any person to whom a report may be made under section 36. (CEPA, 37) of a substance in contravention of a regulation made under section 54. (CEPA 58)

Request of confidentiality

A person may request that the person's identity and any information that could reasonably reveal the identity not be released (CEPA 37 2, and 58.2)

Requirement for confidentiality

Where a person makes a request under subsection (2) no person shall release or cause to be released the identity of the person making the request or any information that could be reasonably be expected to reveal the identity, unless the person making the request authorizes the release in writing (37.3)

2) For the purpose of this section, "employer" includes a person who(a) has control or direction of, or
(b) is responsible, directly or indirectly, for the employment of an employee, and includes a person who was an employer

3. No person shall dismiss, threaten to dismiss, cause to be dismissed, discipline, coerce, discriminate against, or impose any type of penalty on an employee or an authorized representative of an employee, because the employee or representative
(a) has reported or proposed to report any violation or perceived violation of this Act or an Act listed in Schedule A or
(b) refuses to carry out work that the employee reasonably believes would be or would lead to a violation of this Act or an Act listed in Schedule A

Notwithstanding any other Act of Parliament, no employee of a department, board commission or agency of the Government of Canada, or of a corporation named in Schedule III to the Financial Administration Act or of a federal regulatory body shall be disciplined, dismissed or harassed for making a report under subsection (1) (CEPA 37.1 and , 57.4)

(4) Employers shall keep their employees informed of the protection available under this section

(5) a person who alleges that he or she has been treated in a manner contrary to subsection (3) may file a complaint with the board in the manner set out in the regulations.

(6) The board shall cause an investigation to be made upon the filing of a complaint, and may dismiss a complaint without a hearing where it appears to the board that

- (a) the employee or representative was proceeding in bad faith or for an improper purpose [as defined by the purpose of the act]
7. the board may conduct a hearing into the complaint, and if the board is satisfied that the employer has contravened subsection (3) the board may make an order directing the employer to do any or all of the following:
- (a) cease doing the act or acts complained of
 - (b) rectify the act or acts complained of
 - (c) reinstate the person aggrieved with compensation
 - (d) compensate the person aggrieved in lieu of reinstatement for the loss of earnings or other employment benefits
 - (e) pay general damages, special damages or pecuniary damages to the employee.
- (8) the board may award either party all or a portion of the costs of the hearing as it considers appropriate.

Since the first United Nations Conference on the Environment in Stockholm in 1972, we have come to realize that the traditional patterns of development have contributed to poverty - denying more than a quarter of the world's population adequate living conditions — to the inequitable distribution of resources to overconsumption, to the violation of human rights, and to the potentially irreversible degradation of the ecosystem.

WE DECLARE THE FOLLOWING PRINCIPLES TO GUIDE HUMANITY TO AN EQUITABLE AND ECOLOGICALLY SOUND FUTURE:

1. The ecosystem of which we are a part shall be protected and preserved, ecologically unsound patterns of development shall be condemned and the inequity of development must be addressed and rectified

2. Development activities that benefit the few while compromising the biological inheritance and quality of life of the many must be condemned as being inherently wrong

4. International ecological standards should be in place so that no short-term individual pursuit of self-interest, or short sighted national or international regulations (GATT) could jeopardize the environment. The purpose of these standards is to address the individual and multinational pursuit of self-interest and consumptive and exploitative use of the environment and not to penalize local communities that wish to function in an interdependent way within the ecosystem. The economic development necessary to eliminate poverty shall not be a mandate to abuse the environment for either short-term gain or economic growth alone. Principle must drive industry not industry driving principle.

5. Environmental processes do not recognize national boundaries; therefore, states shall not have the sovereign right to exploit resources

within their territories in isolation from the global ecological needs of the Earth

6. The continued build-up of the military complex must cease, and the use of military force as a means of resolving conflict must be rejected. A radical reduction of the military budgets of the world must occur and the funds released for ecological and humanitarian purposes. Peace is not merely the absence of war but the pursuit of environmental, social justice, economic, spiritual and cultural well-being.

7. 8. the decision-making process should be clearly defined, transparent, accessible and equitable. Criteria in decision making should be revealed, and the public and affected communities should be involved at the time of the formulation of the terms of reference and through the process.

9. The international community must condemn and disallow the exporting of products deemed to be unsafe in a state where there are advance testing procedures to other states with less advanced testing procedures Since the first United Nations Conference on the Environment in Stockholm in 1972 we have come to realize that the threats to the biosphere which sustains all life on this planet have increased in rate, magnitude and scale that inaction is negligent. The international community has enough information about the pending state of ecological irreversibility that it must act immediately (proposal for NGO Earth Charter, Rio, June, 1992)

The precautionary principle shall be extended to require those who wish to intervene in the ecological commons to have to justify their intervention and demonstrate the safety of their intervention. The full environmental costs shall be considered in any proposed development project. (NGO Earth Charter, Rio, June, 1992)

REGULATIONS RELATED TO PESTICIDES

Authorized body for making regulations related to pesticides

“The Lieutenant Governor in Council may make regulations (BCEPA 112.1) Without limiting subsection (1) the Lieutenant Governor in Council may make regulations

- specifying and defining what constitutes an unreasonable adverse effect in particular or general circumstances ((BCEPA 112.2 a)
- classifying substances as pesticides and designating a pesticide as a restricted use pesticide” (BCEPA 112.2)

() THAT in 1994, I drafted a formal petition for the Green Party of BC related to Clayoquot Sound

EXHIBIT

PETITION

TO THE HONOURABLE HOUSE OF COMMONS OF CANADA

IN PARLIAMENT ASSEMBLED

The Petition of the undersigned residents of Canada who now avail themselves of their ancient and undoubted right thus to present a grievance common to your Petitioners in the certain assurance that your Honourable House will therefore provide a remedy

THE GREEN PARTY OF BC.

calls upon the Government of Canada

(1)

to seek an advisory opinion from the International Court of Justice on Canada's compliance with the Convention on Biological Diversity as it applies to forests including community watersheds.

(2)

to seek an advisory opinion on whether the granting of an injunction (internal law) may not be in violation of section 27 of the Convention of the Law of Treaties

3

to seek an advisory opinion from the International Court of Justice on whether trials of indigenous peoples and forest protectors have not been in violation of sections of the International Covenant on Civil and Political Rights.

Call upon the Attorney General of British Columbia to cease all proceedings against citizens who have been arrested in Clayoquot Sound, and press the prosecution against Mac Millan Bloedel for its infractions, and prosecute the known people who have imprisoned the bus, and attacked the peace camp.

WHEREAS

• The "World Charter for Nature" passed by the General Assembly" in 1982, enunciated the following principles that

Every form of life is unique, warranting respect regardless of its worth to [humans] and to accord other organisms such recognitions, humans must be guided by a moral code of action"

"Lasting benefits from nature depend upon the maintenance of essential ecological processes and life support systems, and upon the diversity of life forms, which are jeopardized through excessive exploitation and habitat

destruction by {Humans}" [humans] must acquire the knowledge to maintain and enhance [their] ability to use natural resources in a manner which ensures the preservation of the species and ecosystems for the benefit of present and future generations.

"Activities which are likely to pose a significant risk to nature shall be preceded by an exhaustive examination; their proponents shall demonstrate that expected benefits outweigh potential damage to nature, and where potential adverse effects are not fully understood, the activities should not proceed."

- Since 1972, Canada has made significant international commitments to human rights, equity, social justice, ecological preservation, and ecologically sound practices, (Universal Declaration of Human Rights, 1948; International Covenant on Civil and Political Rights International Covenant of Social, Cultural Rights; Environmental Conference in Stockholm, 1972; UN Conservation of Natural Heritage, 1972; the World Charter of Nature, 1982; Global Biodiversity Strategy, 1992; the Caracas Declaration 1992; Biodiversity Convention, Climate Change Convention and Agenda 21, 1992). The action to condemn and in some cases imprison individuals who call for Canada's compliance to these international, national and provincial commitments has been in direct violation of principles of equity, social justice and human rights.

- For years, through its forest practices, Canada as well as the forest Industry has been in violation of international law, and even in violation of its own federal and provincial law. Through non-compliance with its international obligations, and with national and provincial Acts, the government has permitted devastation of its forests; this devastation is now recognized widely and condemned by the international community. This recognition is reflected in the statement by the German Biologist, Dr. Schutt.

The practice of clearcutting, followed by [broadcast burn] artificial reforestation has undoubtedly many technical and organizational advantages. In the course of time, however, soil scientists and ecologists found out that the practice of clearcutting automatically leads to considerable drawbacks:

- wounding of the soil surface through logging operations. risk of erosion
- high irradiation and higher climatic extremes alter the microclimate, the flora and the microflora and deteriorate the growing conditions for a number of valuable tree species. Soil compression and a reduction of species richness occur

- An accelerated decomposition of organic matter occurs, combined with a wash out of nutrients, and the eutrophication of ground water, rivers and lakes (Environmental Ethics Conference, 1992, Vancouver)

as well as in the recent IUCN (World Conservation Union) Resolution January 25, 1994

MINDFUL of the fact that such ancient forests on Vancouver Island and on the mainland-coast of British Columbia are disappearing at a rapid rate as a result of practices that have, to date, not been ecologically sustainable;

- Section 60 of the Forest Act calls for suspension of tree farm licensees if the licence holder has caused harm to the natural environment. Throughout B.C. environmentalists have been documenting evidence of non-compliance to the Forest Act. The Fisheries Department has documented evidence of violation by the forest industry of section 33 of the Fisheries Act.

- as a result of industry's violation of the law and Governments' failure to enforce the federal and provincial Acts, irreparable harm to the environment has ensued. Over 1000 Vancouver Island citizens have been arrested, condemned as criminals and in some cases imprisoned because they call for compliance to obligations, attempt to prevent irreparable harm, and demand that environmental law be enforced.

In the latest case, the protesters in Clayoquot Sound have been condemned as criminals because of their non-compliance with an injunction to prevent them from preventing irreparable harm. On the other hand, McMillan Bloedel has been causing irreparable harm, and governments have failed to suspend tree farm licence as required under section 60 of the Forest Act of British Columbia.

Traditionally, the equitable remedy of injunctions is deemed necessary to prevent irreparable harm. In 1985, the court concurred with this conception in McMillan Bloedel vs. Mullin where it was decided that

Indians, ...will be deprived of valuable ecological rights, and in further light of the fact that irreparable harm will not result to the Logging Company if timber harvest is delayed pending an expedited adjudication of issue [1985, BCD Civ 1892-08]

Now, the courts have appeared to misconstrue the concept of irreparable harm: those who cause irreparable harm (industry) through non-compliance with international obligations, national and provincial legislation are granted injunctions to facilitate their continuing to cause irreparable harm , while citizens are condemned as criminals for not complying with the injunctions granted to facilitate irreparable harm.

- Section 15 of the Canadian Charter of Rights guarantees citizens equality before and under the law

- the current court proceedings against citizens in Clayoquot are in contravention of the International Covenant on Civil and Political Rights, to which Canada is a signatory

WE THE GREEN PARTY OF CANADA

Call upon the Attorney General of British Columbia to cease all proceedings against citizens who have been arrested in Clayoquot Sound, and press the prosecution against Mac Millan Bloedel for its infractions, and prosecute the known people who have imprisoned the bus, and attacked the peace camp.

() THAT I wrote and circulated CHARTER OF ECOLOGICAL PRINCIPLES

PRINCIPLE MUST DRIVE INDUSTRY NOT INDUSTRY DRIVING PRINCIPLES

Legend

Underlined: what has already been agreed to internationally

Bold: what still needs to be done

CHARTER OF ECOLOGICAL PRINCIPLES

This Charter draws from international obligations that have already been agreed to internationally. The Charter draws from both obligations undertaken by states through UN resolutions such as the "World Charter of Nature", globally agreed to documents such as the United Nations Conference on Humans and the Environment (Stockholm, 1972), The Rio Declaration (UNCED, 1992) and Agenda 21 (UNCED, 1992) and the legally binding documents such as the Vienna Convention on Ozone (1986), the Montreal Protocol (1987), The Basel Convention (); Convention on Biological Diversity (UNCED, 1992, in Force, 1993) and the Convention on Climate Change (UNCED, 1992, in force 1993), and the Law of the Sea (in force 1994).

NOTE: Article 18 of the Vienna Convention Treaty stipulates that if a state has signed a treaty there is an "obligation not to defeat the object and purpose of a treaty prior to the entry into force"

The following principles have been agreed to internationally

International obligations must be fulfilled as being not the maximum but the minimum standards to follow

Transference of agreed to principles to state practices

The principles set forth in the present Charter shall be reflected in the law and practice of each State, as well as at the international level (World Charter of Nature)

Inherent worth of nature

ensuring that every form of life is unique, warranting respect regardless of its worth to man

[human], and to accord other organisms such recognition's, man [human] must be guided by a moral code of action (World Charter of nature)

Respect for essential processes

Nature shall be respected and its essential processes shall not be impaired

Urgency of conserving nature

Humans can alter nature and exhaust natural resources by their actions or the consequences and, therefore, must fully recognize the urgency of maintaining the stability and quality of nature and of conserving natural resources and nature (World Charter of Nature)

Moral code of action

ensuring that every form of life is unique, warranting respect regardless of its worth to man [humans], and to accord other organisms such recognition's, man [human] must be guided by a moral code of action (World Charter of nature)

Enunciation of the primacy of the ecosystem

Ensuring that in all decisions made about the environment that the ecosystem be given primacy

Invocation of the precautionary principle

where there is a threat of serious or irreversible damage, lack of full scientific certainty *should* shall not be used as a reason for postponing measures to avoid or minimize such a threat (from the Biodiversity Convention)

Enunciation of the principle of doubt

Activities which are likely to pose a significant risk to nature shall be preceded by an exhaustive examination; their proponents shall demonstrate that expected benefits outweigh potential damage to nature, and where potential adverse effect are not fully understood, the activities should shall not proceed (World Charter of Nature)

Enunciation of the "Cautionary" Principle

Every proponent of an intervention in the ecosystem must demonstrate that the intervention will not cause harm to the environment or will not create ecologically unsound wastes

Adoption of "prevention technologies — technologies that emphasize "protecting, conserving and sustaining the environment from the beginning, and thus avoiding the cycle of rectification of error.

Non introduction of hazardous products in the environment

the onus of proving the non-hazardous nature of the product will be on the proponent of this new type of product [after a full life cycle analysis of all the potential environmental harm by non-vested interest parties]

Environmental Assessment review

Introduce appropriate procedures requiring environmental impact assessment of its proposed projects that are likely to have significant adverse effects on Biological diversity with a view to avoiding or minimizing such effects, and where appropriate, allow for public participation in such procedures (Article 14, 1A, Convention on Biological Diversity)

Assertion of the avoidance of activities

Activities which are likely to cause irreversible damage to nature shall be avoided (World Charter of Nature)

Recognition of interconnectedness with nature

Humankind is a part of nature and life depends on the uninterrupted functioning of natural systems which ensure the supply of energy and nutrients

Reaffirmation of intergenerational equity
Reaffirming that man [humans] must acquire the knowledge to maintain and enhance their ability to use natural resources in a manner which ensures the preservation of the species and ecosystems for the benefit of present and future generations
(World Charter of Nature)

Commitment to non-transference of harmful substances and activities
States should [Shall] *effectively cooperate to discourage or prevent the relocation and transfer to other States of any activities and substances that cause severe environmental degradation or are found to be harmful to human health* (Rio Declaration)

(b) identifying, preserving and preventing the loss or reduction of Biological Diversity
[wording in part from the Convention on Biological Diversity]

(b 1) mitigating climate change by addressing anthropogenic emissions by sources and removals by sinks of all greenhouse gases not controlled by the Montreal Protocol, and measures to facilitate adequate adaptation to climate change [wording from the Climate Change Convention]

(c) Achieving the goal of zero pollution in the province

(e) applying the principles of pollution prevention as the foundation of environmental protection

[from definition of "pollution prevention"]

(a 0) _ the prevention of the use, generation and release of any substance into the environment in such a manner or quantity as to cause pollution [repeated from 41 1)

(a) the elimination of the use of polluting substances

(b 0) the substitution of polluting substance with non-polluting substances

(b) the substitution of polluting substances with less polluting substances

(c) the reduction in the introduction and use of **[non-renewable]** resources and polluting substances

(d) the elimination and reduction in the generation of polluting substances

[e, f, g removed because not deemed appropriate for prevention;
Discussion Environmental Group, February 19]

(f0) Confirming the responsibility of government to set up a non-vested interest board or panel with varying levels of expertise and experience

to do "arms-length" research into the true environmental impacts of substances and activities by carrying out "life cycle analyses" (recommendations from various chapters of UNCED Agenda 21) (Suggested Environment meeting, February 19)

(f) Confirming the responsibility of producers for sound environmental stewardship of products through all phases of a product's life;

(g) *ensuring the comprehensive and integrated consideration of environmental and socioeconomic effects in public policy-making in British Columbia. [Deemed to be inconsistent with the overriding purpose of the Act]*
Ensuring that in all decisions made about the environment that the ecosystem be given primacy (Suggested Environment meeting, February 19)

(h0) International obligations must be fulfilled as being not the maximum but the minimum standards to follow (proposed, Discussion, February 19)

(h) Recognizing that British Columbia residents have an interest in **and a responsibility of minimizing their impact upon** the regional, national and **global environment** and global environmental well-being **(Suggested Environment meeting, February 19)**

(i) using the knowledge and experience of British Columbia residents in the formulation of decisions affecting the environment,

(j) confirming the responsibility of polluters to pay for the costs of their actions **(also recommended in Agenda 21) but also recognizing that no pecuniary payment of costs for environmental destruction can ever fully redress the loss to the environment, and reaffirming that the prevention of pollution and environmental destruction should be by using "prevention technologies"**

(k) ensuring that every activity or substance that could prevent the protection, conservation and sustainability of the environment will be included under this Act, regardless of whether the activity or substance is presumed to be covered under another Act (proposed, February 19)

(l) ensuring that no citizen will be prosecuted for advocating or acting to promote the purposes of the act (Suggested, February 19)

(m) promoting the research into the development and introduction of renewable, non-polluting (protection technologies)

(n) ensuring that compensation can never be used as reason for not exercising the duty under the act to protect, conserve and sustain the environment (proposed, Discussion, February 19)

(o) agreeing that any compensation given shall be assessed on the basis of past environmental performance and environmental costs and subsidies, and that any awarded money shall be (used by the compensated party to create employment within B.C.) placed in a job creation fund (Suggested, Discussion, February 20)

(p) ensuring the maintenance and enhancement of the quality of the environment (moved from section 2.a, February 20)

2. To achieve the purposes of this Act, all persons who exercise functions and powers under this Act shall have regard to the importance **of the purposes of this act** ((proposed, February 20)

(a) the maintenance and enhancement of the quality of the environment

(b) the actual or potential effect of an activity or natural process on the whole of the environment, including its actual or potential effect on the health and safety, and the economic, cultural and social well-being of people and communities

(c) the potential costs and benefits of any objective, policy, or proposal to the environment

Scope

(1) For the purposes of this Act, introduction of a substance into the environment means depositing the substance on or in or allowing or causing the substance to flow or seep on or into any land or water or allowing or causing the substance to be emitted into the air and includes indirect means of introduction into the environment

(1*) For the purpose of this Act, the impact of an activity on the environment means the engaging in any activity which could prevent the protection, conservation and sustainability of the environment will be included under this Act, regardless of whether the activity or substance is presumed to be covered under another Act (proposed, February 19)

2. Except where this Act or the regulations specifically provides to the contrary, this Act applies to the whole environment of British Columbia **{The onus of proof for exclusion from the Act must reside in the proponent for exclusion (proposed, February 20)}**

3. Where there is conflict between this Act, its regulations or an authorization under this Act and any other act or regulations there under, this Act its regulations and authorizations issued or subsisting under this Act apply, **except when provisions in other Acts or regulations contribute to the fulfillment of the purposes of the Environmental Protection Act better than those contained in this Act**

(a) where this Act or its regulations provide to the contrary, or

(b) as may be prescribed by the Lieutenant Governor in Council

4. Nothing in the Soil Conservation Act shall be taken to prevent the establishment within a local authority of any facility for the disposal of waste in accordance with this Act **providing that the establishment is deemed to fulfill the purposes of the Environment Protection Act. (Proposed, February 20)**

5. *The Crown is bound by this Act, except where this Act or the regulations specifically provide to the contrary*

[Not yet commented on rest of section]

Part 2

Environmental Bill of Rights

Public Trust

30. (1) Every resident of British Columbia has a right to protect the environment and the public trust from any pollution, impairment or destruction

(2) The government, as trustee, has a duty to conserve and protect the environment of British Columbia

3. Citizens of British Columbia have the right to have the environment conserved and protected (Suggested Environment meeting, February 19)

4. Citizens of British Columbia have to right to expect that no person shall use **generate or release**, waste or recyclable maters, or any other substance **(including fugitive gas or leachate)** into the environment in such a manner or quantity as to cause pollution

[moved from 41 (1) (Suggested Environment meeting, February 19)

5. Citizens of British Columbia have the right to expect that the government will live up to its obligations (Doctrine of Legitimate Expectation)

6. Present and future generations of British Columbia have the right to an ecological heritage (Suggested Environment meeting, February 19)

7. ensuring that no citizen will be prosecuted for advocating or acting to promote the purposes of the act (Suggested Environment meeting, February 19)

Right of action

31. (1) The Attorney General or any resident of British Columbia may commence an action in the Supreme Court against any person who has polluted or otherwise degraded the environment and the public trust or who is likely to do so.

2. A person may commence an action under subsection (1) without having to establish that there is, has been or is likely to be an infringement of an authorization issued under this Act or an approval, permit, licence, standard, regulation, rule or order issued by or under an Act listed in Schedule A.

3. A person who commences an action under subsection (1) shall provide notice of the proceedings to the Attorney General and the Minister.

4. This section does not abrogate those common law rights that would normally be available to a plaintiff to commence an action.

5. the need for intervener funding

Standing

32 A person may commence an action under section 31 without having to show that he or she has

(1) any greater or different right, harm or interest than any other person; or

(2) any pecuniary or proprietary right or interest in the subject matter at issue.

Burden of proof.

33.

(1 a) Every proponent of an intervention in the ecosystem must demonstrate that the intervention will not cause harm to the environment or will not create ecologically unsound wastes

If the proposal involves anything that could be hazardous, 0 emissions and waste must apply; if the proposal involves lowest achievable discharge rate should apply (February 19, discussion)

(1 b) the plaintiff shall establish a prima facie case showing that **the defendant's proposed activities are likely to pollute or degrade the environment**

(1) the plaintiff shall establish a prima facie case showing that the defendants' activities have polluted or degraded the environment or is likely to do so

(1 c. In a prosecution for a contravention the burden of proving compliance is on the defendant [Section 46, ss 4]

2. Where a prima facie case under subsection (1) is established, the defendant may rebut the prima facie case by showing that there is no feasible and prudent alternative to the defendant's action

[If so, there must be some criteria for determining feasible and prudent alternatives in the light of the purpose of the Act; "providing prevention, conservation and sustainability of the environment" determined by an advisory, non-vested interest board or panel with representation from varied areas of expertise and experience]

3. It is a defence to an action commenced under this Act that the defendant's action is authorized under this act or an Act listed in Schedule A, unless the plaintiff can establish, on balance of probabilities, that the standard is inadequate to protect the environment and that the defendant's action has caused, or is likely to cause, severe or irreparable contamination or degradation of the environment.

The burden of proof must be on the defendant to demonstrate that the defendant's action has not caused or is not likely to cause, severe or

**irreparable contamination or degradation of the environment
(Discussion, February 19)**

Limitation Period

34. The limitation period for an action under section 31 of this Act is postponed and time does not commence to run until the plaintiff becomes aware, or ought reasonably to have become aware, of the identity of the defendant and of the material facts surrounding the claim

Appointment of minister's environmental mediator

37 (1) Subject to section 140, the Minister may, *where he or she deems it advisable where it is deemed advisable* and where the conflicting parties concur, appoint an environmental mediator acceptable to the parties to mediate between persons involved in an environmental conflict.

(2) when a mediator is appointed under subsection (1), the mediator shall, within 6 weeks after completion of the mediation, report to the results of the mediation to the Minister and the parties

38 (c) award damages to (iv) any person who has a concern for the environment

39 ...licence, standard, regulation, rule or order issued under an Act listed in Schedule A affects **the environment** and rights of a person, **any** person shall be furnished with a written statement of the decision setting out.... **(c) any dissenting opinions (Discussion, February 19)**

() **THAT** in **1994**, along with David White, the Chair of the Sierra Club Victoria Group, I filed a Freedom of Information request with the Ministry of Forestry, and launched the **TIMBERGATE CAMPAIGN**

EXHIBIT

Accessing Existing information vs. Generating information

In 1994, we heard of a leaked document

Biggest Forest scam since Summers Case?

TIMBERGATE!

The Sierra Club (Victoria Group) and the ERA Ecological Rights Association obtained through Freedom of Information Act a significant Ministry of Forest report related to inventory. The report revealed that MacMillan Bloedel had been overestimating forest inventory on TFL 39 (Queen Charlotte Islands) by 44% since 1965 when the inventory was first submitted to the government.

The report proves what environmentalists have claimed for years, and provides the first documented evidence of serious overcutting in this Province.

The Report outlined a new technique, Ratio Sampling Analysis, for verifying the accuracy of inventory data supplied to the government by forest companies. The report then used the new technique, which had previously been tested for accuracy, to assess inventory information on the Queen Charlotte Island's portion of MacMillan Bloedel's Tree Farm Licence 39. This report, which revealed a significant discrepancy between the original estimation of the inventory and the estimations through the ratio sampling technique, was

submitted to the Ministry of Forests in March, 1993. Rather than release the document to the public, the Ministry of Forests invited the company to conduct its own study to confirm these findings. It was not until the Ministry of Forests was required under the Freedom of Information Act and the ERA, that the Ministry issued a press release. In the Ministry Press release, instead of seriously addressing the discrepancies of the MacMillan Bloedel inventory data, the Ministry promoted with fanfare, the government's new inventory assessment techniques.

In 1965, MacMillan Bloedel supplied inventory figures to the provincial government in order to secure a Tree Farm Licence. That inventory estimation was crucial in setting the amount that the company was allowed to annually cut on these public lands (AAC). The 1965 inventory figure became the basis for the calculation of not merely the 1965 AAC, but of all subsequent AAC calculations for that TFL. Most, if not all, of the AACs are based upon inventory data supplied to the government by forest companies many decades ago. If the inventory that the companies provide the government is too high, then the amount the government allows the companies to cut will be correspondingly high.

As a result of "ratio sampling" technique, the Ministry had independent inventory data for the first time. The government found that the inventory data that had been used for the Queen Charlotte Island TSA was 28% over-estimated, while the inventory for MacMillan Bloedel's T.F.L. 39 was 44% over-estimated. Thus, it appears that MacMillan Bloedel has been allowed to overcut by about forty percent for thirty years.

As a responsible steward, the Ministry should have temporarily suspended the company's licence for "misstatement of fact" under Section 59 of the Forest Act. Instead, away from the light of public scrutiny, the government allowed the company to make some important "modifications" to the new technique, and to try to disprove the Ministry's findings. In fact, the "modified" technique was much different from the one initially devised. The Ministry also allowed the company to use their own contractor to do the inventory work. Even so, the results were still very alarming; the company found that the inventory for their TFL was over-estimated by 12 percent.

Despite these developments, in June of 1993, the company applied to the Chief Forester for an increase in their AAC in TFL 39. The Chief Forester further increased the AAC by 11,000 cu.m. The company was instructed to reduce the AAC by 12 percent in February, 1994 (which revised ratio sampling work).

The "Ratio Sampling Analysis" Report concludes that "the reasons for the consistent over-estimation of volume in this TFL is still unknown." In this situation there was a perceived conflict of interest -- MacMillan Bloedel was given the responsibility for submitting data upon which decisions were made which resulted in enormous profits to the company. Undoubtedly there was incentive to inflate the inventory because high inventory meant high AAC.

In the province, there has been a long-standing tradition of institutional collusion involving the forest industry, the judicial system and sympathetic public administrations, which when investigated have resulted in criminal prosecution (Summers affair, 1957). The industry's initial miscalculation, the Ministry of Forests' failure to release the report in a timely way, and to suspend licensees as permitted under the Forest Act, and the conduct of the professional foresters involved in the affair raise a series of questions: Did the company misrepresent the data to the government? Is this an isolated incident of overestimation of inventory or is it commonplace within the industry? Why did it take thirty years to determine that there was such massive overcutting? Have professional foresters been misinformed, in collusion, or merely incompetent? Who are the stewards of the public's forests? Whose responsibility is it to verify data submitted by industry? Should industry-paid foresters be entrusted to make decisions in the public interest? Why did the government try to cover up the results of their inventory investigation? What is the level of government's complicity and guilt in the cover-up?

Meanwhile MacMillan Bloedel continues to harvest public forests in the province. There has been no investigation into the role of the Chief Forester of the Province or into the way he approves inventory figures and long-term Annual Allowable Cuts (AAC). There has been no determination of the amount of timber that has been overcut on MacMillan

Bloedel managed public lands or on lands "managed" by other licence holders. An overcutting of 40 percent accumulating over 30 years in one area implies that there has been serious and irreversible harm to the natural environment, which would be grounds to suspend licensees under section 60 of the Forest Act, and to eventual cancellation under Section 59 of the Forest Act.

A ROYAL COMMISSION MUST BE HELD INTO FORESTRY IN B.C.

The direct evidence of long-term inventory inaccuracy by MacMillan Bloedel and of neglected government enforcement of regulations supports the complete reassessment of forest policy in British Columbia.

The N.D.P and then the Socreds before them have resisted calls for a Royal Commission into B.C. Lands. Such commissions, however, have been held in B.C. about every twenty years this past century. Each commission has completely redefined forestry and the use of public lands in B.C. For example, the Sloan Commission in the 1950's resulted in the T.F.L. system; the Pearce Commission in the 1970's resulted in much of our present Forest Act. Another twenty years have passed, and it's time to get another complete evaluation of what happens on B.C. lands. This is even more crucial now because the government is negotiating with native peoples about the future of some of these lands. Before these negotiations proceed, there must be a general understanding, with wide public involvement, including the subpoenaing of expert witnesses, about what is appropriate on all British Columbia lands.

Until a Royal Commission can address these questions, there must be a moratorium on logging old growth forests and on clearcutting. While the present government has had a Commission on Resources and Environment (CORE), it wasn't a public forum, and logging still continued in old growth forests. CORE called on few expert witnesses, and included only government accredited "stakeholders." While CORE dealt with public lands, it didn't tackle what really happens on public lands - in particular forest tenure and forest practices.

The Commission should be given wide terms of reference. The following are some suggestions for inclusion in the terms of reference:

1. Inventory and timber supply throughout the province.
 - It is likely that if the TFL 39 inventory figures are incorrect, then other inventories elsewhere in the province are similarly flawed.
2. B.C.'s silviculture program
 - There has been no independent assessment of the success of the tree planting program in B.C. Mounting evidence confirms that there are serious problems with establishing "plantations" in large clear cuts.
3. Logging Practices
 - The present government's Forest Practices Code is merely a compendium of existing regulations. There must be an independent environmental assessment review of these practices, starting with clearcutting which contribute to a loss or reduction of biodiversity. This review is required under the Biodiversity Convention.
4. The Stewardship role of the Provincial Government and Educational Institutions
 - Successive governments, including the present government, by relaxing standards have allowed the situation similar to the Charlottes to continue. Serious questions have been raised about conflict of interest in the government's management of the forests.
 - The president of the University of British Columbia is a member of the Board of Directors of MacMillan and Bloedel, and most Ministry of Forests foresters have and will work again with the large multi-nationals. What are the implications of these relations?
5. The training, legal role and responsibilities of Registered Professional Foresters (R.P.F.'s)
 - R.P.F.'s swear an oath of professional conduct, but many are employed by forest companies. Their oath assures the public that they will make decisions in both the public and forest's interests. Yet, a R.P.F. conducted the original inventory for MacMillan and Blondel's TFL 39 application. Subsequently, many R.P.F.s, including Chief Foresters, have affixed

their professional name to the T.F.L. documents.

6. Reforming land tenure

The current system of land tenure in this province costs the provincial government hundreds of millions of dollars per year. The government has lost billions of dollars in revenues since the inception of the current land tenure system. A full cost, long-term accounting of the current land tenure system - including an analysis of ecological consequences - should be carried out by the provincial Auditor General. Absolutely no land claim settlement should be finalized until this review is completed.

7. Overhauling the Forest Act

To preserve forests and encourage ecologically sound employment, the Act should rigorously restrict the export of logs, and actively promote the value-added manufacturing so that there is a close correspondence between the nature of the wood and the nature of the product. These issues must thoroughly aired by the public of B.C.

Sequence of events

1. In early August. We were informed about the existence of a Ministry of Forest Report (March, 1993) which indicated that there was a 12% to 44 % overestimation of inventory by MacMillan Bloedel in TFL 39
2. In mid-August we contacted the Ministry of Forests about obtaining this report. Our request was refused. Contact Wiert
3. On August 27 we filed an official request for the report through the Freedom of Information Act
4. In Mid-October we were contacted by Jack Boomer who informed us that our request could not be granted because the Ministry of Forests was undertaking to publish the report.(and that in this circumstances because of the rights of the authors the report was excluded from the Freedom of Information Act). On being asked if they were publishing the original document or the Ministry of Forests version of the document, he responded that it was the MOF version. We replied that we had sought the original document not the MOF version
5. We wrote a letter to Jack Boomer, indicating that we were concerned about the original report. Copies of this letter were sent to
5. Within a few days we received a phone call from Jack Boomer indicating that we could pick up the documents at 4PM on November 28
6. we went to pick up the documentation and were greeted by a delegation in a conference room
 1. David Gilbert, Inventory Branch, and three other officials from the Ministry of Forests
 2. Two representatives from MacMillan Bloedel
 3. A forester from Kenya
 4. A forester from Sweden

We were presented with a package which contained the following documents,
marked "DRAFT confidential."

Abstract:

Results of a Ratio Sampling pilot study, for checking the accurate of forest inventory in the Queen Charlotte Islands TSA and TFL 39 Block 6 are presented in this report. They indicate that the TSA projected inventory is over-estimated by 28% for all mature types, and TFL 39 (Block 6) projected inventory is over-estimated by 44% for all mature

types....In TFL 39 the overall average actual net volume was 550m³/ha and MacMillan Bloedel's projected net volume was 793 m³/ha. ...

2. Comparison between

- Abstract. March 11, 1993 report, "Ratio Sampling Analysis," by A.Y. Omule and K.D. Tudor. Statistical Decision Support, Forest Inventory Branch, B.C. Ministry of Forests
- Abstract. April 1, 1993 report. Report, Ratio Sampling Analysis by A.Y. Omule and K.D Tudor **Support [Decision]** Forest Inventory Branch, B.C. Ministry of Forests.
- No abstract. October 27, 1993. FOREST INVENTORY STATISTICAL AUDIT PILOT TEST
TREE FARM LICENSE 39 BLOCK 6 (QUEEN CHARLOTTE ISLAND)
Sam Otukol, PhD, AY. Omule, PhD, RPF, Keith Tudor, RPF

◦ **Press release by Ministry of Forests: New forest inventory techniques provide greater accuracy October 29.** [Note: how they had engaged in damage control to cover up the error

Results of a Ratio Sampling pilot study, for checking the accuracy of a forest inventory in the Queen Charlotte Islands TSA and TFL 39 Block 6 are presented in this report. They indicate that the TSA projected inventory is over-estimated by 28% for all mature types, and TFL 39 (block 6) projected inventory is over-estimated by 44% **[42%]** for all mature types **[in the operable land base]**. On the average in the TSA actual net volume was 520 m³/ha and the projected net volume was 666m³. In TFL 39 (Block 6) the overall average actual net volume was 550m³/ha and MacMillan Bloedel's projected net volume was 793 m³/ha. The actual volumes are based on a total of 317 full-measure plots established **[systematically within 44 sample polygons]** based on a valid sampling design. The TSA and TFL(Block6) total volumes should be adjusted by multiplying the total volumes in the sampled types by the ratios 0.802 and .709, respectively.

[The polygons were selected at random within the Queen Charlotte islands as part of a decay sampling study]

Audit findings in three pilot project areas have demonstrated that one area on Vancouver Island and one in the Queen Charlottes have accurate forest inventory information while a third, also in the Queen Charlottes, has been overestimated.

This work has found that current mature timber inventories for the Queen charlotte timber supply areas and the Toquart River drainage are statistically accurate while there is a discrepancy in block six of tree farm licence 39

In support of its forest stewardship responsibilities the Forest Service has developed a forest inventory audit technique that provides the ability to confirm forest inventory volume estimates in tree farm licensees, timber supply areas and other forest management units.

..."this allows the forest Service to check our own inventory data in timber supply areas and other management units. It also allows us to check data provided by tree farm licence holders where before we were dependent on information supplied by the forest companies.
(Petter)

"These numbers will be taken seriously and the Forest Service intends to use them to confirm, adjust, or, if necessary, recommend that a new inventory be conducted." (Petter)

Legend:

plain text original from the March 11, 1993 Report

Bold text: additions in the April 1, 1993 Report

Italics text: parts deleted in the April 1, 1993 Report

Underlined text from October 27 report

Underlined and italics deleted sections in the October 27 report

Outline text from Ministry of Forests Press release, October 29

Outline and italics text, deleted sections from the Press release, October 29

2. Comparison between

- Introduction. Abstract. March 11, 1993 report, "Ratio Sampling Analysis," by A.Y. Omule and K.D. Tudor. Statistical Decision Support, Forest Inventory Branch, B.C. Ministry of Forests
- Introduction Abstract. April 1, 1993 report. Report, Ratio Sampling Analysis by A.Y. Omule and K.D Tudor **Support [Decision]** Forest Inventory Branch, B.C. Ministry of Forests.
- Introduction and background. October 27, 1993. FOREST INVENTORY STATISTICAL AUDIT PILOT TEST TREE FARM LICENSE 39 BLOCK 6 (QUEEN CHARLOTTE ISLAND) Sam Otukol, PhD, AY. Omule, PhD, RPF, Keith Tudor, RPF

INTRODUCTION

In British Columbia forest inventories are [usually conducted] conducted usually every 10-15 [every 10 to 30 years] years, with regular updates [or re-compilation for forest growth.]. Inventory updates are required to enable users to access current estimates until the next inventory is undertaken. They are usually based on yield model projections, sparse [sparse] field visitation [field visitation], or data from outside sources such as silviculture surveys [or cruise plots]. Questions often arise: [Questions such as the following often arise] 'Is the old or projected inventory [old or updated] any good? and "How good is the new inventory?" An independent, small, new sample (inventory) [(inventory)] along with ratio estimation is suggested as a suitable [auditing] methodology to be used to answer such questions for the provincial inventory, and to adjust or correct the inventory. This methodology is now known within the Inventory Program as 'Ratio Sampling.' *This report gives some background on ratio sampling, and presents the results of a pilot project in the Queen Charlotte Islands (TSA and TFL 39 (Block 6). The project was originally a decay study.1.*

This statistical auditing methodology is now known within the Inventory Program as "Ratio Sampling."

1. We thank Will Smith and Ken Richardson for providing the data used in this study; John Andres, Cam Bartram and Jon Vivian for assistance with the volume predictions.

- Discussion and Conclusion. Abstract. March 11, 1993 report, "Ratio Sampling Analysis" by A.Y. Omule and K.D. Tudor. Statistical Decision Support, Forest Inventory Branch, B.C. Ministry of Forests
- Discussion and Conclusion Abstract. April 1, 1993 report. Report, Ratio Sampling Analysis by A.Y. Omule and K.D Tudor Statistical **Support** [*Decision*] Forest Inventory Branch, B.C. Ministry of Forests.
- Summary and Conclusion October 27, 1993. FOREST INVENTORY STATISTICAL AUDIT PILOT TEST TREE FARM LICENSE 39 BLOCK 6 (QUEEN CHARLOTTE ISLAND) Sam Otukol, PhD, AY. Omule, PhD, RPF, Keith Tudor, RPF

Discussion and Conclusion

The data clearly indicate that overall, the projected volumes in both TSA and TFL 39 (Block 6) are over-estimated. Over-estimation of stand height (photo-interpreted) may account for the over-estimation of volume in the TSA. Reasons for the over-estimation in the sampled types in TFL 39 (Block 6) are unknown. But difference owing to use of different *loss factors and* diameter limits in the compilation would not account for all the over-estimation. In the TSA, the magnitude of the over-estimation was lower in the hemlock leading types compared to the remainder (Cedar leading). However, the sample size was inadequate in TFL 39 (Block 6) to determine in which mature types the problem was more severe. The TFL (Block 6) results should not be expanded to the rest of the TFL or the immature timber within Block 6. Further sampling is recommended to enable adjustment to the projected inventory to that made by timber type. The reasons for the consistent over-estimation of volume in this TFL is still unknown. It is suspected that during volume compilation in 1964, tree heights for Hemlock were over-estimated. This suspicion has not been confirmed and more statistical investigations are going on to pin point the problem.

Preliminary results based on 17 sample polygons indicated that there was a significant difference between MOF estimated volume (560 m³/ha), and the unadjusted 1964 MB inventory volume (793 m³/ha). this result was confirmed by the larger sample of 200 ground sample plots for which the average volume was 616 cubic meters per hectare. the 616 m³/ha falls within the confidence interval of the 17-polygon sample average (489-681 m³/ha⁰ (Figure 2). Furthermore, the 1964 MB adjusted volume (693m³/ha) derived from 180 sample polygons (or 200 sample plots) fell outside the confidence interval for the 1993 ground sample (571 - 659 m³/ha).

Both VDYP and E-P are, as expected, good predictors of stand yield provided the inputs (species composition, crown closure, and especially height) are accurate.

Ratio sampling while expensive, is necessary and recommended to assure us that our projected volumes, or any other variables of interest, indeed reflect reality. It should be used in both pre-and post-inventory analyses.

In the meantime, the 616 m3/ha estimated on the basis of 200 samples is now accepted as the representative average volume for TFL 39 Block 6, and changes will be made to the MB Management Plan to reflect this development.

() **THAT** I had input into the 1994 BC CEPA

EXHIBIT

1994 INPUT INTO PUBLIC INVOLVEMENT B.C. ENVIRONMENTAL PROTECTION ACT FOLLOW-UP TO CONSULTATION ON FEB 19, 1994 3 Who is the "Public"

While a definition for the term "public" is not provided in CEAA, guidelines will have to be developed to determine who constitutes the "public" for purposes of projects and activities outside of Canada. In developing these guidelines, consideration will have to be given to a number of broad issues including: the sovereignty of foreign nations, the spirit and intent of CEAA, the widely differing institutional capabilities and socio-political context of recipient countries, international agreements and arrangement to which Canada is party, timeliness and cost. These suggest the need for a definition rigorous enough to reflect the principles that underline CEAA, yet sufficiently flexible to be relevant in a variety of circumstances.

- to address the issue of "who is the 'public'" the government could bring together informed and concerned members of the public, drawing upon a wide range of expertise and experience, as well as upon the local members of the community that are concerned about humanitarian development. In no way should the involvement of the public be based on the promotion of particular vested interests. A distinction could be made between vested interest for individual gain and public concern for the commons. The current round table process which sets up an arena of competing interests through "multistakeholders" rarely brings together the people that have a larger vision of comprehensive solution for the commons.
- To ensure that the "public" is involved in establishing the terms of reference and throughout the project

[all contained in UNCED documents].

in 1983 the science council of Canada made an important distinction between a "reasoned outcome" and a "negotiated outcome"; the establishment of standards should not be part of a negotiated outcome.

- There must be a continuous vigil on substance. Perhaps given that we do not understand the long-term synergistic effects or the long-term effect of

combinations. Introduction of no new chemicals should become a policy. An assumption is often made that the effects are additive or independent rather than exponential or....

- The problem of limitation of knowledge must be recognized. often scientists are not capable of anticipating impacts because they don't even know what they are looking for and consequently are not able to find it. For example, CFCs were initially considered to be non-toxic, not bioaccumulation, and were hailed as the solution. no one would have anticipated the problem with the ozone.

See Financial Administration Act see act schedule III re CEPA 54)

Plain text: original draft document of the proposed BC Environment Protection Act, February, 10, 1994

Italics: Sections or sentences that should be left out

Italics and outline Notwithstanding case

Underlined suggestions from international or national documents, such as CEPA

Bold and underlined: additions from other NGO documents

Bold (September 27) suggestions of modification of documents such as CEPA

Bold (February 19, 1994) suggestions that were presented to the meeting held in Vancouver

Bold (February 20, 1994) suggestions added from the following day

B.C. ENVIRONMENTAL PROTECTION ACT

DECLARATION

It is hereby declared that the preservation and the protection of the environment is essential to the well-being of Canada and British Columbia (CEPA)

PREAMBLE

• Whereas the presence of *Toxic substances contaminants* in the environment is a matter of national and provincial concern.

• **Whereas the diminution of ecosystems and the release of contaminants into ecosystems has occurred**

• Whereas the presence of toxic substances, once introduced into the environment, cannot always be contained within geographic boundaries (CEPA)

• Whereas the Government of Canada, and the Government of British Columbia in demonstrating leadership should establish national and provincial environmental quality objectives, guidelines and codes of practice, and enforceable technical regulations.

part 1.

• Whereas Canada must be able to fulfill its international obligations in respect of the environment: (CEPA)

DEFINITIONS

NOTE THAT THE DEFINITIONS IN KABEL FONT ARE FROM THE BACT DOCUMENT

Aboriginal government

Administrator means the administrator of Environmental Emergency Services Coordination Office (BCEPA)

Air means the atmosphere but does not include the atmosphere inside

(a) an underground mine, or

(b) a place or category of places exempted by order of the Lieutenant Governor in Council

Adverse effect

means any effect that causes, has caused or contributed to or is likely to cause or contribute to significant damage to [the ecosystem, or loss or reduction of biodiversity, or elimination of carbon sinks] or loss of use of the environment and includes pollution and the effects of an environmental accident (BCEPA).

(a) any significant and widespread effect which any reasonably be anticipated to impair wildlife, aquatic life, *natural resources* or environmental quality, or

b) any effect that results in or contributes damage to the environment (Arizona} BCEPA)

Ambient criteria, or environmental quality criteria

refers to levels of contaminants in the environment that must be zero use, production, and release in all cases where a toxic substance is persistent or bioaccumulative. It also applies when a substance will generate persistent or bioaccumulative toxic byproducts or breakdown products during its productions, use or disposal (zero Toxics Alliance Statement of Principles) that must not be exceeded to protect the [ecosystem — water, air, sediment, soil or biota) and] the use of the air, water or soil, human health and the health of the environment. *The criteria have no legal standing for enforcement purposes.*

The Framework of mandatory standards and technical regulations will have legal standing so that the mandatory standards and technical regulations will be enforceable, and will give incentive to the development of BEST,

Air contaminant means any solid, liquid, gas or odor or combination of any of them that, if emitted into the air, would create or contribute to the creation of air pollution (CEPA)

Air contaminant means a substance that is emitted into the air and that

(a) injures or is capable of injuring the health or safety of a person

(b) injures or is capable of injuring property or any life form

(c) interferes or is capable of interfering with visibility

- (d) interferes or is capable of interfering with the normal conduct of business
- (e) causes or is capable of causing material discomfort to a person, or
- (f) damages or is capable of damaging the environment (CEPA)

Air pollution means a condition of the air, arising wholly or partly from the presence therein of one or more air contaminants, that

- (a) endangers the health, safety or welfare of persons
- (b) interferes with normal enjoyment of life or property
- (c) endangers the health of animal life, or
- (d) causes damage to plant life or to property: (BCEPA)

(Ambient air or water quality

refers to the overall or general condition of air or water in a region outside the zone of influence of discharges in contrast to local conditions which may be related to a specific source of contamination. (Water Management Division, Principles for Preparing Water Quality Objectives in B.C, 1986)

Authorization

means a permit, approval, licence, pollution prevention plan, operational certificate, order, certificate, pest management plan, certificate of compliance, conditional certificate of compliance, approval in principles (BCEPA)

Analyst means a person designated by the executive director under section (19 5) (BCEPA)

Analyst means a person or a member of a class of persons designated as an analyst under subsection 99(1)

Biological matter means anything which consists of or includes

- (a) tissue or cells (including gametes or propagules) or subcellular entities, of any kind, capable of replication or of transferring genetic material or
- b) genes or other genetic material, in any form, which are so capable , and it is immaterial, in determining if something is or is not any organism or biological matter, whether it is the product of natural or artificial processes of reproduction and , in the case of biological matter, whether it has ever been part of a whole organism (BCEPA)

Biotechnology

means the application of science and engineering in the direct or indirect use of living organisms or parts or products of living organisms in their natural or modified forms. (CEPA)

Bioaccumulation

means the increase in levels of toxic substances in an organism over time due to continued exposure. This can only happen if the substances do not break down quickly and are essentially stored in some part of the organism. (Fox). Bioconcentration of a biologically active contaminant as it moves up the food chain should also be considered under "bioaccumulation." DDT in water could be present in PPB but as it moves up food chain in the top consumer it could appear as parts per million or even greater.

Biodiversity

is defined as “the variability among living organisms from all sources including, *inter alia*, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part; this includes diversity within species, between species and of ecosystems (Convention on Biological Diversity, UNCED, 1992)

Biomedical waste means

- (a) a substance that is prescribed as a biomedical waste by the Lieutenant Governor in Council, and
- (b) Where the Lieutenant Governor in Council prescribes circumstances in which a substance is

Carbon sinks

can be organic as in old growth forests or inorganic as in sedimentary rock

sinks and reservoirs of greenhouse gases, including biomass, forests and oceans, as well as other terrestrial, coastal and marine ecosystems. (Framework Convention on Climate Change, 1992)

Conservation means the planning, management and implementation of an activity with the objective of protecting the essential physical, chemical and biological characteristics of the environment against degradation (BCEPA)

Consumer means a user or consumer of a product, substance, or material, but does not include the producer of the product, substance or material

Contaminant

is any solid liquid gas, odor, heat, sound, vibration radiation or combination of any of them resulting directly or indirectly from human activities that may cause an adverse effect. (draft regulation for clean Air Program, 1990)

Contaminated soil means

- (a) any soil sediment that is prescribed as a contaminated soil by the Lieutenant Governor in Council and
- (b) where the Lieutenant Governor in Council prescribes circumstances in which a soil or a sediment is a contaminated soil, a soil that is present in those circumstances (BCEPA)

Contingency plan means a plan which documents preparations and procedures for managing environmental accidents, including

- (a) a prior assessment of the potential hazard
- (b) predictions of the probable effects of an environmental accident
- (c) an assessment of the health and environmental costs of an environmental accident

- (d) measures to minimize risk
- (e) shut down procedures
- (f) communication networks to be used
- (g) notification procedures for the public and response agencies including
 - i) police departments in the vicinity
 - (ii) fire departments in the vicinity
 - (iii) emergency response teams
 - (iv) ambulance and medical services
 - (v) federal and provincial governments and local authorities
- (h) evacuation procedures for employees and the public
- (i) activities to protect human health
- (J) abatement, control and containment measures to minimize adverse effects
- (k) inventories of equipment available for spill response and cleanup
- (l) any other items prescribed by regulation (BCEPA)

Criteria means numerical limits or narrative statements approved by the executive director for application province wide and used as general guidance in setting site specific standards (BCEPA)

Criteria (objective?)

means numerical limits or narrative statements with respect to substances which provide policy direction on a provincial basis in the setting of objectives and standards. (BCEPA) [BACT document]

Decision means

- (a) the making of or refusal to make an order
- (b) an exercise of, or refusal to make a power
- (c) the issue, amendment, renewal, suspension, refusal or cancellation of an authorization, not including a regulation or a bylaw, or
- (d) the inclusion of any requirement or condition in an authorization, not including a regulation or a bylaw by manager, director or district director (BCEPA)

Director (BCEPA)

Discharge

the release into the air, land, water, soils, and sediment of substances

Ecosystem

is defined as "Ecosystem" means a dynamic complex of plant, animal and micro-organism communities and their non-living environment interacting as a functional unit. (Convention on Biological Diversity, UNCED, 1992)

Effluent means a substance that is discharged into water or onto land and that

- (a) injures or is capable of injuring the health or safety of a person
- (b) injures or is capable of injuring property or any life form
- (c) interferes or is capable of interfering with visibility in water
- (d) interferes or is capable of interfering with normal conduct of business
- (e) causes or is capable of causing material physical discomfort to a person or
- (f) damages or is capable of damaging the environment (BCEPA)

Environment

means the components of the earth and includes:

- (a) air, land, water, sediment, soils
- (b) all organic and inorganic matter, including living organisms such as humans and non-humans
- (c) the interacting ecological systems that include components referred to in subclauses (a) and (b)

Environment means the components of the Earth and includes

- (a) air, land and water
- (b) all layers of the atmosphere
- (c) all organic and inorganic matter and living organisms, and
- (d) the interacting natural systems that includes components referred to in Paragraphs (a) to (c) (CEPA) also (BCEPA)

Environmental accident and Emergency Fund means

Minor amendment

means an amendment to a permit or approval for any of the following purposes:

- (a) a change of ownership or name;
- (b) a change of legal address or mailing address;

Federal lands

means

Land that belong to Her Majesty in right of Canada or in respect of which Her Majesty in right of Canada has power to dispose and all waters on and air above such lands CEPA 52, a)

Those submarine areas not with in a province, adjacent to the coast of Canada and extending throughout the natural prolongation of the land territory of Canada to the outer edge of the continental margin or to a distance of two hundred nautical miles from the baselines from which the breadth of the territorial sea of Canada is measured, whichever is the greater, and the water and air above those submarine areas (CEPA 52 b)

...

h) a work or undertaking that, although wholly situate within a province, is before or after its execution declared by Parliament to be for the general advantage of Canada or for the advantage of two or more of the provinces (CEPA 52)

Fuel means any form of matter that in its primary use is combusted or oxidized for the generation of energy; (CEPA)

Hazardous waste

For the purposes of subsection (43.3) and sections 44 and 45 "hazardous waste means

(a) any dangerous goods, within the meaning of the Transportation of Dangerous Goods Act, that are a waste, within the meaning of the regulations made under that Act: or

(b) any substance specified on the List of Hazardous Wastes Requiring Export or Import Notification in Part III of Schedule II (CEPA)

Major amendments

any amendment to a permit or approval which is not a minor amendment, as defined (Public Notification Regulation, May 1994)

THE CHANGES BELOW SHALL ALL BE DESIGNATED AS MAJOR AMENDMENTS; TOO MUCH DISCRETIONARY POWER GIVEN TO MANAGER

c) a decrease in the authorized quantity of the discharge, emission, or stored material;

(d) and increase in; the authorized quantity of the discharge, emission or stored material that does not exceed 10% of the authorized quantity.

(e) a change in the authorized quality of the discharge, emission or stored material such that, in the opinion of the manager, the change has or will have less impact on the environment;

(f) a change in a monitoring program

(g) a change to the works, method of treatment or any other condition of a permit or approval such that, in the opinion of manager, the change has or will have less impact on the environment. (Public Notification Regulation, May 1994)

Minister or Ministers

“minister” refers to Minister of the Environment (CEPA)

“ministers” refers to Minister of the Environment and Minister of Health and Welfare

Nutrients

means any substance or combination of substances that, if added to any waters in sufficient quantities, provides nourishment that promotes the growth of aquatic vegetation in those waters to such densities as to

a) interfere with their use by human beings or by any animal, fish or plant that is useful to human beings or

Objective

means numerical limits or narrative statement with respect to substances which provide policy direction for application in specified regions, airshed or watersheds used in the setting of standards.

Persistent

means the property of a substance to resist degradation or decomposition in the environment (Fox)

Pollutant

includes not only chemicals but also heat, light and electro-magnetic radiation thermal discharges

Polluting substance

means any substance alone or in combination with other substances that causes or is capable of causing pollution if it were to escape into the environment

Pollution

means the presence in the environment of a substance or an activity that

- (a) substantially alters the environment,
- (b) impacts on the functioning of the ecosystem substantially or may impair the equitable and ecologically sound use of the environment *impairs the usefulness of the environment or*
- (c) *cause a standard to be violated (BCEPA)*

or contributes to the diminution of the ecosystem by extracting substances that could cause the lessening of the functioning of the ecosystem

Pollution prevention

means to avoid the creation of polluting substances or to eliminate the release of these substances to the environment through *a hierarchy of activities including:*

The following is a list of prevention measures that should be addressed concurrently:

1. Applying the principles of pollution prevention such as the precautionary and the anticipatory principles
2. The prevention of the use, generation and release of any substance into the environment in such a manner or quantity as to cause pollution (Pollution Protection Act)
3. The adoption of BEST — technologies that emphasize "protecting, conserving and sustaining the environment from the beginning, and thus avoiding the cycle of rectification of error.
4. The adoption of the "cautionary principle," which can be expressed as follows:
Every proponent of an intervention in the ecosystem must demonstrate that the intervention will not cause harm to the environment or will not create ecologically unsound wastes
5. the elimination of the use of polluting substances
6. The substitution of polluting substance with non-polluting substances that themselves may not become a polluting substance through concentration imbalance
7. The elimination and reduction in the generation of polluting substances
8. The elimination of, and reduction in, the generation of polluting by products;
9. the reduction and phasing out of non-renewable resources in the extraction of resources, the production of substances, and the disposal of wastes
10. exclusion of substances of acute toxicity

Pollution prevention means to avoid the creation of polluting substances or to eliminate the release of these substances to the environment through a hierarchy of activities including:

- (a) avoidance, elimination or substitution of polluting products;*
- (b) reduction in the use of pollution products;*
- (c) elimination of, and reduction in, the generation of polluting by products;*
- (d) reuse and recycling of polluting by-products;*
- (e) recovery of energy from polluting by-products; and if necessary,*
- (f) treatment and containment of pollution residual by-products;*
- (g) remediation of polluting residual by-products.*

Precautionary principle

Where a substance has been specified on the Priority Substances List for a period of five years and the Ministers have not yet assessed whether the substance is toxic or capable of becoming toxic, any person may file a notice of objection with the Minister requesting that a board of review be established under section 89

capable of becoming toxic

Product stewardship

means the responsibility of producers for demonstrating that the introduction of a substance or activity will not have harmful ecological consequences *sound environmental stewardship of products* from the point of design or extraction to the point of final use and/or disposal. (Municipal Waste Reduction Branch)

Release includes discharge, spray, inject, inoculate, abandon, deposit, spill, leak, seep, pour, emit, empty, throw, dump, place and exhaust (CEPA) significant amendment (CEPA)

Remediation means action to eliminate, limit, correct, counteract, mitigate or remove any substance or the negative effects on the environment or human health or any substance and includes, but is not limited to

- (a) preliminary site investigations, detailed site investigations, analysis and interpretation including tests, sampling, surveys, data evaluation, risk assessment and environmental impact assessment;
- (b) evaluation of alternative methods of remediation;
- (c) preparation of a remediation plan, satisfactory to the manager, including a plan for any consequential or associated removal of soil or soil relocation from the site;
- (d) implementation of a remediation plan;
- (e) monitoring, verification and confirmation of whether the remediation complies with the remediation plan, applicable standards and requirements imposed by the manager
- (f) other actions that the Lieutenant Governor in council may prescribe (BCEPA)

see above under minor amendment)

Substance

means any product, by-product or waste

Substance means any distinguishable kind of organic or inorganic matter, whether animate or inanimate, and includes

(a) any matter that is capable of being dispersed in the environment or of being transformed in the environment into matter that is capable of being so dispersed or that is capable of causing such transformations in the environment

(b) any element or free radical

(c) any combination of elements of a particular molecular identity that occurs in nature or as a result of a chemical reaction, and

(d) complex combinations of different molecules that originate in nature or are the result of chemical reactions but that could not practicably be formed by simply combining individual constituents,

and except for the purpose of sections 25 to 32 includes

(de) any mixture that is a combination of substances and does not itself produce a substance that is different from the substances that were combined

(f) any manufactured item that is formed into a specific physical shape or design during manufacture and has, for its final use, a function or functions dependent in whole or in part on its shape or design and

(g) any animate matter that is or any complex mixtures of different molecules that are contained in effluents, emissions or wastes that result from any work undertaking or activity; (CEPA)

Substance includes

(a) any odour, sound vibration heat, electricity, electromagnetic radiation or form of energy

and

(b) and genetically modified organism (BCEPA)

Sustainability

means the preservation/protection of nature and the equitable and ecologically sound use, *development and protection* of natural *and physical* resources

which enable people to meet their needs and the needs of the ecosystem without compromising the ability of future generations to meet their needs and the needs of the ecosystem, and includes the following considerations.

(a) the maintenance and enhancement of the life-supporting capacity of the environment,

(b) the efficient management of natural and physical resources.

the preservation of ecological heritage

(c) the use, development or protection of natural and physical resources in a way which provides for the social, economic and cultural needs and opportunities of present and future residents,

the preservation/protection of nature and the equitable and ecologically sound use of nature in consultation with indigenous representatives from the inherent indigenous governmental bodies in the areas

(d) where the environment could be *is* modified by human activity, and where there could be a possibility of irreversible damage, the adverse effects of irreversible change are fully recognized then the activity shall not proceed

and avoided or mitigated to the extent practicable.

(e) the use, development or protection of renewable natural and physical resources so that their ability to yield long term benefits is not endangered. (BCEPA) through ecologically unsound and unsafe practices, and through culturally inappropriate practices.

Sustainability means the use, development and protection of natural and physical resources in a way, or at a rate, which enables people to meet their needs now without compromising the ability of future generations to meet their own needs, and includes the following considerations

(a) the efficient management of natural and physical resources

(b) the maintenance and enhancement of the life-supporting capacity of the environment

(c) the use, development or protection of natural and physical resources in a way which provides for the social, economic and cultural needs and opportunities of the present and future residents,

(d) where the environment is modified by human activity, the adverse effects of irreversible change are fully recognized and avoided or mitigated to the extent practicable

(e) the use, development or protection of renewable natural and physical resources so that their ability to yield long term benefits is not endangered; [the above definition of 'sustainability' is derived from the NZ Resource Management Act] BCEPA [note not derived from environmental legislation]

Toxicity

is the potential or capacity of a material of being harmful to the health of a living organism. (Fox)

NOTE THAT TOXICITY SHALL BE THE GENERIC TERM AND WOULD INCLUDE DISCHARGES THAT WOULD NORMALLY BE ADDRESSED UNDER HAZARDOUS AND ATOMIC WASTES

Toxic [defined in article 11]

A substance is toxic if it is entering or may enter the environment in a quantity or concentration or under conditions

(a) having or that may have an immediate or long-term harmful effect on the environment

(b) constituting or that may constitute a danger to the environment on which human life depends or

(c) constituting or that may constitute a danger in Canada **to ecosystem or** to human life or health

Transition reaction intermediate

means a substance that is formed and consumed in the course of a chemical reaction (CEPA)

Waste includes

- (a) air contaminants
- (b) litter,
- (c) effluent,
- (d) refuse,
- (e) biomedical waste
- (f) special wastes
- (g) contaminated soil, and
- (h) any other substance prescribed by the Lieutenant Governor in Council, whether or not the type of waste referred to in paragraphs (a) to (e) or prescribed under paragraph (f) has any commercial value or is capable of being used for a useful purpose BCEPA

Waste stream management license (BCEPA)

water means water as defined in the Water Act and [the Water Resource Preservation and Protection Act] includes marine waters under the jurisdiction of the province, groundwater and ice (BCEPA)

White goods mean stoves, refrigerators, freezers, washers, dryers, dishwashers and similar appliance (BCEPA)

“Works” includes

- (a) a drain, ditch, sewer and waste disposal system including a sewage treatment plant, pumping station and outfall
- (b) a device, equipment, land and a structure that
 - (i) measures, handles, transports, stores, treats or destroys waste or a substance that is capable of causing pollution, or
 - (ii) introduces into the environment waste or a substance that is capable of causing pollution
- (c) an installation, plant, machinery equipment, land or a process that causes or may cause pollution or is designed or used to measure or control the introduction of waste into the environment or to measure or control a substance that is capable of causing pollution, or
- (d) an installation, plant, machinery, equipment, land or a process that monitors or cleans up pollution or waste

Zero use 1.

zero use, production, and release of persistent and /or bioaccumulative toxic substances in the environment, workplace and home. Zero does not mean below some arbitrary level, or even beneath the level of detection. Zero means Zero. (Zero toxicity Coalition, July. 1994)

COMMENTS

Purpose of the Act

1. The purpose of this Act is to provide for the protection, conservation and sustainability of the environment by

ensuring that the full costs of pollution as reflected in a growing body of scientific evidence documenting pervasive health and environmental impacts must be considered rather than just the cost of implementing emission reduction measures (adapted from Resolution to support the ozone transport commission petition to the US EPA)

(a 0) ensuring that every form of life is unique, warranting respect regardless of its worth to man [humans], and to accord other organisms such recognition's, man [humans] must be guided by a moral code of action (World Charter of nature)

(b) identifying, preserving and preventing the loss or reduction of Biological Diversity

[wording in part from the Convention on Biological Diversity]

(b 1) mitigating climate change by addressing anthropogenic emissions by sources and removals by sinks of all greenhouse gases not controlled by the Montreal Protocol, and measures to facilitate adequate adaptation to climate change [wording from the Climate Change Convention]

(c) Achieving the goal of zero pollution in the Province

(d) Protecting the environment by the application of the precautionary principle where there is a threat of serious or irreversible damage, **lack of full scientific certainty should not be used as a reason for postponing measures to avoid or minimize such a threat (from the Biodiversity Convention)**

(d 1) Activities which are likely to pose a significant risk to nature shall be preceded by an exhaustive examination; their proponents shall demonstrate that expected benefits outweigh potential damage to nature, and where potential adverse effect are not fully understood, the activities should not proceed (World Charter of Nature)

(e) applying the principles of pollution prevention as the foundation of environmental protection

[from definition of "pollution prevention"]

(a 0) _ the prevention of the use, generation and release of any substance into the environment in such a manner or quantity as to cause pollution [repeated from 41 1)

(a0) the adoption of "prevention technologies — technologies that emphasize "protecting, conserving and sustaining the environment from the beginning, and thus avoiding the cycle of rectification of error.

(a1) ..no product introduced into the environment will be hazardous; the onus of proving the non-hazardous nature of the product will be on the introducer of this new type of product

(a) the elimination of the use of polluting substances

(b 0) the substitution of polluting substance with non-polluting substances

(b) the substitution of polluting substances with less polluting substances

(c) the reduction in the introduction and use of **[non-renewable]** resources and polluting substances

(d) the elimination and reduction in the generation of polluting substances

[e, f, g removed because not deemed appropriate for prevention; Discussion Environmental Group, February 19]

participating in the established [National/provincial] advisory committee for national action and cooperative action in matters affecting the environment for the purpose of avoiding conflict between and duplication in, federal and provincial regulatory activity (S5 CEPA)

(f0) Confirming the responsibility of government to set up a non-vested interest board or panel with varying levels of expertise and experience to do "arms-length" research into the true environmental impacts of substances and activities by carrying out "life cycle analysis" (recommendations from various chapters of UNCED Agenda 21) (Suggested Environment meeting, February 19)

(f) Confirming the responsibility of producers for sound environmental stewardship of products through all phases of a product's life;

(g) ensuring the comprehensive and integrated consideration of environmental and socioeconomic effects in public policy-making in British Columbia. [Deemed to be inconsistent with the overriding purpose of the Act]
Ensuring that in all decisions made about the environment that the ecosystem be given primacy (Suggested Environment meeting, February 19)

(h0) International obligations must be fulfilled as being not the maximum but the minimum standards to follow (proposed, Discussion, February 19)

(h) Recognizing that British Columbia residents have an interest in **and a responsibility of minimizing their impact upon** the regional, national and **global environment** and global environmental well-being **(Suggested Environment meeting, February 19)**

(i) using the knowledge and experience of British Columbia residents in the formulation of decisions affecting the environment,

requiring to report

Where there occurs or is a reasonable likelihood of a release into the environment of a substance specified on the List of Toxic Substances (36) in

Schedule 1 in contravention of a regulation made under section 34 or an order made under section 35,[[of substance in contravention of a regulation made under section 54, 57.1] any person described in subsection (2) shall, as soon as possible in the circumstances

... Report the matter to an inspector or to such person as is designated by regulation (CEPA 36.1 a)

Requirement to take emergency measures

Take all reasonable emergency measures consistent with public safety to prevent the release or, if it cannot be prevented to remedy any dangerous condition or reduce or mitigate any danger to the environment or to human life or health that results from the release of the substance or may reasonably be expected to result if the substance is released; and

Take all reasonable emergency measures consistent with public safety to prevent or eliminate any dangerous condition or reduce or mitigate any danger to the environment or to human life or health that results from the release or may reasonably be expected to result if the substance is releases; and (CEPA 57 1.b)

(c) make a reasonable effort to notify any member of the public who may be adversely affected by the release or likely release

Where any person fails to take any measure required under subsection (1) an inspector may take those measures, cause them to be taken or direct any person referred to in subsection (2) to take them (36.5)

Polluter pays

(j) confirming the responsibility of polluters to pay for the costs of their actions **(also recommended in Agenda 21) but also recognizing that no pecuniary payment of costs for environmental destruction can ever fully redress the loss to the environment, and reaffirming that the prevention of pollution and environmental destruction should be by using "prevention technologies"**

Her Majesty in right of Canada may recover the costs and expenses of and incidental to taking any measures under subsection 36.5 from

(a) any person referred to in paragraph 36 (2) (a) and

(b) any person referred to in paragraph 36 (2) (b) to the extent of the person's negligence in causing or contributing to the release. (CEPA 39.)

Her Majesty in right of Canada may recover the costs and expenses of and incidental to taking any measures under subsection 57 (4) from

(a) any person referred to in paragraph 57 (2) (a) and

(b) any person 's negligence in causing or contributing to the release (CEPA 60 1)

the costs and expenses referred to in subsection (1) shall only be recovered to the extent that they can be established to have been reasonably incurred in the circumstances (CEPA 60.2)

A person referred to in paragraph 57 (2) (B) shall not be held liable under subsection (3) to an extent greater than the extent of the person's negligence in causing or contributing to the release. (CEPA 60.4)

57 (2) any person who a0 owns or has charge of a substance immediately before its initial release or its likely initial release into the environment; or (b) cause of contributes to the initial release or increases the likelihood of the initial release. (CEPA)

(k) ensuring that every activity or substance that could prevent the protection, conservation and sustainability of the environment will be included under this Act, regardless of whether the activity or substance is presumed to be covered under another Act (proposed, February 19)

(l) ensuring that no citizen will be prosecuted for advocating or acting to promote the purposes of the act (Suggested, February 19)

(m) promoting the research into the development and introduction of renewable, non-polluting (protection technologies)

(n) ensuring that compensation can never be used as reason for not exercising the duty under the act to protect, conserve and sustain the environment (proposed, Discussion, February 19)

(o) agreeing that any compensation given shall be assessed on the basis of past environmental performance and environmental costs and subsidies, and that any awarded money shall be (used by the compensated party to create employment within B.C.) placed in a job creation fund (Suggested, Discussion, February 20)

(p) ensuring the maintenance and enhancement of the quality of the environment (moved from section 2.a, February 20)

2. To achieve the purposes of this Act, all persons who exercise functions and powers under this Act shall have regard to the importance **of the purposes of this act** ((proposed, February 20)

(a) the maintenance and enhancement of the quality of the environment

(b) the actual or potential effect of an activity or natural process on the whole of the environment, including its actual or potential effect on the health and safety, and the economic, cultural and social well-being of people and communities

(c) the potential costs and benefits of any objective, policy, or proposal to the environment

[The above principles clause is derived from the NZ Resource Management Act]

PURPOSE:

- To establish a framework for the setting of province-wide enforceable mandatory standards and technical regulations designed to ensure the preservation and protection of the environment and the equitable and ecologically sound use of resources, for present and future generations, taking into consideration the advice of indigenous representatives from the inherent indigenous governmental bodies in the area
- to extend this framework to address not only the discharge of substances into the ecosystem but also the diminution of the ecosystem through extractive practices that could cause the reduction or loss of biodiversity or the elimination of carbon sinks. The substances discharged could be toxic or non-toxic. Toxicity has been defined as the potential or capacity of a material of being harmful to the health of a living organism (Fox) (biosphere). Non-toxic substances can through impacting on the non-living environment cause environmental degradation which subsequently causes harm to the biosphere (Agents of ecological degradation). For example, CFC's are not deemed toxic yet through causing depletion of the ozone layer cause harm to living organism. In addition, there are substances that are themselves naturally occurring and harmless but become harmful to the environment when through anthropogenic activity they are increased or decreased in proportional concentration (re concentrated substance—created through imbalance in biogeochemical cycles).
- to apply principles that will enable the setting of high mandatory standards and technical regulations and that will encourage the development and implementation of prevention technology— ecologically sound technology or environmentally benign technology (Benign Ecologically Safe/Sound Technology/Techniques—BEST). BEST is based on the true invocation of International principles, such as the precautionary principle, anticipatory principle, environmental assessment principle, life cycle analysis principle, responsible care principle, cradle to grave principle, polluter pay principle, recognition of inherent worth of nature principle. BAT in contrast to BEST may not necessarily be benign or ecologically sound. In the event that there is no BEST which can prevent the release of persistent or bioaccumulative toxics then the extractive or productive activities which produce the product or substance process should be changed; the activities and product phased out/outlawed, or the demand for the product reduced through public education. In this case, the industry involved shall be assisted in the conversion to alternative processes or products involving BEST.
- to ensure that proposed technologies that appear to be ecologically sound such as closed-circuit technologies are evaluated in the context of the full life cycle analysis within the environmental context. The environmental context involves examining the potential impact of supplemental industrial activities in the relevant impact area. Often a technology will be presented as being ecologically sound because it is closed circuit; however, it could be that, because of the reliance on other resources such as water, the problem could

be compounded by the presence of contaminants in the water through the activities of adjacent industries. For example, in a proposed closed-circuit operation the required water is drawn from a source contaminated by the precursor elements to the formation of dioxins; the proposed closed-circuit operation by using catalysts such as copper and nickel along with heat, could cause dioxins to be formed and emitted through the air. It would consequently not be enough to claim that a system is a closed system to justify as an appropriate technology, if the closed system itself is dependent upon potentially adverse transformation processes within the larger environmental context.

- to ensure that a mass balance calculation—a measurement of all of the input material/ a measurement of all the output including the finished products and emissions is carried out.
- to ensure that industry will be held responsible for past ecological harm and past health effects caused through contaminated discharge, and that when in documents there is a provision for carrying out a “clean-up of major long standing environmental and work place health problems” it will apply to past damage to the environment and to the workforce, as well as to past off-site damage to the ecosystem and to human health.
- to ensure that the setting up of Provincial Task Forces to assess past health effects of contaminated discharge does not affect citizens’ rights to sue industry for the health effects caused from the contaminated discharge and emissions.
- to ensure that obligations are undertaken in good faith, that the reduction in contaminants will be in areas where they will have impact, and to ensure the implementation of the “greatest impact reduction principle.” Often when regulations are put in place for reduction, governments follow the path of least resistance. For example, in the reduction of CFC’s the regulations are applying for the reduction in production to refrigerators and car air conditioners (R12) and not applying to industrial uses(R12).
- to ensure that the public is presented with the real alternatives: the convenience product and contaminants in the ecosystem, and health impacts or less convenient product and no contaminants in the ecosystem and no health impacts.
- to ensure that compliance with high enforceable mandatory standards and technical regulations, and that adoption of BEST, will not place B.C. industry at a disadvantage because of an “uneven playing field.”
- to ensure that there is a provision for the transference of funds from federal and provincial discretionary budgets, such as the federal military budget to assist industry in its compliance, and conversion to BEST.

- to undertake to assist industry in the phasing out of ecologically unsound practices and substances and in the conversion to ecologically sound practices and substances.
- to reevaluate federal and provincial (Ministry of Employment and Investment) “commercial assistance” designed to bolster employment in ecologically unsound industries through the purchase of “equity shares”, “fee concessions” the “job Protection Act” (1991) or “job Protection Commission” (1992). Often government funding is designated for attempted mitigation of the adverse environmental effects rather than through the development of BEST.
- to similarly assess the value of maintaining the production of a product through an ecologically unsound process in one province when a similar product can be produced in an ecologically sound way in another province. For example, Flax stalks — ideal for the production of paper, are being burned in Saskatchewan, while B.C. continues to reduce biodiversity in the forests and to pollute the waters in the production of paper.
- to reassess current government targets in the light of recent zero emissions recommendations, and in the light of the recent EPA findings.
- to consult with non-vested interest (i.e. financial interest) members of the public with a wide range of expertise and experience during all levels of the development of the framework, including the determination of the terms of reference and thought all states and stages of the process of developing the Framework.
- to take into consideration when evaluating BEST, the land base from which the resources are extracted such as the extraction of resources from indigenous territories beyond the treaty frontier.
- to ensure that the ecosystem is given primacy through ecological preservation and equitable and ecologically sound use of resources, and that indigenous representatives from the inherent indigenous governmental bodies in the area are consulted.
- to ensure that the ecological rights of present and future generations are protected

purpose

The purpose of this policy is to establish a framework for setting province-wide discharge criteria and standards designed to protect the environment, to integrate environmental, economic, social considerations and to ensure that sustainability is achieved.

SCOPE

(1) For the purposes of this Act, introduction of a substance into the environment means depositing the substance on or in or allowing or causing the substance to flow or seep on or into any land or water or allowing or

causing the substance to be emitted into the air and includes indirect means of introduction into the environment

(1*) For the purpose of this Act, the impact of an activity on the environment means the engaging in any activity which could prevent the protection, conservation and sustainability of the environment will be included under this Act, regardless of whether the activity or substance is presumed to be covered under another Act (proposed, February 19)

2. Except where this Act or the regulations specifically provides to the contrary, this Act applies to the whole environment of British Columbia **{The onus of proof for exclusion from the Act must reside in the proponent for exclusion (proposed, February 20)}**

3. Where there is a conflict between this Act and international obligations the higher or greater ecological principles of the two shall apply.

Where there is conflict between this Act, its regulations or an authorization under this Act and any other act or regulations there under, this Act its regulations and authorizations issued or subsisting under this Act apply, **except when provisions in other Acts or regulations contribute to the fulfillment of the purposes of the Environmental Protection Act better than those contained in this Act**

*(a) where this Act or its regulations provide to the contrary, or
(b) as may be prescribed by the Lieutenant Governor in Council*

4. Nothing in the Soil Conservation Act shall be taken to prevent the establishment within a local authority of any facility for the disposal of waste in accordance with this Act **providing that the establishment is deemed to fulfill the purposes of the Environment Protection Act. (Proposed, February 20)**

5. The Crown is bound by this Act, except where this Act or the regulations specifically provide to the contrary

MINISTRY OF ENVIRONMENT, LANDS AND PARK

4. (1) There shall be a ministry of the public service of the Province called the Ministry of Environment Lands and Parks

(2) the minister shall preside over the ministry and be responsible to the lieutenant Governor in Council for the direction of the ministry

Delegating power

The minister may in writing delegate to any person representing the government

a government agency

the government of Canada

an aboriginal government or

a local authority

any power or duty conferred or imposed on the minister under this act.

FUNCTIONS AND POWERS OF THE MINISTRY AND OF THE GOVERNOR
IN COUNCIL

Administering crown lands

Shall administer the Crown land resource of the Province (BCEPA 6.2.i)

Setting up Advisory committees

5. (1) for the purpose of carrying out their duties under this Act, the Ministers or either Minister may

(a) establish advisory committees to report to the Ministers or either Minister

For the purpose of establishing a framework for national action and taking cooperative action in matters affecting the environment and for the purpose of avoiding conflict between, and duplication in , federal and provincial regulatory activity, the Minister shall, in cooperation with the governments of the provinces, establish a federal-provincial advisory committee to advise the Minister on

(CEPA 6.1)

regulations proposed to be made under paragraph 34.... (CEPA 6.1.a)

other environmental matters that are of mutual interest to the federal and provincial government and to which this Act relates (CEPA 6.1.b)

the Minister shall include in the annual report required by section 138 a report of the activities of the federal-provincial advisory committee (CEPA 2)

The minister may establish advisory committees and retain experts to report to the minister with respect to

(a) the content and administration of this Act and (BCEPA 9 la)

(b) any of the policies, programs, services or other matters under the minister's administration [from Alberta] [new] (BCEPA 9 l b)

When establishing an advisory committee under subsection (1) the minister may specify the functions that the committees and experts are to perform, and the manner and time period in which those functions are to be performed (BCEPA 9.2)

the report of a committee established or an expert retained pursuant to subsection (1) including the recommendations and reasons for them, shall be made public in a prescribed manner (BCEPA 9.3)

A person serving on a committee or an expert retained shall, while performing his or her duties, be paid for reasonable traveling and living expenses or a reasonable allowance in respect of them as fixed by the Lieutenant Governor in Council, and may be paid remuneration as the minister determines (

Maintaining liaisons

may as the representative of the government, maintain continuing liaisons with

- (i) the Government of Canada and agencies of that government
- (ii) the governments of other provinces and agencies of those governments
- (iii) the government of states of the United States of America and agencies of those governments, and
- (iv) local authorities in British Columbia (BCEPA 6 I)

Integrating with other Ministries

The minister shall, in recognition of the integrated relationship between human health and the natural environment, co-operate with and assist the Minister of Health in promoting human health through environmental protection [from Alberta]

For the purpose of carrying out the functions and duties of the Minister of National Health and Welfare related to preserving and improving public health under this Act, the Minister of National Health and Welfare shall formulate objectives, guidelines and codes of practice with respect to the elements of the environment that may affect the life and health of the people of Canada (CEPA 9.1)

In carrying out the responsibilities conferred by subsection (1), the Minister of National Health and Welfare may consult with the governments of the provinces; and (CEPA 9.2.a)

Entering into agreements

the minister may on behalf of the government enter into agreements and partnerships relating to any matter pertaining to the environment with
The government of another jurisdiction or a ministry or agency thereof
An aboriginal government (BCEPA 7.a)
a local authority (BCEPA 7.b)
a government agency (BCEPA 7.c)
any person (BCEPA 7d)
[from Alberta]

the minister with the approval of the lieutenant Governor in council may enter into agreements with the federal government with respect to the administration of this Act, the Canadian Environmental Protection Act, the fisheries Act or any other federal enactment of the purpose of protection of the environment ((BCEPA 17.1)

Notwithstanding subsection (1), the minister shall not enter into a equivalency agreement under the Canadian Environmental Protection Act unless the agreement contains a declaration that the Government of Canada will require the provisions of this Act and the regulations to be complied with at all federal facilities and activities including activities undertaken on federal land owned or leased by the Crown in the right of Canada by persons other than agents of the federal government (BCEPA 17.2)

Transferring of administration

The minister may, after appropriate consultation and with the consent of a part listed in (a) to (d) transfer the administration of a provision of this Act to another minister of the government (BCEPA 13 a)
a government agency (BCEPA 13b)
an aboriginal government (BCEPA 13 c)
a local authority (BCEPA 13d)
and may specify the terms and conditions including the collection of fees and taxes by which the transfer is made and may appoint officials to be responsible for the administration of the provision transferred.
(BCEPA 13) Adapted from Alberta draft.

Designating officials

Subject to the Public service Act, the minister may designate an executive director who shall administer that Act and regulations (BCEPA 19.1)
... 19.12

Establishing guidelines

For the purposes of carrying out the Minister's duties and functions related to the quality of the environment, the Minister may, with the approval of the Governor in Council, establish guidelines for use by departments, boards and agencies of the Government of Canada and, where appropriate, by corporations named in Schedule III to the Financial Administration Act and federal regulatory bodies in the exercise of their powers and the carrying out of their duties and functions. (CEPA 53)

making regulations

The Governor in Council may, for the purposes of section 46

No person shall produce or import for use or sale in Canada or sell or offer for sale any fuel that contains an element component or additive in a concentration or quantity that exceeds the concentration or quantity prescribed with respect to that element, component or additive in relation to the fuel; or

make regulations

Prescriptions

prescribing with respect to any fuel or fuel used for any purpose, the concentration or quantity of any element, component or additive that in the opinion of the Governor in Council, if exceeded, would, on the combustion of

the fuel in ordinary circumstances, result in a significant contribution to air pollution. (CEPA 47 a) ...

Where no other Act of Parliament expressly provides for the making of regulations that result in the protection of the environment and apply to federal works or undertaking or federal lands, the governor in Council may, on the recommendation of the Minister and with the concurrence of the minister of the Crown who has the administration and control of or duties and functions in relation to those works, undertakings or lands make regulations applicable thereto for the protection of the environment (CEPA 54 1)

the Governor in Council may, on the recommendation of the Minister make regulations prescribing

limits on the release of emission and effluents; by departments, boards and agencies of the Government of Canada and where appropriate by corporations named in Schedule III to the Financial Administration Act (CEPA 54 2 b)

Requiring analyses... relating to the environment that is or is likely to be affected by the work

the Minister may require from any person who carries on, or proposes to carry on, any federal work or undertaking or any activity on federal lands such plans, specifications, studies, procedures, schedules, analyses, samples or other information relating to the work, undertaking or activity together with such analyses, samples, evaluation, studies or other information relating to the environment that is or is likely to be affected by the work, undertaking or activity (CEPA 56)

preventing of pollution and protecting of environment

the Ministry, under the direction of the minister, is responsible for the **preservation** protection, enhancement and administration of all matters relating to the environment (BCEPA 6.1)

establish, operate and maintain a system of environmental quality monitoring stations CEPA 1 (a)

collect, process, correlate and publish on a periodic basis data on environmental quality in Canada from environmental quality monitoring stations and from any other appropriate source CEPA 1(b)

Prohibiting export and import of toxic substances and Waste Materials

The Governor in Council may, on the recommendation of the Ministers, make an order adding to the List of Prohibited Substances in Part 1 or Schedule II any toxic substance the use of which is prohibited in Canada by or under an Act of Parliament and may, in the same manner, delete any toxic substance from that List. (41 a i)

No person shall export any toxic substance specified on the List of Prohibited Substances in Part 1 of Schedule II except *for the purpose of destroying the substance or complying with a direction under sub-paragraph 41 (b) (ii)*

States should effectively cooperate to discourage or prevent the relocation and transfer to other States of any activities and substances that cause severe environmental degradation or are found to be harmful to human health. (principle 14, Rio Declaration, UNCED)

Adding to list of Toxic Substances requiring Export Notification

Adding to the List of Toxic Substances requiring Export Notification in Part II of Schedule II any toxic substance where the Governor in Council is of the opinion

that

the uses of the substance are substantially restricted by or under an Act of Parliament, and CEPA 42 (i)

The Minister shall compile a list, to be known as the List of Toxic Substances Authorities and the List shall specify each country in respect of which a notice is required under subsection (3) and the authority, body or person to whom the notice shall be given. CEPA 42 (2)

A person shall give notice of the proposed export of a substance specified on the List of Toxic Substances Requiring Export Notification in Part II of Schedule II, where the person proposes to export the substance to a country specified on the list of Toxic Substances Authorities and the export of the substance by that person is to be for the first time after (CEPA 43 3)

Adding to list of hazardous wastes

Adding to the List of Hazardous Wastes Requiring Export or import Notification in Part III of Schedule II any substance that, in the opinion of the Governor in Council, is a hazardous waste and may, in the same manner, delete any substance from that List. (CEPA 43

Conducting research

conduct research and studies relating to the nature, transportation, dispersion, effects, control and abatement of environmental pollution and provide advisory and technical services and information related thereto: (c)

conduct research and studies relating to environmental contamination arising from disturbances of ecosystems by human activity, and CEPA d (i) changes in the normal geochemical cycling of toxic substances that are naturally present in the environment CEPA1 (d) (ii)

formulate comprehensive plans and designs for the **prevention**, control and abatement of environmental pollution and establish, operate and publicize demonstration projects and make them available for demonstration (CEPA)

“...may undertake, commission and coordinate environmental studies, base mapping and related photographic and survey control functions” (BCEPA 6.2.e)

“...may compile, study and assess information related to the environment for the purpose of better carrying out the minister’s functions and responsibilities under this or any other act with a view to providing that information to ministries of the government, government agencies and the public” (BCEPA 6.2.m)

“...may participate in and coordinate research projects related to matters pertaining to the environment” (BCEPA 6.2.n)

“...may maintain a library consisting of publications and other information related to matters pertaining to the environment” (BCEPA 6.2o)

Remedial measures principle

Where, in respect of a substance or a product containing a substance, there is a contravention of this Part or any regulation made under this Part, the Minister may, in writing,

Requirement to give public notice

(a) direct any manufacturer, processor, importer retailer or distributor of the substance or product to take any or all of the following measures.

-give public notice in a manner directed by the Minister of any danger to the environment or to human life or health posed by the substance or product (CEPA 40 a i)

Direct any manufacturer, processor, distributor, importer or retailer of the substance or product to take any or all of the following measures:

(i) replace the substance or product with one that does not pose a danger to the environment or to human life or health (i)

Accept the return of the substance or product from the purchaser and refund the purchase price, or (ii)

any other measures for the protection of the environment or of human life or health. (CEPA 40.b iii)

Publishing information

publish or otherwise distribute or arrange for the publication or distribution of

(i) pertinent information to inform the public in respect of all aspects of the quality of the environment, including **the prevention** and the control and abatement of environmental pollution and

Report on the state of the Canadian environment to be prepared on a periodic basis

Minister may in exercising the powers conferred by paragraphs (1 B to (e) act alone or in cooperation with any government, government department or agency, institution or person and may sponsor or assist in any research,

studies or planning and development by a government institution or person in relation to the quality of the environment or **the prevention** the control or abatement of environmental pollution (7.3 CEPA)

Developing and distributing educational materials

“...may unilaterally or in co-operation with other ministries of the government and government agencies, develop, publish and distribute educational materials with respect to the environment and shall co-ordinate, develop and deliver educational programs and services to assist British Columbians to better understand the environment and become responsibly involved in the protection and stewardship of the environment” (BCEPA 6.2.p)

Organizing conferences

organize conferences of individuals, and groups reflecting a wide range of expertise and experience

representatives of industry and labour, provincial and municipal authorities and any interested persons described in paragraph a (CEPA 8.3.b)

individuals, and groups reflecting a wide range of expertise and experience

Formulating of objectives

“Shall encourage the maintenance of an optimum quality environment through specific objectives for the management protection and conservation of land, water, air, plant life and animal life, in the Province” (BCEPA 6.2.a)

For the purpose of carrying out the Minister’s functions and duties related to the quality of the environment, the Minister shall formulate
(a) environmental quality objectives specifying goals or purposes toward which an environmental **pollution prevention and control** effort is directed, including goals or purposes stated in quantitative or qualitative terms; (CEPA 8.1a.)

(b) “...environmental quality guidelines specifying recommendation in quantitative or qualitative terms to support and maintain particular uses of the environment” (CEPA 8.1b.)

(c) “...release guidelines recommending limits, including limits expressed a concentrations or quantities, for the release of substances into the environment from works, undertakings or activities; and...” (CEPA 8.1c)

“...may plan, design, construct, operate and maintain works and undertakings for the management, protection or enhancement of the environment, or for any other purpose of function assigned by the Lieutenant Governor in Council”, (BCEPA 6.2.h)

The minister, or a person designated by the minister, after engaging in such public consultation as the minister considers appropriate, may develop guidelines, codes, criteria, objectives and standards for emissions, discharges, storage, and ambient environmental quality in qualitative or quantitative terms for management areas in all or part of

British Columbia to promote the protection and stewardship of the environment [from Alberta] undertaking inventories

Establishing management areas

“For the purposes of subsection 1 the minister may establish management areas in accordance with the regulations providing for land use” (BCEPA 11.1)

“...*may shall* undertake inventories and prepare plans for the effective management, protection and conservation of the environment” (BCEPA 6.2.d)

preservation of nature, conservation of natural resources and sustainable development (CEPA 8.2 d)

“The minister shall give due consideration to public input that he or she has received in developing objectives and regulations policies under subsection 1” (BCEPA 11.3)

In carrying out the responsibilities conferred by subsection (1) the Minister may consult with the government of any province, any government department or agency or any person interested in the quality of the environment or the control or abatement of environment of environmental pollution; and (CEPA 8.3.a)

Criteria, objectives, standards and regulations developed under subsection (1) shall be made available to the public in accordance with the regulations

organize conferences of **individuals, and groups reflecting a wide range of expertise and experience representatives of industry and labour, provincial and municipal authorities and any persons interested in the preservation and improvement of public health.** (CEPA 9.2.b)

Establishing Priority Substances List

Ministers shall compile and may amend from time to time a list, to be known as the Priority Substances List, and the List shall specify substances in respect of which the Ministers are satisfied priority should be given in assessing whether they are toxic or capable of becoming toxic (CEPA 12.1)

Ministers shall publish in the Canada Gazette the Priority Substances List and any amendments to the list (CEPA 12.2)

Establishment of priority list

For the purpose of establishing the Priority Substances List, the Ministers may consult the governments of the provinces **individuals, and groups reflecting a wide range of expertise and experience members or representatives of any labour group or industrial sector, associations or persons concerned with environmental and health matters and any other persons** (CEPA 12.3)

“The Ministers shall consider a request filed under subsection (4) and within ninety days after the request is filed the Minister shall inform the person who filed the request of how the Minister intends to deal with the request and the reasons for dealing with it in that manner” (CEPA 12.5)

Determining of toxicity

For the purpose of assessing whether a substance is toxic or is capable of becoming toxic, or for the purpose of assessing the need for measures to control a substance, either Minister may

Collect data and conduct investigations respecting (a)

The nature of the substance (i)

the presence of the substance in the environment and the effect of its presence on the environment or on human life or health (ii)

the extent to which the substance can become dispersed and will persist in the environment (iii)

The ability of the substance to become incorporated or accumulate in biological tissues or to interfere with biological processes (iv)

methods of controlling the presence of the substance in the environment (v)

methods for testing the effects of the presence of the substance in the environment (vi)

development and use of alternatives to the substance (vii)

quantities used and disposal of the substance, and (viii)

methods of reducing the amount of the substance used, produced or released into the environment (ix)

Developing economic mechanisms

“...may in co-operation with other ministries of the government develop and implement economic and financial instruments and market-based incentives to achieve environmental protection to achieve environmental quality goals and provide methods of financing programs for environmental purposes in a cost-effective manner, and” (BCEPA 6.2 q)

the Minister may, in accordance with the regulations, establish programs and other measures for the use of economic and financial instruments and market-based approaches including, without limiting the generality of the foregoing emission trading (BCEPA 14.1.a)

incentives (BCEPA 14.1.b)

subsidies (BCEPA 14.1.c)

deposits and refunds (BCEPA 14.1d)

taxes (BCEPA 14.1.e)

emission effluent and waste disposal fees (BCEPA 14.1.f)

differential levies (BCEPA 14.1.g)

product charts and (BCEPA 14.1.h)

grants ... and contributions (BCEPA 14.1i)

Encouraging recreation

“...shall encourage outdoor recreation. establish parks and conserve the natural scenic and historic features of the Province” (BCEPA, 6.2.j)

Monitoring

(d) environmental codes of practice specifying procedures, practices or release limits for environmental protection, pollution prevention, control relating to works, undertakings and activities during any phase of their development and operation including the location design, construction, start-up, closure, dismantling and clean-up phases and any subsequent monitoring activities. (CEPA 8.1d.)

“...shall monitor, assess and report to the Lieutenant Governor in Council on general environmental conditions in the Province” (6.2.d)

the objectives, guidelines and codes of practice referred to in subsection (1) shall relate to the environment (CEPA 8.2a)

recycling, reusing, treating, storing or disposing of substances or reducing the release thereof into the environment; (CEPA 8.2 b)

works, undertakings or activities that affect or may affect the environment; or (8.2 c)

Designating laboratories

The minister may designate laboratories as approved laboratories that may conduct laboratory analyzes for the purposes of this Act (BCEPA 15.1)

Enforcing safety standards

shall administer and enforce safety standards respecting recreational activities and services on Crown land

Ordering an inquiry

“The minister may order an inquiry with respect to the environment whenever he or she considers it necessary” (BCEPA 8.1.)

for the purpose of an inquiry ordered under subsection (1) the minister or a person appointed by the minister to hold the inquiry has the powers, protection and privileges of a commissioner under section 12, 15 and 16 of the Inquiry Act” (BCEPA 8.2.)

“A person appointed under this subsection shall conduct the inquiry in accordance with terms of reference and any procedural guidelines for the inquiry specified by the minister” (BCEPA 8.3.)

“An inquiry may be ordered under subsection (1) with respect to the socio-economic considerations of an environmental issue.” (BCEPA 8.4.)

“An inquiry may be ordered under subsection (1) with respect to the socio-economic considerations of an environmental issue” (BCEPA 8.4.)

CHECK: THIS SECTION FOLLOWS S7 OF THE ENVIRONMENTAL MANAGEMENT ACT

planning in event of environmental accident

“...shall plan, coordinate, implement and manage a program to protect the welfare of the public in the event of an environmental accident or emergency” (BCEPA 6.2.h)

INDIVIDUAL INITIATIVE

Any person may file in writing with the Minister a request that a substance be added to the Priority Substances List and the request shall state the reasons for adding the substances to the List. (CEPA 12.4)

Where the Ministers make an assessment referred to in subsection (1) and decide not to recommend that the substance be added to the List of Toxic Substances in Schedule 1, any person may, within sixty days after publication of the decision in the Canada Gazette file a notice of objection with the Minister requesting that a board of review be established under section 89 stating the reason for the objection. (CEPA 13.2)

Where a substance has been specified on the Priority Substances List for a period of five years and the _____ Ministers have not yet assessed whether the substance is toxic or capable of becoming toxic, any person may file a notice of objection with the Minister requesting that a board of review be established under section 89 (CEPA 14)

Additional powers

“In addition to other powers vested in the Minister, the ministry, in respect of the ministry all the powers, duties and authorities had and exercisable by the officers mentioned as the Commissioner of Lands and Surveyor General, the Chief Commissioner of Lands and Surveyor General, the Chief Commissioner of Lands and Works and Surveyor General and the Surveyor General, in an Act, ordinance or proclamation passed or made in the former Colonies of British Columbia and Vancouver Island.” (BCEPA 6.3)

NOTE IN SOME CASES PROVISIONS IN CEPA HAVE BEEN TAKEN OUT OF THE BCEPA DOCUMENT AND PUT INTO THE B.C. ENVIRONMENTAL BILL OF RIGHTS: Part 2 THE UNIQUE SECTION WILL BE MARKED IN OUTLINE

Environmental Bill of Rights

Public Trust

30. (1) Every resident of British Columbia has a right to protect the environment and the public trust from any pollution, impairment or destruction

(2) The government, as trustee, has a duty to conserve and protect the environment of British Columbia

3. Citizens of British Columbia have the right to have the environment conserved and protected (Suggested Environment meeting, February 19)

4. Citizens of British Columbia have to right to expect that no person shall use **generate or release**, waste or recyclable maters, or any other substance **(including fugitive gas or leachate)** into the environment in such a manner or quantity as to cause pollution

[moved from 41 (1) (Suggested Environment meeting, February 19)

5. Citizens of British Columbia have the right to expect that the government will live up to its obligations (Doctrine of Legitimate Expectation)

6. Present and future generations of British Columbia have the right to an ecological heritage (Suggested Environment meeting, February 19)

7. ensuring that no citizen will be prosecuted for advocating or acting to promote the purposes of the act (Suggested Environment meeting, February 19)

Right to request that a substance be added

Any person may file in writing with the Minister a request that a substance be added to the Priority Substances List and the request shall state the reasons for adding the substances to the List. (CEPA 12.4)

Where the Ministers make an assessment referred to in subsection (1) and decide not to recommend that the substance be added to the List of Toxic Substances in Schedule 1, any person may, within sixty days after publication of the decision in the Canada Gazette file a notice of objection with the Minister requesting that a board of review be established under section 89 stating the reason for the objection. (CEPA 13.2)

Where a substance has been specified on the Priority Substances List for a period of five years and the Ministers have not yet assessed whether the substance is toxic or capable of becoming toxic, any person may file a notice of objection with the Minister requesting that a board of review be established under section 89 (CEPA 14)

Right of action

31. (1) The Attorney General or any resident of British Columbia may commence an action in the Supreme Court against any person who has polluted or otherwise degraded the environment and the public trust or who is likely to do so.

2. A person may commence an action under subsection (1) without having to establish that there is , has been or is likely to be an infringement of an authorization issued under this Act or an approval, permit, licence, standard, regulation, rule or order issued by or under an Act listed in Schedule A.

3. A person who commences an action under subsection (1) shall provide notice of the proceedings to the Attorney General and the Minister.

4. This section does not abrogate those common law rights that would normally be available to a plaintiff to commence an action.

5. the need for intervener funding

Standing

32 A person may commence an action under section 31 without having to show that he or she has

- (1) any greater or different right, harm or interest than any other person; or
- (2) any pecuniary or proprietary right or interest in the subject matter at issue.

Burden of proof.

33.

(1 a) Every proponent of an intervention in the ecosystem must demonstrate that the intervention will not cause harm to the environment or will not create ecologically unsound wastes

If the proposal involves anything that could be hazardous, 0 emissions and waste must apply; if the proposal involves lowest achievable discharge rate should apply (February 19, discussion)

(1 b) "...the plaintiff shall establish a prima facie case showing that **the defendant's proposed activities are likely to pollute or degrade the environment**

(1) the plaintiff shall establish a prima facie case showing that the defendants' activities have polluted or degraded the environment or is likely to do so

(1 c. In a prosecution for a contravention the burden of proving compliance is on the defendant" [Section 46, ss 4]

2. Where a prima facie case under subsection (1) is established, the defendant may rebut the prima facie case by showing that there is no feasible and prudent alternative to the defendant's action

[If so, there must be some criteria for determining feasible and prudent alternatives in the light of the purpose of the Act; "providing prevention, conservation and sustainability of the environment" determined by an advisory, non-vested interest board or panel with representation from varied areas of expertise and experience]

3. It is a defence to an action commenced under this Act that the defendant's action is authorized under this act or an Act listed in Schedule A, unless the plaintiff can establish, on balance of probabilities, that the standard is inadequate to protect the environment and that the defendant's action has caused, or is likely to cause, severe or irreparable contamination or degradation of the environment.

The burden of proof must be on the defendant to demonstrate that the defendant's action has not caused or is not likely to cause, severe or irreparable contamination or degradation of the environment (Discussion, February 19)

Limitation Period

34. The limitation period for an action under section 31 of this Act is postponed and time does not commence to run until the plaintiff becomes aware, or ought reasonably to have become aware, of the identity of the defendant and of the material facts surrounding the claim

Appointment of minister's environmental mediator

37 (1) Subject to section 140, the Minister may, *Where he or she deems it advisable* **where it is deemed advisable** and where the conflicting parties concur, appoint an environmental mediator acceptable to the parties to mediate between persons involved in an environmental conflict.

(2) when a mediator is appointed under subsection (1), the mediator shall, within 6 weeks after completion of the mediation, report to the results of the mediation to the Minister and the parties

38 (c) award damages to (iv) any person who has a concern for the environment

39 "...licence, standard, regulation, rule or order issued under an Act listed in Schedule A affects **the environment** and rights of a person, **any** person shall be furnished with a written statement of the decision setting out....**(c) any dissenting opinions should be made public**" (Discussion, February 19)

Freedom of information [SHOULD BE ADDED]

under the guise of client/solicit relation or confidentially shall not prevent the revealing, disclosing information about any actions that could have [wording from purpose]

40. Whistleblower protection

(1) for the purposes of this section "employee" includes

(a) a person, including a deceased person, in receipt of or entitled to payment for labour services performed for another

(b) a person whom an employer allows, directly or indirectly, to perform work or service normally performed by an employee, and

(c) a person being trained by an employer for the purpose of the employer's business.

Where a person has knowledge of the occurrence or reasonable likelihood of a release into the environment

of a substance specified in the List of Toxic Substances in Schedule 1, 37

[but the person is not required to report the matter under this Act, the person may report any information relating to the release or likely release to an inspector or to any person to whom a report may be made under section 36.

(CEPA, 37)

of a substance in contravention of a regulation made under section 54. (CEPA 58)

Request of confidentiality

A person may request that the person's identity and any information that could reasonably reveal the identity not be released (CEPA37 2, and 58.2)

Requirement for confidentiality

Where a person makes a request under subsection (2) no person shall release or cause to be released the identity of the person making the request or any information that could be reasonably be expected to reveal the identity, unless the person making the request authorizes the release in writing (37.3)

2) For the purpose of this section, “employer” includes a person who(a) has control or direction of, or
(b) is responsible, directly or indirectly, for the employment of an employee, and includes a person who was an employer

3. No person shall dismiss, threaten to dismiss, cause to be dismissed, discipline, coerce, discriminate against, or impose any type of penalty on an employee or an authorized representative of an employee, because the employee or representative

(a) has reported or proposed to report any violation or perceived violation of this Act or an Act listed in Schedule A or

(b) refuses to carry out work that the employee reasonably believes would be or would lead to a violation of this Act or an Act listed in Schedule A

Notwithstanding any other Act of Parliament, no employee of a department, board commission or agency of the Government of Canada, or of a corporation named in Schedule III to the Financial Administration Act or of a federal regulatory body shall be disciplined, dismissed or harassed for making a report under subsection (1) (CEPA 37.1 and , 57.4)

(4) Employers shall keep their employees informed of the protection available under this section

(5) a person who alleges that he or she has been treated in a manner contrary to subsection (3) may file a complaint with the board in the manner set out in the regulations.

(6) The board shall cause an investigation to be made upon the filing of a complaint, and may dismiss a complaint without a hearing where it appears to the board that

(a) the employee or representative was proceeding in bad faith or for an improper purpose [**as defined by the purpose of the act**]

7. the board may conduct a hearing into the complaint, and if the board is satisfied that the employer has contravened subsection (3) the board may make an order directing the employer to do any or all of the following:

(a) cease doing the act or acts complained of

(b) rectify the act or acts complained of

(c) reinstate the person aggrieved with compensation

(d) compensate the person aggrieved in lieu of reinstatement for the loss of earnings or other employment benefits

(e) pay general damages, special damages or pecuniary damages to the employee.

(8) the board may award either party all or a portion of the costs of the hearing as it considers appropriate.

[Further comment to come on subsequent sections]

Since the first United Nations Conference on the Environment in Stockholm in 1972, we have come to realize that the traditional patterns of development have contributed to poverty - denying more than a quarter of the world's population adequate living conditions — to the inequitable distribution of resources to overconsumption, to the violation of human rights, and to the potentially irreversible degradation of the ecosystem.

WE DECLARE THE FOLLOWING PRINCIPLES TO GUIDE HUMANITY TO AN EQUITABLE AND ECOLOGICALLY SOUND FUTURE:

1. The ecosystem of which we are a part shall be protected and preserved, ecologically unsound patterns of development shall be condemned and the inequity of development must be addressed and rectified

2. Development activities that benefit the few while compromising the biological inheritance and quality of life of the many must be condemned as being inherently wrong

4. International ecological standards should be in place so that no short-term individual pursuit of self-interest, or short sighted national or international regulations (GATT) could jeopardize the environment. The purpose of these standards is to address the individual and multinational pursuit of self-interest and consumptive and exploitative use of the environment and not to penalize local communities that wish to function in an interdependent way within the ecosystem. The economic development necessary to eliminate poverty shall not be a mandate to abuse the environment for either short-term gain or economic growth alone. Principle must drive industry not industry driving principle.

5. Environmental processes do not recognize national boundaries; therefore, states shall not have the sovereign right to exploit resources within their territories in isolation from the global ecological needs of the Earth

6. The continued build-up of the military complex must cease, and the use of military force as a means of resolving conflict must be rejected. A radical reduction of the military budgets of the world must occur and the funds released for ecological and humanitarian purposes. Peace is not merely the absence of war but the pursuit of environmental, social justice, economic, spiritual and cultural well-being.

7. 8. the decision-making process should be clearly defined, transparent, accessible and equitable. Criteria in decision making should be revealed, and the public and affected communities should be

involved at the time of the formulation of the terms of reference and through the process.

9. The international community must condemn and disallow the exporting of products deemed to be unsafe in a state where there are advance testing procedures to other states with less advanced testing procedures Since the first United Nations Conference on the Environment in Stockholm in 1972 we have come to realize that the threats to the biosphere which sustains all life on this planet have increased in rate, magnitude and scale that inaction is negligent. The international community has enough information about the pending state of ecological irreversibility that it must act immediately (proposal for NGO Earth Charter, Rio, June, 1992)

The precautionary principle shall be extended to require those who wish to intervene in the ecological commons to have to justify their intervention and demonstrate the safety of their intervention. The full environmental costs shall be considered in any proposed development project. (NGO Earth Charter, Rio, June, 1992)

REGULATIONS RELATED TO PESTICIDES

Authorized body for making regulations related to pesticides

“The Lieutenant Governor in Council may make regulations” (BCEPA 112.1)
Without limiting subsection (1) the Lieutenant Governor in Council may make regulations

- specifying and defining what constitutes an unreasonable adverse effect in particular or general circumstances” (BCEPA 112.2 a)
- classifying substances as pesticides and designating a pesticide as a restricted use pesticide” (BCEPA 112.2)
- respecting the manner in which a pesticide is contained, transported, stored, prepared mixed, applied or sold” (BCEPA 112.2c)
- prescribing the conditions for the disposal of a pesticide, pesticide container, equipment or a container used to store, prepare, mix or apply it” (BCEPA 112.2d)
- prescribing the records to be maintained by a person or class of persons who stores, prepares, mixes, applies, transports, sells or disposes of a pesticide” (BCEPA 112.2e)
- defining standards of competence and requirements for a person to obtain a licence, permit, certificate or pest management plan” (BCEPA 112.2f)
- defining standards of competence and requirements for a person training others in the application of pesticides” (BCEPA 112.2g)
- requiring that a person or class of persons referred to in paragraph (e) be bonded, subject to terms he or she considers appropriate, under the Bonding Act” (BCEPA 112.2h)
- exempting a person, class of persons, body of water or land area from this Act where its application may be unnecessarily restrictive ”(BCEPA 112.i)

- respecting the requirement and content of pest management plans” (BCEPA 112.2j)
prescribing pesticide monitoring standards and practices” (BCEPA 112.2

() **THAT** in March 1994, I was invited to give a presentation on the Framework Convention on Climate Change at the annual conference on International Environmental Law, at the law School in Eugene Oregon. I pointed out that all signatories had incurred an obligation to reduce greenhouse gas emission to 1990 levels by the end of the century, (2000); and above all the Framework Convention on Climate Change is one of the few International instruments signed and ratified by the US.
EXHIBIT

() **THAT** in March 1994 I attended the Globe 1994, meeting where I attended the session on international law, regulations and I continually advocated Mandatory International Normative Standards to drive industry. I circulated a petition Globe 1994 related to compliance with the Convention on Biological Diversity .

() **THAT** at the session on regulations at Globe 1994, corporations held a panel on environmental reporting. A representative from Monsanto was declaring that they had been working with environmental groups and that they had had fewer legal suits as a result of environmental reporting. I intervened and commented that I was surprised that he would not have been called into court for misrepresentation through his claiming that the production of genetically engineered foods would be supported by environmental groups.

() **THAT** in 1994, I drafted a formal petition for the Green Party of BC related to Clayoquot Sound
EXHIBIT

PETITION

TO THE HONOURABLE HOUSE OF COMMONS OF CANADA

IN PARLIAMENT ASSEMBLED

The Petition of the undersigned residents of Canada who now avail themselves of their ancient and undoubted right thus to present a grievance common to your Petitioners in the certain assurance that your Honourable House will therefore provide a remedy

THE GREEN PARTY OF BC.
calls upon the Government of Canada
(1)

to seek an advisory opinion from the International Court of Justice on Canada's compliance with the Convention on Biological Diversity as it applies to forests including community watersheds.

(2)

to seek an advisory opinion on whether the granting of an injunction (internal law) may not be in violation of section 27 of the Convention of the Law of Treaties

3

To seek an advisory opinion from the International Court of Justice on whether trials of indigenous peoples and forest protectors have not been in violation of sections of the International Covenant on Civil and Political Rights.

Call upon the Attorney General of British Columbia to cease all proceedings against citizens who have been arrested in Clayoquot Sound, and press the prosecution against Mac Millan Bloedel for its infractions, and prosecute the known people who have imprisoned the bus, and attacked the peace camp.

WHEREAS

- The "World Charter for Nature" passed by the General Assembly" in 1982, enunciated the following principles that

Every form of life is unique, warranting respect regardless of its worth to [humans] and to accord other organisms such recognitions, humans must be guided by a moral code of action"

"Lasting benefits from nature depend upon the maintenance of essential ecological processes and life support systems, and upon the diversity of life forms, which are jeopardized through excessive exploitation and habitat destruction by {Humans}" [humans] must acquire the knowledge to maintain and enhance [their] ability to use natural resources in a manner which ensures the preservation of the species and ecosystems for the benefit of present and future generations.

"Activities which are likely to pose a significant risk to nature shall be preceded by an exhaustive examination; their proponents shall demonstrate that expected benefits outweigh potential damage to nature, and where potential adverse effects are not fully understood, the activities should not proceed."

- Since 1972, Canada has made significant international commitments to human rights, equity, social justice. ecological preservation, and ecologically sound practices, (Universal Declaration of Human Rights , 1948; International Covenant on Civil and political Rights International Covenant of Social, Cultural Rights; Environmental Conference in Stockholm, 1972; UN Conservation of Natural Heritage, 1972; the World Charter of Nature, 1982; Global Biodiversity Strategy, 1992; the Caracas Declaration 1992; Biodiversity

Convention, Climate Change Convention and Agenda 21, 1992). The action to condemn and in some cases imprison individuals who call for Canada's compliance to these international, national and provincial commitments has been in direct violation of principles of equity, social justice and human rights.

- For years, through its forest practices, Canada as well as the forest Industry has been in violation of international law., and even in violation of its own federal and provincial law. Through non-compliance with its international obligations, and with national and provincial Acts, the government has permitted devastation of its forests; this devastation is now recognized widely and condemned by the international community. This recognition is reflected in the statement by the German Biologist, Dr. Schutt.

The practice of clearcutting, followed by [broadcast burn] artificial reforestation has undoubtedly many technical and organizational advantages. In the course of time, however, soil scientists and ecologists found out that the practice of clearcutting automatically leads to considerable drawbacks:

- wounding of the soil surface through logging operations. risk of erosion
- high irradiation and higher climatic extremes alter the microclimate, the flora and the microflora and deteriorate the growing conditions for a number of valuable tree species. Soil compression and a reduction of species richness occur

- An accelerated decomposition of organic matter occurs, combined with a wash out of nutrients, and the eutrophication of ground water, rivers and lakes (Environmental Ethics Conference, 1992, Vancouver)

as well as in the recent IUCN (World Conservation Union) Resolution January 25, 1994

MINDFUL of the fact that such ancient forests on Vancouver Island and on the mainland-coast of British Columbia are disappearing at a rapid rate as a result of practices that have, to date, not been ecologically sustainable;

- Section 60 of the Forest Act calls for suspension of tree farm licensees if the licence holder has caused harm to the natural environment. Throughout B.C. environmentalists have been documenting evidence of non-compliance to the Forest Act. The Fisheries Department has documented evidence of violation by the forest industry of section 33 of the Fisheries Act.

- As a result of industry's violation of the law and Governments' failure to enforce the federal and provincial Acts, irreparable harm to the environment has ensued. Over 1000 Vancouver Island citizens have been arrested, condemned as criminals and in some cases imprisoned because they call for compliance to obligations, attempt to prevent irreparable harm, and demand that environmental law be enforced.

In the latest case, the protesters in Clayoquot Sound have been condemned as criminals because of their non-compliance with an injunction to prevent them from preventing irreparable harm. On the other hand, McMillan Bloedel has been causing irreparable harm, and governments have

failed to suspend tree farm licence as required under section 60 of the Forest Act of British Columbia.

Traditionally, the equitable remedy of injunctions is deemed necessary to prevent irreparable harm. In 1985, the court concurred with this conception in McMillan Bloedel vs. Mullin where it was decided that

Indians, ...will be deprived of valuable ecological rights, and in further light of the fact that irreparable harm will not result to the Logging Company if timber harvest is delayed pending an expedited adjudication of issue [1985, BCD Civ 1892-08]

Now, the courts have appeared to misconstrue the concept of irreparable harm: those who cause irreparable harm (industry) through non-compliance with international obligations, national and provincial legislation are granted injunctions to facilitate their continuing to cause irreparable harm, while citizens are condemned as criminals for not complying with the injunctions granted to facilitate irreparable harm.

- Section 15 of the Canadian Charter of Rights guarantees citizens equality before and under the law
- the current court proceedings against citizens in Clayoquot are in contravention of the International Covenant on Civil and Political Rights, to which Canada is a signatory

WE THE GREEN PARTY OF CANADA

call upon the Attorney General of British Columbia to cease all proceedings against citizens who have been arrested in Clayoquot Sound, and press the prosecution against Mac Millan Bloedel for its infractions, and prosecute the known people who have imprisoned the bus, and attacked the peace camp.

() THAT I wrote and circulated CHARTER OF ECOLOGICAL PRINCIPLES

PRINCIPLE MUST DRIVE INDUSTRY NOT INDUSTRY DRIVING PRINCIPLES

Legend

Underlined: what has already been agreed to internationally

Bold: what still needs to be done

CHARTER OF ECOLOGICAL PRINCIPLES

This Charter draws from international obligations that have already been agreed to internationally. The Charter draws from both obligations undertaken by states through UN resolutions such as the "World Charter of Nature", globally agreed to documents such as the United Nations Conference on Humans and the Environment (Stockholm, 1972), The Rio Declaration (UNCED, 1992) and Agenda 21 (UNCED, 1992) and the legally binding

documents such as the Vienna Convention on Ozone (1986), the Montreal Protocol (1987), The Basel Convention (); Convention on Biological Diversity (UNCED, 1992, in Force, 1993) and the Convention on Climate Change (UNCED, 1992, in force 1993), and the Law of the Sea (in force 1994).

NOTE: Article 18 of the Vienna Convention Treaty stipulates that if a state has signed a treaty there is an "obligation not to defeat the object and purpose of a treaty prior to the entry into force"

The following principles have been agreed to internationally

International obligations must be fulfilled as being not the maximum but the minimum standards to follow

Transference of agreed to principles to state practices

The principles set forth in the present Charter shall be reflected in the law and practice of each State, as well as at the international level (World Charter of Nature)

Inherent worth of nature

ensuring that every form of life is unique, warranting respect regardless of its worth to man

[human], and to accord other organisms such recognition's, man [human] must be guided by a moral code of action (World Charter of nature)

Respect for essential processes

Nature shall be respected and its essential processes shall not be impaired

Urgency of conserving nature

Humans can alter nature and exhaust natural resources by their actions or the consequences and, therefore, must fully recognize the urgency of maintaining the stability and quality of nature and of conserving natural resources and nature (World Charter of Nature)

Moral code of action

ensuring that every form of life is unique, warranting respect regardless of its worth to man [humans], and to accord other organisms such recognition's,

man [human] must be guided by a moral code of action (World Charter of nature)

Enunciation of the primacy of the ecosystem

Ensuring that in all decisions made about the environment that the ecosystem be given primacy

Invocation of the precautionary principle

where there is a threat of serious or irreversible damage, lack of full scientific certainty *should* shall not be used as a reason for postponing measures to avoid or minimize such a threat (from the Biodiversity Convention)

Enunciation of the principle of doubt

Activities which are likely to pose a significant risk to nature shall be preceded by an exhaustive examination; their proponents shall demonstrate that expected benefits outweigh potential damage to nature, and where potential adverse effects are not fully understood, the activities should not proceed (World Charter of Nature)

Enunciation of the "Cautionary" Principle

Every proponent of an intervention in the ecosystem must demonstrate that the intervention will not cause harm to the environment or will not create ecologically unsound wastes

Adoption of "prevention technologies — technologies that emphasize "protecting, conserving and sustaining the environment from the beginning, and thus avoiding the cycle of rectification of error.

Non introduction of hazardous products in the environment

the onus of proving the non-hazardous nature of the product will be on the proponent of this new type of product [after a full life cycle analysis of all the potential environmental harm by non-vested interest parties]

Environmental Assessment review

Introduce appropriate procedures requiring environmental impact assessment of its proposed projects that are likely to have significant adverse effects on Biological diversity with a view to avoiding or minimizing such effects, and where appropriate, allow for public participation in such procedures (Article 14, 1A, Convention on Biological Diversity)

Assertion of the avoidance of activities

Activities which are likely to cause irreversible damage to nature shall be avoided (World Charter of Nature)

Recognition of interconnectedness with nature

Humankind is a part of nature and life depends on the uninterrupted functioning of natural systems which ensure the supply of energy and nutrients

Reaffirmation of intergenerational equity

Reaffirming that man [humans] must acquire the knowledge to maintain and enhance their ability to use natural resources in a manner which ensures the preservation of the species and ecosystems for the benefit of present and future generations (World Charter of Nature)

Commitment to non-transference of harmful substances and activities

States should [Shall] *effectively cooperate to discourage or prevent the relocation and transfer to other States of any activities and substances that cause severe environmental degradation or are found to be harmful to human health* (Rio Declaration)

(b) identifying, preserving and preventing the loss or reduction of Biological Diversity

[wording in part from the Convention on Biological Diversity]

(b 1) mitigating climate change by addressing anthropogenic emissions by sources and removals by sinks of all greenhouse gases not controlled by the Montreal Protocol, and measures to facilitate adequate adaptation to climate change [wording from the Climate Change Convention]

(c) Achieving the goal of zero pollution in the province

(e) applying the principles of pollution prevention as the foundation of environmental protection

[from definition of "pollution prevention"]

(a 0) _ the prevention of the use, generation and release of any substance into the environment in such a manner or quantity as to cause pollution [repeated from 41 1)

(a) the elimination of the use of polluting substances

(b 0) the substitution of polluting substance with non-polluting substances

(b) the substitution of polluting substances with less polluting substances

(c) the reduction in the introduction and use of **[non-renewable]** resources and polluting substances

(d) the elimination and reduction in the generation of polluting substances

[e, f, g removed because not deemed appropriate for prevention; Discussion Environmental Group, February 19]

(f0) Confirming the responsibility of government to set up a non-vested interest board or panel with varying levels of expertise and experience to do "arms-length" research into the true environmental impacts of substances and activities by carrying out "life cycle analyses" (recommendations from various chapters of UNCED Agenda 21) (Suggested Environment meeting, February 19)

(f) Confirming the responsibility of producers for sound environmental stewardship of products through all phases of a product's life;

(g) *ensuring the comprehensive and integrated consideration of environmental and socioeconomic effects in public policy-making in British Columbia. [Deemed to be inconsistent with the overriding purpose of the Act]*
Ensuring that in all decisions made about the environment that the ecosystem be given primacy (Suggested Environment meeting, February 19)

(h0) International obligations must be fulfilled as being not the maximum but the minimum standards to follow (proposed, Discussion, February 19)

(h) Recognizing that British Columbia residents have an interest in and a responsibility of minimizing their impact upon the regional, national and global environment and global environmental well-being (Suggested Environment meeting, February 19)

(i) using the knowledge and experience of British Columbia residents in the formulation of decisions affecting the environment,

(j) confirming the responsibility of polluters to pay for the costs of their actions (also recommended in Agenda 21) but also recognizing that no pecuniary payment of costs for environmental destruction can ever fully redress the loss to the environment, and reaffirming that the prevention of pollution and environmental destruction should be by using "prevention technologies"

(k) ensuring that every activity or substance that could prevent the protection, conservation and sustainability of the environment will be included under this Act, regardless of whether the activity or substance is presumed to be covered under another Act (proposed, February 19)

(l) ensuring that no citizen will be prosecuted for advocating or acting to promote the purposes of the act (Suggested, February 19)

(m) promoting the research into the development and introduction of renewable, non-polluting (protection technologies)

(n) ensuring that compensation can never be used as reason for not exercising the duty under the act to protect, conserve and sustain the environment (proposed, Discussion, February 19)

(o) agreeing that any compensation given shall be assessed on the basis of past environmental performance and environmental costs and subsidies, and that any awarded money shall be (used by the compensated party to create employment within B.C.) placed in a job creation fund (Suggested, Discussion, February 20)

(p) ensuring the maintenance and enhancement of the quality of the environment (moved from section 2.a, February 20)

2. To achieve the purposes of this Act, all persons who exercise functions and powers under this Act shall have regard to the importance of the purposes of this act ((proposed, February 20)

(a) the maintenance and enhancement of the quality of the environment

(b) the actual or potential effect of an activity or natural process on the whole of the environment, including its actual or potential effect on the health and

safety, and the economic, cultural and social well-being of people and communities

(c) the potential costs and benefits of any objective, policy, or proposal to the environment

Scope

(1) For the purposes of this Act, introduction of a substance into the environment means depositing the substance on or in or allowing or causing the substance to flow or seep on or into any land or water or allowing or causing the substance to be emitted into the air and includes indirect means of introduction into the environment

(1*) For the purpose of this Act, the impact of an activity on the environment means the engaging in any activity which could prevent the protection, conservation and sustainability of the environment will be included under this Act, regardless of whether the activity or substance is presumed to be covered under another Act (proposed, February 19)

2. Except where this Act or the regulations specifically provides to the contrary, this Act applies to the whole environment of British Columbia **{The onus of proof for exclusion from the Act must reside in the proponent for exclusion (proposed, February 20)}**

3. Where there is conflict between this Act, its regulations or an authorization under this Act and any other act or regulations there under, this Act its regulations and authorizations issued or subsisting under this Act apply, **except when provisions in other Acts or regulations contribute to the fulfillment of the purposes of the Environmental Protection Act better than those contained in this Act**

(a) where this Act or its regulations provide to the contrary, or

(b) as may be prescribed by the Lieutenant Governor in Council

4. Nothing in the Soil Conservation Act shall be taken to prevent the establishment within a local authority of any facility for the disposal of waste in accordance with this Act **providing that the establishment is deemed to fulfill the purposes of the Environment Protection Act. (Proposed, February 20)**

5. The Crown is bound by this Act, except where this Act or the regulations specifically provide to the contrary

[Not yet commented on rest of section]

Part 2

Environmental Bill of Rights

Public Trust

30. (1) Every resident of British Columbia has a right to protect the environment and the public trust from any pollution, impairment or destruction

(2) The government, as trustee, has a duty to conserve and protect the environment of British Columbia

3. Citizens of British Columbia have the right to have the environment conserved and protected (Suggested Environment meeting, February 19)

4. Citizens of British Columbia have to right to expect that no person shall use **generate or release**, waste or recyclable maters, or any other substance **(including fugitive gas or leachate)** into the environment in such a manner or quantity as to cause pollution

[moved from 41 (1) (Suggested Environment meeting, February 19)

5. Citizens of British Columbia have the right to expect that the government will live up to its obligations (Doctrine of Legitimate Expectation)

6. Present and future generations of British Columbia have the right to an ecological heritage (Suggested Environment meeting, February 19)

7. ensuring that no citizen will be prosecuted for advocating or acting to promote the purposes of the act (Suggested Environment meeting, February 19)

Right of action

31. (1) The Attorney General or any resident of British Columbia may commence an action in the Supreme Court against any person who has polluted or otherwise degraded the environment and the public trust or who is likely to do so.

2. A person may commence an action under subsection (1) without having to establish that there is , has been or is likely to be an infringement of an authorization issued under this Act or an approval, permit, licence, standard, regulation, rule or order issued by or under an Act listed in Schedule A.

3. A person who commences an action under subsection (1) shall provide notice of the proceedings to the Attorney General and the Minister.

4. This section does not abrogate those common law rights that would normally be available to a plaintiff to commence an action.

5. the need for intervener funding

Standing

32 A person may commence an action under section 31 without having to show that he or she has

(1) any greater or different right, harm or interest than any other person; or

(2) any pecuniary or proprietary right or interest in the subject matter at issue.

Burden of proof.

33.

(1 a) Every proponent of an intervention in the ecosystem must demonstrate that the intervention will not cause harm to the environment or will not create ecologically unsound wastes

If the proposal involves anything that could be hazardous, 0 emissions and waste must apply; if the proposal involves lowest achievable discharge rate should apply (February 19, discussion)

(1 b) the plaintiff shall establish a prima facie case showing that **the defendant's proposed activities are likely to pollute or degrade the environment**

(1) the plaintiff shall establish a prima facie case showing that the defendants' activities have polluted or degraded the environment or is likely to do so

(1 c. In a prosecution for a contravention the burden of proving compliance is on the defendant [Section 46, ss 4]

2. Where a prima facie case under subsection (1) is established, the defendant may rebut the prima facie case by showing that there is no feasible and prudent alternative to the defendant's action

[If so, there must be some criteria for determining feasible and prudent alternatives in the light of the purpose of the Act; "providing prevention, conservation and sustainability of the environment" determined by an advisory, non-vested interest board or panel with representation from varied areas of expertise and experience]

3. It is a defence to an action commenced under this Act that the defendant's action is authorized under this act or an Act listed in Schedule A, unless the plaintiff can establish, on balance of probabilities, that the standard is inadequate to protect the environment and that the defendant's action has caused, or is likely to cause, severe or irreparable contamination or degradation of the environment.

The burden of proof must be on the defendant to demonstrate that the defendant's action has not caused or is not likely to cause, severe or irreparable contamination or degradation of the environment (Discussion, February 19)

Limitation Period

34. The limitation period for an action under section 31 of this Act is postponed and time does not commence to run until the plaintiff becomes aware, or ought reasonably to have become aware, of the identity of the defendant and of the material facts surrounding the claim

Appointment of minister's environmental mediator

37 (1) Subject to section 140, the Minister may, *where he or she deems it advisable* **where it is deemed advisable** and where the conflicting parties concur, appoint an environmental mediator acceptable to the parties to mediate between persons involved in an environmental conflict.

(2) when a mediator is appointed under subsection (1), the mediator shall, within 6 weeks after completion of the mediation, report to the results of the mediation to the Minister and the parties

38 (c) award damages to (iv) any person who has a concern for the environment

39 ...licence, standard, regulation, rule or order issued under an Act listed in Schedule A affects **the environment** and rights of a person, **any** person shall be furnished with a written statement of the decision setting out.... **(c) any dissenting opinions (Discussion, February 19)**

[Further comment to come on subsequent sections]

Documentation of meeting October 28, 1993

Evidence in Act of responsibility for Inventory

Inventory of Land and forests

2. the chief Forester shall develop and maintain an inventory of the land and forests in the Province.

3. The chief Forester shall assess the land in the Provinces for its potential for

- a) trees growing continually
- b) provides forest or wilderness-oriented recreation
- c) producing forage for life stock and wildlife
- d) Conservation of wilderness
- e. accommodating other forest uses

7. 1 Chief Forester shall determine an AAC except TFL

b. Every TFL according to licence

3. determination of AAC

a) the rate of timber production in the area taking into account

(i) the composition of the forest and its expected rate of growth in the areas;

(ii) expected time it will take the forest to become re-establish

(iii) silvicultural treatments be applied to the area

Tree farm licensees

11. Each licence shall be evaluated in respect of environmental quality and the management of water, fisheries and wildlife resources

20. Rights in tree Farm licensees

Division 5 Tree Farm licensees

(5) following the public hearing the Minister shall evaluate each application including its potential for

(a) creating or maintaining employment opportunities and other social benefits

(d) meeting the objectives of the crown in respect of Environmental quality and the management of water, fisheries and wild life resources and

27.1. same as above

Content of TFL

() THAT on November 16, 1993

I Contacted by Dave Kelt about investigation related to Section 59 and 60

COMMENT

the response of one of the parties contacted was "it would take 3 days of research to audit our own records where we did not exercise the best judgment (Keld) this would cost about \$600

the contact concluded that " this application is asking us to audit our record where we did not exercise the best judgment.

suggested changes name districts 4 districts last 2 years specific records.

() THAT in 1993, Andrew Gage and I made a Submission to the Ombudsman's office

EXHIBIT

1. We request the Ombudsman's office to undertake to investigate the following implications resulting from possibly unfair administrative decisions:

Often intact ecosystems that have been deserving of preservation have been irreversibly destroyed because it was deemed necessary, if these ecosystems were to be withdrawn from an existing tree farm licence, for governments to pay compensation. In the past, compensation has been assessed purely from an economic basis without taking into consideration the true environmental costs. In order to assess the environmental costs of the destruction of significant ecosystems one may need to examine if damage to the natural environment within a significant ecosystem has occurred. Section 60 of the Forest Act does permit the suspension of licensees if environmental damage to the natural environment has occurred as a result of non-compliance with the Forest Act. The potential environmental costs of destroying significant ecosystems as a result of the Ministry of Forests not suspending tree farm licensees when there was evidence of destruction to the natural environment is necessary to include in the assessment of compensation. Although, often the companies that have contributed in the past to the destruction of significant ecosystems may not be the current holders of the specific tree farm licence in the area containing the significant ecosystem, most of the companies are still functioning in British Columbia. This investigation of the environmental costs would involve the whole province so that there would need to be a global assessment of environmental costs incurred by the companies, not a valley to valley assessment.

October 1993

Jack Boomer called Joan Russow on Tuesday, October 19, to follow up the request of information from the Ministry of Forests. He informed her that the information was not forthcoming because of a provision in the Freedom of Information Act, which permitted Ministries to withhold information if the

Ministry would be publishing the information within a reasonable period of time. Russow asked if the information that was going to be published was the original research or the Ministry's interpretation of the research. Boomer responded that it would be the Ministry's interpretation of the research. Russow pointed out that if this were the case the Freedom of Information Act would facilitate the Ministry to avoid peer review of its research by an informed and concerned public.

() **THAT in 1994**, I responded to a request from the CEN to draft a set of guidelines for FEARO, overseas CIDA projects:

EXHIBIT:

() **THAT** I had input into the 1994 BC CEPA

EXHIBIT

1994 INPUT INTO
PUBLIC INVOLVEMENT
B.C. ENVIRONMENTAL PROTECTION ACT FOLLOW-UP TO
CONSULTATION ON FEB 19, 1994
3 Who is the "Public"

While a definition for the term "public" is not provided in CEAA, guidelines will have to be developed to determine who constitutes the "public" for purposes of projects and activities outside of Canada. In developing these guidelines, consideration will have to be given to a number of broad issues including: the sovereignty of foreign nations, the spirit and intent of CEAA, the widely differing institutional capabilities and socio-political context of recipient countries, international agreements and arrangement to which Canada is party, timeliness and cost. These suggest the need for a definition rigorous enough to reflect the principles that underline CEAA, yet sufficiently flexible to be relevant in a variety of circumstances.

- to address the issue of "who is the 'public'" the government could bring together informed and concerned members of the public, drawing upon a wide range of expertise and experience, as well as upon the local members of the community that are concerned about humanitarian development. In no way should the involvement of the public be based on the promotion of particular vested interests. A distinction could be made between vested interest for individual gain and public concern for the commons. The current round table process which sets up an arena of competing interests through "multistakeholders" rarely brings together the people that have a larger vision of comprehensive solution for the commons.
- To ensure that the "public" is involved in establishing the terms of reference and throughout the project

[all contained in UNCED documents].

in 1983 the science council of Canada made an important distinction between a "reasoned outcome" and a "negotiated outcome"; the establishment of standards should not be part of a negotiated outcome.

- There must be a continuous vigil on substance. Perhaps given that we do not understand the long-term synergistic effects or the long-term effect of combinations. Introduction of no new chemicals should become a policy. An assumption is often made that the effects are additive or independent rather than exponential or....
- The problem of limitation of knowledge must be recognized. often scientists are not capable of anticipating impacts because they don't even know what they are looking for and consequently are not able to find it. For example, CFCs were initially considered to be non-toxic, not bioaccumulation, and were hailed as the solution. no one would have anticipated the problem with the ozone.

See Financial Administration Act see act schedule III re CEPA 54)

Plain text: original draft document of the proposed BC Environment Protection Act, February, 10, 1994

Italics: Sections or sentences that should be left out

Italics and outline Notwithstanding case

Underlined suggestions from international or national documents, such as CEPA

Bold and underlined: additions from other NGO documents

Bold (September 27) suggestions of modification of documents such as CEPA

Bold (February 19, 1994) suggestions that were presented to the meeting held in Vancouver

Bold (February 20, 1994) suggestions added from the following day

B.C. ENVIRONMENTAL PROTECTION ACT

DECLARATION

It is hereby declared that the preservation and the protection of the environment is essential to the well-being of Canada and British Columbia (CEPA)

PREAMBLE

• Whereas the presence of *Toxic substances contaminants* in the environment is a matter of national and provincial concern.

• **Whereas the diminution of ecosystems and the release of contaminants into ecosystems has occurred**

• Whereas the presence of toxic substances, once introduced into the environment, cannot always be contained within geographic boundaries (CEPA)

• Whereas the Government of Canada, and the Government of British Columbia in demonstrating leadership should establish national and provincial environmental quality objectives, guidelines and codes of practice, and enforceable technical regulations.
part 1.

• Whereas Canada must be able to fulfill its international obligations in respect of the environment: (CEPA)

DEFINITIONS

NOTE THAT THE DEFINITIONS IN KABEL FONT ARE FROM THE BACT DOCUMENT

Aboriginal government

Administrator means the administrator of Environmental Emergency Services Coordination Office (BCEPA)

Air means the atmosphere but does not include the atmosphere inside

(a) an underground mine, or

(b) a place or category of places exempted by order of the Lieutenant Governor in Council

Adverse effect

means any effect that causes, has caused or contributed to or is likely to cause or contribute to significant damage to [the ecosystem, or loss or reduction of biodiversity, or elimination of carbon sinks] or loss of use of the environment and includes pollution and the effects of an environmental accident (BCEPA).

(a) any significant and widespread effect which any reasonably be anticipated to impair wildlife, aquatic life, natural resources or environmental quality, or

b) any effect that results in or contributes damage to the environment (Arizona} BCEPA)

Ambient criteria, or environmental quality criteria

refers to levels of contaminants in the environment that must be zero use, production, and release in all cases where a toxic substance is persistent or bioaccumulative. It also applies when a substance will generate persistent or bioaccumulative toxic byproducts or breakdown products during its productions, use or disposal (zero Toxics Alliance Statement of Principles) that must not be exceeded to protect the [ecosystem — water, air, sediment, soil or biota) and] the use of the air, water or soil, human health and the health of the environment. *The criteria have no legal standing for enforcement purposes.*

The Framework of mandatory standards and technical regulations will have legal standing so that the mandatory standards and technical regulations will be enforceable, and will give incentive to the development of BEST,

Air contaminant means any solid, liquid, gas or odor or combination of any of them that, if emitted into the air, would create or contribute to the creation of air pollution (CEPA)

Air contaminant means a substance that is emitted into the air and that

(a) injures or is capable of injuring the health or safety of a person

(b) injures or is capable of injuring property or any life form

(c) interferes or is capable of interfering with visibility

(d) interferes or is capable of interfering with the normal conduct of business

(e) causes or is capable of causing material discomfort to a person, or

(f) damages or is capable of damaging the environment (CEPA)

Air pollution means a condition of the air, arising wholly or partly from the presence therein of one or more air contaminants, that

(a) endangers the health, safety or welfare of persons

(b) interferes with normal enjoyment of life or property

(c) endangers the health of animal life, or

(d) causes damage to plant life or to property: (BCEPA)

(Ambient air or water quality

refers to the overall or general condition of air or water in a region outside the zone of influence of discharges in contrast to local conditions which may be related to a specific source of contamination. (Water Management Division, Principles for Preparing Water Quality Objectives in B.C, 1986)

Authorization

means a permit, approval, licence, pollution prevention plan, operational certificate, order, certificate, pest management plan, certificate of compliance, conditional certificate of compliance, approval in principles (BCEPA)

Analyst means a person designated by the executive director under section (19 5) (BCEPA)

Analyst means a person or a member of a class of persons designated as an analyst under subsection 99(1)

Biological matter means anything which consists of or includes
(a) tissue or cells (including gametes or propagules) or subcellular entities, of any kind, capable of replication or of transferring genetic material or
(b) genes or other genetic material, in any form, which are so capable, and it is immaterial, in determining if something is or is not any organism or biological matter, whether it is the product of natural or artificial processes of reproduction and, in the case of biological matter, whether it has ever been part of a whole organism (BCEPA)

Biotechnology

means the application of science and engineering in the direct or indirect use of living organisms or parts or products of living organisms in their natural or modified forms. (CEPA)

Bioaccumulation

means the increase in levels of toxic substances in an organism over time due to continued exposure. This can only happen if the substances do not break down quickly and are essentially stored in some part of the organism. (Fox). Bioconcentration of a biologically active contaminant as it moves up the food chain should also be considered under "bioaccumulation." DDT in water could be present in PPB but as it moves up food chain in the top consumer it could appear as parts per million or even greater.

Biodiversity

is defined as "the variability among living organisms from all sources including, *inter alia*, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part; this includes diversity within species, between species and of ecosystems (Convention on Biological Diversity, UNCED, 1992)

Biomedical waste means

- (a) a substance that is prescribed as a biomedical waste by the Lieutenant Governor in Council, and
- (b) Where the Lieutenant Governor in Council prescribes circumstances in which a substance is

Carbon sinks

can be organic as in old growth forests or inorganic as in sedimentary rock

sinks and reservoirs of greenhouse gases, including biomass, forests and oceans, as well as other terrestrial, coastal and marine ecosystems. (Framework Convention on Climate Change, 1992)

Conservation means the planning, management and implementation of an activity with the objective of protecting the essential physical, chemical and biological characteristics of the environment against degradation (BCEPA)

Consumer means a user or consumer of a product, substance, or material, but does not include the producer of the product, substance or material

Contaminant

is any solid liquid gas, odor, heat, sound, vibration radiation or combination of any of them resulting directly or indirectly from human activities that may cause an adverse effect. (draft regulation for clean Air Program, 1990)

Contaminated soil means

- (a) any soil sediment that is prescribed as a contaminated soil by the Lieutenant Governor in Council and
- (b) where the Lieutenant Governor in Council prescribes circumstances in which a soil or a sediment is a contaminated soil, a soil that is present in those circumstances (BCEPA)

Contingency plan means a plan which documents preparations and procedures for managing environmental accidents, including

- (a) a prior assessment of the potential hazard
- (b) predictions of the probable effects of an environmental accident
- (c) an assessment of the health and environmental costs of an environmental accident
- (d) measures to minimize risk
- (e) shut down procedures
- (f) communication networks to be used
- (g) notification procedures for the public and response agencies including
 - i) police departments in the vicinity
 - ii) fire departments in the vicinity
 - iii) emergency response teams
 - iv) ambulance and medical services
 - v) federal and provincial governments and local authorities
- (h) evacuation procedures for employees and the public
- (i) activities to protect human health
- (j) abatement, control and containment measures to minimize adverse effects
- (k) inventories of equipment available for spill response and cleanup
- (l) any other items prescribed by regulation (BCEPA)

Criteria means numerical limits or narrative statements approved by the executive director for application province wide and used as general guidance in setting site specific standards (BCEPA)

Criteria (objective?)

means numerical limits or narrative statements with respect to substances which provide policy direction on a provincial basis in the setting of objectives and standards. (BCEPA) [BACT document]

Decision means

- (a) the making of or refusal to make an order
- (b) an exercise of, or refusal to make a power
- (c) the issue, amendment, renewal, suspension, refusal or cancellation of an authorization, not including a regulation or a bylaw, or

(d) the inclusion of any requirement or condition in an authorization, not including a regulation or a bylaw by manager, director or district director (BCEPA)

Director (BCEPA)

Discharge

the release into the air, land, water, soils, and sediment of substances

Ecosystem

is defined as "Ecosystem" means a dynamic complex of plant, animal and micro-organism communities and their non-living environment interacting as a functional unit. (Convention on Biological Diversity, UNCED, 1992)

Effluent means a substance that is discharged into water or onto land and that

- (a) injures or is capable of injuring the health or safety of a person
- (b) injures or is capable of injuring property or any life form
- (c) interferes or is capable of interfering with visibility in water
- (d) interferes or is capable of interfering with normal conduct of business
- (e) causes or is capable of causing material physical discomfort to a person or
- (f) damages or is capable of damaging the environment (BCEPA)

Environment

means the components of the earth and includes:

- (a) air, land, water, sediment, soils
- (b) all organic and inorganic matter, including living organisms such as humans and non-humans
- (c) the interacting ecological systems that include components referred to in subclauses (a) and (b)

Environment means the components of the Earth and includes

- (a) air, land and water
- (b) all layers of the atmosphere
- (c) all organic and inorganic matter and living organisms, and
- (d) the interacting natural systems that includes components referred to in Paragraphs (a) to (c) (CEPA) also (BCEPA)

Environmental accident and Emergency Fund means

Minor amendment

means an amendment to a permit or approval for any of the following purposes:

- (a) a change of ownership or name;
- (b) a change of legal address or mailing address;

Federal lands

means

land that belong to Her Majesty in right of Canada or in respect of which Her Majesty in right of Canada has power to dispose and all waters on and air above such lands CEPA 52, a)

Those submarine areas not within a province, adjacent to the coast of Canada and extending throughout the natural prolongation of the land territory of Canada to the outer edge of the continental margin or to a distance of two hundred nautical miles from the baselines from which the breadth of the territorial sea of Canada is measured, whichever is the greater, and the water and air above those submarine areas (CEPA 52 b)

...

h) a work or undertaking that, although wholly situated within a province, is before or after its execution declared by Parliament to be for the general advantage of Canada or for the advantage of two or more of the provinces (CEPA 52)

Fuel means any form of matter that in its primary use is combusted or oxidized for the generation of energy; (CEPA)

Hazardous waste

For the purposes of subsection (43.3) and sections 44 and 45 "hazardous waste means

(a) any dangerous goods, within the meaning of the Transportation of Dangerous Goods Act, that are a waste, within the meaning of the regulations made under that Act: or

(b) any substance specified on the List of Hazardous Wastes Requiring Export or Import Notification in Part III of Schedule II (CEPA)

Major amendments

any amendment to a permit or approval which is not a minor amendment, as defined (Public Notification Regulation, May 1994)

THE CHANGES BELOW SHALL ALL BE DESIGNATED AS MAJOR AMENDMENTS; TOO MUCH DISCRETIONARY POWER GIVEN TO MANAGER

c) a decrease in the authorized quantity of the discharge, emission, or stored material;

(d) and increase in; the authorized quantity of the discharge, emission or stored material that does not exceed 10% of the authorized quantity.

(e) a change in the authorized quality of the discharge, emission or stored material such that, in the opinion of the manager, the change has or will have less impact on the environment;

(f) a change in a monitoring program

(g) a change to the works, method of treatment or any other condition of a permit or approval such that, in the opinion of manager, the change has or will have less impact on the environment. (Public Notification Regulation, May 1994)

Minister or Ministers

"minister" refers to Minister of the Environment (CEPA)

“ministers” refers to Minister of the Environment and Minister of Health and Welfare

Nutrients

means any substance or combination of substances that, if added to any waters in sufficient quantities, provides nourishment that promotes the growth of aquatic vegetation in those waters to such densities as to
a) interfere with their use by human beings or by any animal, fish or plant that is useful to human beings or

Objective

means numerical limits or narrative statement with respect to substances which provide policy direction for application in specified regions, airshed or watersheds used in the setting of standards.

Persistent

means the property of a substance to resist degradation or decomposition in the environment (Fox)

Pollutant

includes not only chemicals but also heat, light and electro-magnetic radiation thermal discharges

Polluting substance

means any substance alone or in combination with other substances that causes or is capable of causing pollution if it were to escape into the environment

Pollution

means the presence in the environment of a substance or an activity that
(a) substantially alters the environment,
(b) impacts on the functioning of the ecosystem substantially or may impair the equitable and ecologically sound use of the environment *impairs the usefulness of the environment or*
(c) *cause a standard to be violated (BCEPA)*
or contributes to the diminution of the ecosystem by extracting substances that could cause the lessening of the functioning of the ecosystem

Pollution prevention

means to avoid the creation of polluting substances or to eliminate the release of these substances to the environment through *a hierarchy of activities including:*

The following is a list of prevention measures that should be addressed concurrently:

1. Applying the principles of pollution prevention such as the precautionary and the anticipatory principles
2. The prevention of the use, generation and release of any substance into the environment in such a manner or quantity as to cause pollution (Pollution Protection Act)

3. The adoption of BEST — technologies that emphasize "protecting, conserving and sustaining the environment from the beginning, and thus avoiding the cycle of rectification of error.

4. The adoption of the "cautionary principle," which can be expressed as follows:

Every proponent of an intervention in the ecosystem must demonstrate that the intervention will not cause harm to the environment or will not create ecologically unsound wastes

5. the elimination of the use of polluting substances

6. The substitution of polluting substance with non-polluting substances that themselves may not become a polluting substance through concentration imbalance

7. The elimination and reduction in the generation of polluting substances

8. The elimination of, and reduction in, the generation of polluting by products;

9. the reduction and phasing out of non-renewable resources in the extraction of resources, the production of substances, and the disposal of wastes

10. exclusion of substances of acute toxicity

Pollution prevention means to avoid the creation of polluting substances or to eliminate the release of these substances to the environment through a hierarchy of activities including:

(a) avoidance, elimination or substitution of polluting products;

(b) reduction in the use of pollution products;

(c) elimination of, and reduction in, the generation of polluting by products;

(d) reuse and recycling of polluting by-products;

(e) recovery of energy from polluting by-products; and if necessary,

(f) treatment and containment of pollution residual by-products;

(g) remediation of polluting residual by-products.

Precautionary principle

Where a substance has been specified on the Priority Substances List for a period of five years and the Ministers have not yet assessed whether the substance is toxic or capable of becoming toxic, any person may file a notice of objection with the Minister requesting that a board of review be established under section 89

capable of becoming toxic

Product stewardship

means the responsibility of producers for demonstrating that the introduction of a substance or activity will not have harmful ecological consequences *sound environmental stewardship of products* from the point of design or extraction to the point of final use and/or disposal. (Municipal Waste Reduction Branch)

Release includes discharge, spray, inject, inoculate, abandon, deposit, spill, leak, seep, pour, emit, empty, throw, dump, place and exhaust (CEPA)

significant amendment (CEPA)

Remediation means action to eliminate, limit, correct, counteract, mitigate or remove any substance or the negative effects on the environment or human health or any substance and includes, but is not limited to

- (a) preliminary site investigations, detailed site investigations, analysis and interpretation including tests, sampling, surveys, data evaluation, risk assessment and environmental impact assessment;
- (b) evaluation of alternative methods of remediation;
- (c) preparation of a remediation plan, satisfactory to the manager, including a plan for any consequential or associated removal of soil or soil relocation from the site;
- (d) implementation of a remediation plan;
- (e) monitoring, verification and confirmation of whether the remediation complies with the remediation plan, applicable standards and requirements imposed by the manager
- (f) other actions that the Lieutenant Governor in council may prescribe (BCEPA)

see above under minor amendment)

Substance

means any product, by-product or waste

Substance means any distinguishable kind of organic or inorganic matter, whether animate or inanimate, and includes

(a) any matter that is capable of being dispersed in the environment or of being transformed in the environment into matter that is capable of being so dispersed or that is capable of causing such transformations in the environment

(b) any element or free radical

(c) any combination of elements of a particular molecular identity that occurs in nature or as a result of a chemical reaction, and

(d) complex combinations of different molecules that originate in nature or are the result of chemical reactions but that could not practicably be formed by simply combining individual constituents,

and except for the purpose of sections 25 to 32 includes

(de) any mixture that is a combination of substances and does not itself produce a substance that is different from the substances that were combined

(f) any manufactured item that is formed into a specific physical shape or design during manufacture and has, for its final use, a function or functions dependent in whole or in part on its shape or design and

(g) any animate matter that is or any complex mixtures of different molecules that are contained in effluents, emissions or wastes that result from any work undertaking or activity; (CEPA)

Substance includes

- (a) any odour, sound vibration heat, electricity, electromagnetic radiation or form of energy
- and

(b) and genetically modified organism (BCEPA)

Sustainability

means the preservation/protection of nature and the equitable and ecologically sound use, *development and protection* of natural and physical resources

which enable people to meet their needs and the needs of the ecosystem without compromising the ability of future generations to meet their needs and the needs of the ecosystem, and includes the following considerations.

(a) the maintenance and enhancement of the life-supporting capacity of the environment,

(b) the efficient management of natural and physical resources.

the preservation of ecological heritage

(c) the use, development or protection of natural and physical resources in a way which provides for the social, economic and cultural needs and opportunities of present and future residents,

the preservation/protection of nature and the equitable and ecologically sound use of nature in consultation with indigenous representatives from the inherent indigenous governmental bodies in the areas

(d) where the environment could be *is* modified by human activity, and where there could be a possibility of irreversible damage, the adverse effects of irreversible change are fully recognized then the activity shall not proceed

and avoided or mitigated to the extent practicable.

(e) the use, development or protection of renewable natural and physical resources so that their ability to yield long term benefits is not endangered.

(BCEPA) through ecologically unsound and unsafe practices, and through culturally inappropriate practices.

Sustainability means the use, development and protection of natural and physical resources in a way, or at a rate, which enables people to meet their needs now without compromising the ability of future generations to meet their own needs, and includes the following considerations

(a) the efficient management of natural and physical resources

(b) the maintenance and enhancement of the life-supporting capacity of the environment

(c) the use, development or protection of natural and physical resources in a way which provides for the social, economic and cultural needs and opportunities of the present and future residents,

(d) where the environment is modified by human activity, the adverse effects of irreversible change are fully recognized and avoided or mitigated to the extent practicable

(e) the use, development or protection of renewable natural and physical resources so that their ability to yield long term benefits is not endangered;

[the above definition of 'sustainability' is derived from the NZ Resource Management Act] BCEPA [note not derived from environmental legislation]

Toxicity

is the potential or capacity of a material of being harmful to the health of a living organism. (Fox)

NOTE THAT TOXICITY SHALL BE THE GENERIC TERM AND WOULD INCLUDE DISCHARGES THAT WOULD NORMALLY BE ADDRESSED UNDER HAZARDOUS AND ATOMIC WASTES

Toxic [defined in article 11]

A substance is toxic if it is entering or may enter the environment in a quantity or concentration or under conditions

- (a) having or that may have an immediate or long-term harmful effect on the environment
- (b) constituting or that may constitute a danger to the environment on which human life depends or
- (c) constituting or that may constitute a danger in Canada **to ecosystem or to human life or health**

gTransition reaction intermediate

means a substance that is formed and consumed in the course of a chemical reaction (CEPA)

Waste includes

- (a) air contaminants
- (b) litter,
- (c) effluent,
- (d) refuse,
- (e) biomedical waste
- (f) special wastes
- (g) contaminated soil, and
- (h) any other substance prescribed by the Lieutenant Governor in Council, whether or not the type of waste referred to in paragraphs (a) to (e) or prescribed under paragraph (f) has any commercial value or is capable of being used for a useful purpose BCEPA

Waste stream management license (BCEPA)

water means water as defined in the Water Act and [the Water Resource Preservation and Protection Act] includes marine waters under the jurisdiction of the province, groundwater and ice (BCEPA)

White goods mean stoves, refrigerators, freezers, washers, dryers, dishwashers and similar appliance (BCEPA)

“Works” includes

- (a) a drain, ditch, sewer and waste disposal system including a sewage treatment plant, pumping station and outfall
- (b) a device, equipment, land and a structure that
 - (i) measures, handles, transports, stores, treats or destroys waste or a substance that is capable of causing pollution, or

- (ii) introduces into the environment waste or a substance that is capable of causing pollution
- (c) an installation, plant, machinery equipment, land or a process that causes or may cause pollution or is designed or used to measure or control the introduction of waste into the environment or to measure or control a substance that is capable of causing pollution, or
- (d) an installation, plant, machinery, equipment, land or a process that monitors or cleans up pollution or waste

Zero use 1.

zero use, production, and release of persistent and /or bioaccumulative toxic substances in the environment, workplace and home. Zero does not mean below some arbitrary level, or even beneath the level of detection. Zero means Zero. (Zero toxicity Coalition, July, 1994)

COMMENTS

Purpose of the Act

1. The purpose of this Act is to provide for the protection, conservation and sustainability of the environment by

ensuring that the full costs of pollution as reflected in a growing body of scientific evidence documenting pervasive health and environmental impacts must be considered rather than just the cost of implementing emission reduction measures (adapted from Resolution to support the ozone transport commission petition to the US EPA)

(a 0) ensuring that every form of life is unique, warranting respect regardless of its worth to man [humans], and to accord other organisms such recognition's, man [humans] must be guided by a moral code of action (World Charter of nature)

(b) identifying, preserving and preventing the loss or reduction of Biological Diversity

[wording in part from the Convention on Biological Diversity]

(b 1) mitigating climate change by addressing anthropogenic emissions by sources and removals by sinks of all greenhouse gases not controlled by the Montreal Protocol, and measures to facilitate adequate adaptation to climate change [wording from the Climate Change Convention]

(c) Achieving the goal of zero pollution in the Province

(d) protecting the environment by the application of the precautionary principle where there is a threat of serious or irreversible damage, **lack of full scientific certainty should not be used as a reason for postponing measures to avoid or minimize such a threat (from the Biodiversity Convention)**

(d 1) Activities which are likely to pose a significant risk to nature shall be preceded by an exhaustive examination; their proponents shall demonstrate that expected benefits outweigh potential damage to nature, and where potential adverse effect are not fully understood, the activities should not proceed (World Charter of Nature)

(e) applying the principles of pollution prevention as the foundation of environmental protection

[from definition of "pollution prevention"]

(a 0) _ the prevention of the use, generation and release of any substance into the environment in such a manner or quantity as to cause pollution [repeated from 41 1)

(a0) the adoption of "prevention technologies — technologies that emphasize "protecting, conserving and sustaining the environment from the beginning, and thus avoiding the cycle of rectification of error.

(a1) ..no product introduced into the environment will be hazardous; the onus of proving the non-hazardous nature of the product will be on the introducer of this new type of product

(a) the elimination of the use of polluting substances

(b 0) the substitution of polluting substance with non-polluting substances

(b) the substitution of polluting substances with less polluting substances

(c) the reduction in the introduction and use of **[non-renewable]** resources and polluting substances

(d) the elimination and reduction in the generation of polluting substances

[e, f, g removed because not deemed appropriate for prevention; Discussion Environmental Group, February 19]

participating in the established [National/provincial] advisory committee for national action and cooperative action in matters affecting the environment for the purpose of avoiding conflict between and duplication in, federal and provincial regulatory activity (S5 CEPA)

(f0) Confirming the responsibility of government to set up a non-vested interest board or panel with varying levels of expertise and experience to do "arms-length" research into the true environmental impacts of substances and activities by carrying out "life cycle analysis" (recommendations from various chapters of UNCED Agenda 21) (Suggested Environment meeting, February 19)

(f) Confirming the responsibility of producers for sound environmental stewardship of products through all phases of a product's life;

(g) *ensuring the comprehensive and integrated consideration of environmental and socioeconomic effects in public policy-making in British Columbia. [Deemed to be inconsistent with the overriding purpose of the Act]*
Ensuring that in all decisions made about the environment that the

ecosystem be given primacy (Suggested Environment meeting, February 19)

(h0) International obligations must be fulfilled as being not the maximum but the minimum standards to follow (proposed, Discussion, February 19)

(h) Recognizing that British Columbia residents have an interest in **and a responsibility of minimizing their impact upon** the regional, national and **global environment** and global environmental well-being **(Suggested Environment meeting, February 19)**

(i) using the knowledge and experience of British Columbia residents in the formulation of decisions affecting the environment,

requiring to report

Where there occurs or is a reasonable likelihood of a release into the environment of a substance specified on the List of Toxic Substances (36) in Schedule 1 in contravention of a regulation made under section 34 or an order made under section 35,[[of substance in contravention of a regulation made under section 54, 57.1] any person described in subsection (2) shall, as soon as possible in the circumstances

... Report the matter to an inspector or to such person as is designated by regulation (CEPA 36.1 a)

Requirement to take emergency measures

Take all reasonable emergency measures consistent with public safety to prevent the release or, if it cannot be prevented to remedy any dangerous condition or reduce or mitigate any danger to the environment or to human life or health that results from the release of the substance or may reasonably be expected to result if the substance is released; and

Take all reasonable emergency measures consistent with public safety to prevent or eliminate any dangerous condition or reduce or mitigate any danger to the environment or to human life or health that results from the release or may reasonably be expected to result if the substance is releases; and (CEPA 57 1.b)

(c) make a reasonable effort to notify any member of the public who may be adversely affected by the release or likely release

Where any person fails to take any measure required under subsection (1) an inspector may take those measures, cause them to be taken or direct any person referred to in subsection (2) to take them (36.5)

Polluter pays

(j) confirming the responsibility of polluters to pay for the costs of their actions **(also recommended in Agenda 21) but also recognizing that no pecuniary payment of costs for environmental destruction can ever fully redress the loss to the environment, and reaffirming that the prevention of pollution and environmental destruction should be by using "prevention technologies"**

Her Majesty in right of Canada may recover the costs and expenses of and incidental to taking any measures under subsection 36.5 from

(a) any person referred to in paragraph 36 (2) (a) and

(b) any person referred to in paragraph 36 (2) (b) to the extent of the person's negligence in causing or contributing to the release. (CEPA 39.)

Her Majesty in right of Canada may recover the costs and expenses of and incidental to taking any measures under subsection 57 (4) from

(a) any person referred to in paragraph 57 (2) (a) and

(b) any person 's negligence in causing or contributing to the release (CEPA 60 1)

the costs and expenses referred to in subsection (1) shall only be recovered to the extent that they can be established to have been reasonably incurred in the circumstances (CEPA 60 2)

A person referred to in paragraph 57 (2) (B) shall not be held liable under subsection (3) to an extent greater than the extent of the person's negligence in causing or contributing to the release. (CEPA 60.4)

57 (2) any person who a0 owns or has charge of a substance immediately before its initial release or its likely initial release into the environment; or (b) cause of contributes to the initial release or increases the likelihood of the initial release. (CEPA)

(k) ensuring that every activity or substance that could prevent the protection, conservation and sustainability of the environment will be included under this Act, regardless of whether the activity or substance is presumed to be covered under another Act (proposed, February 19)

(l) ensuring that no citizen will be prosecuted for advocating or acting to promote the purposes of the act (Suggested, February 19)

(m) promoting the research into the development and introduction of renewable, non-polluting (protection technologies)

(n) ensuring that compensation can never be used as reason for not exercising the duty under the act to protect, conserve and sustain the environment (proposed, Discussion, February 19)

(o) agreeing that any compensation given shall be assessed on the basis of past environmental performance and environmental costs and subsidies, and that any awarded money shall be (used by the

compensated party to create employment within B.C.) placed in a job creation fund (Suggested, Discussion, February 20)

(p) ensuring the maintenance and enhancement of the quality of the environment (moved from section 2.a, February 20)

2. To achieve the purposes of this Act, all persons who exercise functions and powers under this Act shall have regard to the importance **of the purposes of this act** ((proposed, February 20)

- (a) the maintenance and enhancement of the quality of the environment*
- (b) the actual or potential effect of an activity or natural process on the whole of the environment, including its actual or potential effect on the health and safety, and the economic, cultural and social well-being of people and communities*
- (c) the potential costs and benefits of any objective, policy, or proposal to the environment*

[The above principles clause is derived from the NZ Resource Management Act]

PURPOSE:

- To establish a framework for the setting of province-wide enforceable mandatory standards and technical regulations designed to ensure the preservation and protection of the environment and the equitable and ecologically sound use of resources, for present and future generations, taking into consideration the advice of indigenous representatives from the inherent indigenous governmental bodies in the area
- to extend this framework to address not only the discharge of substances into the ecosystem but also the diminution of the ecosystem through extractive practices that could cause the reduction or loss of biodiversity or the elimination of carbon sinks. The substances discharged could be toxic or non-toxic. Toxicity has been defined as the potential or capacity of a material of being harmful to the health of a living organism (Fox) (biosphere). Non-toxic substances can through impacting on the non-living environment cause environmental degradation which subsequently causes harm to the biosphere (Agents of ecological degradation). For example, CFC's are not deemed toxic yet through causing depletion of the ozone layer cause harm to living organism. In addition, there are substances that are themselves naturally occurring and harmless but become harmful to the environment when through anthropogenic activity they are increased or decreased in proportional concentration (re concentrated substance—created through imbalance in biogeochemical cycles).
- to apply principles that will enable the setting of high mandatory standards and technical regulations and that will encourage the development and implementation of prevention technology— ecologically sound technology or environmentally benign technology (Benign Ecologically Safe/Sound

Technology/Techniques—BEST). BEST is based on the true invocation of International principles, such as the precautionary principle, anticipatory principle, environmental assessment principle, life cycle analysis principle, responsible care principle, cradle to grave principle, polluter pay principle, recognition of inherent worth of nature principle. BAT in contrast to BEST may not necessarily be benign or ecologically sound. In the event that there is no BEST which can prevent the release of persistent or bioaccumulative toxics then the extractive or productive activities which produce the product or substance process should be changed; the activities and product phased out/outlawed, or the demand for the product reduced through public education. In this case, the industry involved shall be assisted in the conversion to alternative processes or products involving BEST.

- to ensure that proposed technologies that appear to be ecologically sound such as closed-circuit technologies are evaluated in the context of the full life cycle analysis within the environmental context. The environmental context involves examining the potential impact of supplemental industrial activities in the relevant impact area. Often a technology will be presented as being ecologically sound because it is closed circuit; however, it could be that, because of the reliance on other resources such as water, the problem could be compounded by the presence of contaminants in the water through the activities of adjacent industries. For example, in a proposed closed-circuit operation the required water is drawn from a source contaminated by the precursor elements to the formation of dioxins; the proposed closed-circuit operation by using catalysts such as copper and nickel along with heat, could cause dioxins to be formed and emitted through the air. It would consequently not be enough to claim that a system is a closed system to justify as an appropriate technology, if the closed system itself is dependent upon potentially adverse transformation processes within the larger environmental context.
- to ensure that a mass balance calculation—a measurement of all of the input material/ a measurement of all the output including the finished products and emissions is carried out.
- to ensure that industry will be held responsible for past ecological harm and past health effects caused through contaminated discharge, and that when in documents there is a provision for carrying out a “clean-up of major long standing environmental and work place health problems” it will apply to past damage to the environment and to the workforce, as well as to past off-site damage to the ecosystem and to human health.
- to ensure that the setting up of Provincial Task Forces to assess past health effects of contaminated discharge does not affect citizens’ rights to sue industry for the health effects caused from the contaminated discharge and emissions.
- to ensure that obligations are undertaken in good faith, that the reduction in contaminants will be in areas where they will have impact, and to ensure the implementation of the “greatest impact reduction principle.” Often when

regulations are put in place for reduction, governments follow the path of least resistance. For example, in the reduction of CFC's the regulations are applying for the reduction in production to refrigerators and car air conditioners (R12) and not applying to industrial uses(R12).

- to ensure that the public is presented with the real alternatives: the convenience product and contaminants in the ecosystem, and health impacts or less convenient product and no contaminants in the ecosystem and no health impacts.
- to ensure that compliance with high enforceable mandatory standards and technical regulations, and that adoption of BEST, will not place B.C. industry at a disadvantage because of an “uneven playing field.”
- to ensure that there is a provision for the transference of funds from federal and provincial discretionary budgets, such as the federal military budget to assist industry in its compliance, and conversion to BEST.
- to undertake to assist industry in the phasing out of ecologically unsound practices and substances and in the conversion to ecologically sound practices and substances.
- to reevaluate federal and provincial (Ministry of Employment and Investment) “commercial assistance” designed to bolster employment in ecologically unsound industries through the purchase of “equity shares”, “fee concessions” the “job Protection Act” (1991) or “job Protection Commission” (1992). Often government funding is designated for attempted mitigation of the adverse environmental effects rather than through the development of BEST.
- to similarly assess the value of maintaining the production of a product through an ecologically unsound process in one province when a similar product can be produced in an ecologically sound way in another province. For example, Flax stalks — ideal for the production of paper, are being burned in Saskatchewan, while B.C. continues to reduce biodiversity in the forests and to pollute the waters in the production of paper.
- to reassess current government targets in the light of recent zero emissions recommendations, and in the light of the recent EPA findings.
- to consult with non-vested interest (i.e. financial interest) members of the public with a wide range of expertise and experience during all levels of the development of the framework, including the determination of the terms of reference and thought all states and stages of the process of developing the Framework.
- to take into consideration when evaluating BEST, the land base from which the resources are extracted such as the extraction of resources from indigenous territories beyond the treaty frontier.

- to ensure that the ecosystem is given primacy through ecological preservation and equitable and ecologically sound use of resources, and that indigenous representatives from the inherent indigenous governmental bodies in the area are consulted.

- to ensure that the ecological rights of present and future generations are protected

purpose

The purpose of this policy is to establish a framework for setting province-wide discharge criteria and standards designed to protect the environment, to integrate environmental, economic, social considerations and to ensure that sustainability is achieved.

SCOPE

(1) For the purposes of this Act, introduction of a substance into the environment means depositing the substance on or in or allowing or causing the substance to flow or seep on or into any land or water or allowing or causing the substance to be emitted into the air and includes indirect means of introduction into the environment

(1*) For the purpose of this Act, the impact of an activity on the environment means the engaging in any activity which could prevent the protection, conservation and sustainability of the environment will be included under this Act, regardless of whether the activity or substance is presumed to be covered under another Act (proposed, February 19)

2. Except where this Act or the regulations specifically provides to the contrary, this Act applies to the whole environment of British Columbia **{The onus of proof for exclusion from the Act must reside in the proponent for exclusion (proposed, February 20)}**

3. Where there is a conflict between this Act and international obligations the higher or greater ecological principles of the two shall apply.

Where there is conflict between this Act, its regulations or an authorization under this Act and any other act or regulations there under, this Act its regulations and authorizations issued or subsisting under this Act apply, **except when provisions in other Acts or regulations contribute to the fulfillment of the purposes of the Environmental Protection Act better than those contained in this Act**

(a) where this Act or its regulations provide to the contrary, or

(b) as may be prescribed by the Lieutenant Governor in Council

4. Nothing in the Soil Conservation Act shall be taken to prevent the establishment within a local authority of any facility for the disposal of waste in accordance with this Act **providing that the establishment is deemed to**

fulfill the purposes of the Environment Protection Act. (Proposed, February 20)

5. The Crown is bound by this Act, except where this Act or the regulations specifically provide to the contrary

MINISTRY OF ENVIRONMENT, LANDS AND PARK

4. (1) There shall be a ministry of the public service of the Province called the Ministry of Environment Lands and Parks

(2) the minister shall preside over the ministry and be responsible to the lieutenant Governor in Council for the direction of the ministry

Delegating power

The minister may in writing delegate to any person representing the government

a government agency

the government of Canada

an aboriginal government or

a local authority

any power or duty conferred or imposed on the minister under this act.

FUNCTIONS AND POWERS OF THE MINISTRY AND OF THE GOVERNOR IN COUNCIL

Administering crown lands

Shall administer the Crown land resource of the Province (BCEPA 6.2.i)

Setting up Advisory committees

5. (1) for the purpose of carrying out their duties under this Act, the Ministers or either Minister may

(a) establish advisory committees to report to the Ministers or either Minister

For the purpose of establishing a framework for national action and taking cooperative action in matters affecting the environment and for the purpose of avoiding conflict between, and duplication in , federal and provincial regulatory activity, the Minister shall, in cooperation with the governments of the provinces, establish a federal-provincial advisory committee to advise the Minister on

(CEPA 6.1)

regulations proposed to be made under paragraph 34.... (CEPA 6.1.a)

other environmental matters that are of mutual interest to the federal and provincial government and to which this Act relates (CEPA 6.1.b)

the Minister shall include in the annual report required by section 138 a report of the activities of the federal-provincial advisory committee (CEPA 2)

The minister may establish advisory committees and retain experts to report to the minister with respect to

(a) the content and administration of this Act and (BCEPA 9 la)

(b) any of the policies, programs, services or other matters under the minister's administration [from Alberta] [new] (BCEPA 9 I b)

When establishing an advisory committee under subsection (1) the minister may specify the functions that the committees and experts are to perform, and the manner and time period in which those functions are to be performed (BCEPA 9.2)

the report of a committee established or an expert retained pursuant to subsection (1) including the recommendations and reasons for them, shall be made public in a prescribed manner (BCEPA 9.3)

A person serving on a committee or an expert retained shall, while performing his or her duties, be paid for reasonable traveling and living expenses or a reasonable allowance in respect of them as fixed by the Lieutenant Governor in Council, and may be paid remuneration as the minister determines (

Maintaining liaisons

may as the representative of the government, maintain continuing liaisons with

- (i) the Government of Canada and agencies of that government
- (ii) the governments of other provinces and agencies of those governments
- (iii) the government of states of the United States of America and agencies of those governments, and
- (iv) local authorities in British Columbia (BCEPA 6 I)

Integrating with other Ministries

The minister shall, in recognition of the integrated relationship between human health and the natural environment, co-operate with and assist the Minister of Health in promoting human health through environmental protection [from Alberta]

For the purpose of carrying out the functions and duties of the Minister of National Health and Welfare related to preserving and improving public health under this Act, the Minister of National Health and Welfare shall formulate objectives, guidelines and codes of practice with respect to the elements of the environment that may affect the life and health of the people of Canada (CEPA 9.1)

In carrying out the responsibilities conferred by subsection (1), the Minister of National Health and Welfare may consult with the governments of the provinces; and (CEPA 9.2.a)

Entering into agreements

the minister may on behalf of the government enter into agreements and partnerships relating to any matter pertaining to the environment with The government of another jurisdiction or a ministry or agency thereof

An aboriginal government (BCEPA 7.a)
a local authority (BCEPA 7.b)
a government agency (BCEPA 7.c)
any person (BCEPA 7d)
[from Alberta]

the minister with the approval of the lieutenant Governor in council may enter into agreements with the federal government with respect to the administration of this Act, the Canadian Environmental Protection Act, the fisheries Act or any other federal enactment of the purpose of protection of the environment ((BCEPA 17.1)

“Notwithstanding subsection (1), the minister shall not enter into a equivalency agreement under the Canadian Environmental Protection Act unless the agreement contains a declaration that the Government of Canada will require the provisions of this Act and the regulations to be complied with at all federal facilities and activities including activities undertaken on federal land owned or leased by the Crown in the right of Canada by persons other than agents of the federal government” (BCEPA 17.2)

Transferring of administration

“The minister may, after appropriate consultation and with the consent of a part listed in (a) to (d) transfer the administration of a provision of this Act to another minister of the government (BCEPA 13 a)
a government agency (BCEPA 13b)
an aboriginal government (BCEPA 13 c)
a local authority (BCEPA 13d)
and may specify the terms and conditions including the collection of fees and taxes by which the transfer is made and may appoint officials to be responsible for the administration of the provision transferred.”
(BCEPA 13) Adapted from Alberta draft.

Designating officials

Subject to the Public service Act, the minister may designate an executive director who shall administer that Act and regulations (BCEPA 19.1)
... 19.12

Establishing guidelines

For the purposes of carrying out the Minister’s duties and functions related to the quality of the environment, the Minister may, with the approval of the Governor in Council, establish guidelines for use by departments, boards and agencies of the Government of Canada and, where appropriate, by corporations named in Schedule III to the Financial Administration Act and federal regulatory bodies in the exercise of their powers and the carrying out of their duties and functions. (CEPA 53)

making regulations

The Governor in Council may, for the purposes of section 46

No person shall produce or import for use or sale in Canada or sell or offer for sale any fuel that contains an element component or additive in a concentration or quantity that exceeds the concentration or quantity prescribed with respect to that element, component or additive in relation to the fuel; or

make regulations

Prescriptions

prescribing with respect to any fuel or fuel used for any purpose, the concentration or quantity of any element, component or additive that in the opinion of the Governor in Council, if exceeded, would, on the combustion of the fuel in ordinary circumstances, result in a significant contribution to air pollution. (CEPA 47 a) ...

Where no other Act of Parliament expressly provides for the making of regulations that result in the protection of the environment and apply to federal works or undertaking or federal lands, the governor in Council may, on the recommendation of the Minister and with the concurrence of the minister of the Crown who has the administration and control of or duties and functions in relation to those works, undertakings or lands make regulations applicable thereto for the protection of the environment (CEPA 54 1)

the Governor in Council may, on the recommendation of the Minister make regulations prescribing

limits on the release of emission and effluents; by departments, boards and agencies of the Government of Canada and where appropriate by corporations named in Schedule III to the Financial Administration Act (CEPA 54 2 b)

Requiring analyses... relating to the environment that is or is likely to be affected by the work

the Minister may require from any person who carries on, or proposes to carry on, any federal work or undertaking or any activity on federal lands such plans, specifications, studies, procedures, schedules, analyses, samples or other information relating to the work, undertaking or activity together with such analyses, samples, evaluation, studies or other information relating to the environment that is or is likely to be affected by the work, undertaking or activity (CEPA 56)

preventing of pollution and protecting of environment

the Ministry, under the direction of the minister, is responsible for the **preservation** protection, enhancement and administration of all matters relating to the environment (BCEPA 6.1)

establish, operate and maintain a system of environmental quality monitoring stations CEPA 1 (a)

collect, process, correlate and publish on a periodic basis data on environmental quality in Canada from environmental quality monitoring stations and from any other appropriate source CEPA 1(b)

Prohibiting export and import of toxic substances and Waste Materials

The Governor in Council may, on the recommendation of the Ministers, make an order adding to the List of Prohibited Substances in Part 1 or Schedule II any toxic substance the use of which is prohibited in Canada by or under an Act of Parliament and may, in the same manner, delete any toxic substance from that List. (41 a i)

No person shall export any toxic substance specified on the List of Prohibited Substances in Part 1 of Schedule II except for the purpose of destroying the substance or complying with a direction under sub-paragraph 41 (b) (ii)

States should effectively cooperate to discourage or prevent the relocation and transfer to other States of any activities and substances that cause severe environmental degradation or are found to be harmful to human health. (principle 14, Rio Declaration, UNCED)

Adding to list of Toxic Substances requiring Export Notification

Adding to the List of Toxic Substances requiring Export Notification in Part II of Schedule II any toxic substance where the Governor in Council is of the opinion

that

the uses of the substance are substantially restricted by or under an Act of Parliament, and CEPA 42 (i)

The Minister shall compile a list, to be known as the List of Toxic Substances Authorities and the List shall specify each country in respect of which a notice is required under subsection (3) and the authority, body or person to whom the notice shall be given. CEPA 42 (2)

A person shall give notice of the proposed export of a substance specified on the List of Toxic Substances Requiring Export Notification in Part II of Schedule II, where the person proposes to export the substance to a country specified on the list of Toxic Substances Authorities and the export of the substance by that person is to be for the first time after (CEPA 43 3)

...

Adding to list of hazardous wastes

Adding to the List of Hazardous Wastes Requiring Export or import Notification in Part III of Schedule II any substance that, in the opinion of the Governor in Council, is a hazardous waste and may, in the same manner, delete any substance from that List. (CEPA 43

Conducting research

conduct research and studies relating to the nature, transportation, dispersion, effects, control and abatement of environmental pollution and provide advisory and technical services and information related thereto: (c)

conduct research and studies relating to environmental contamination arising from disturbances of ecosystems by human activity, and CEPA d (i)

changes in the normal geochemical cycling of toxic substances that are naturally present in the environment CEPA1 (d) (ii)

formulate comprehensive plans and designs for the **prevention**, control and abatement of environmental pollution and establish, operate and publicize demonstration projects and make them available for demonstration (CEPA)

“...may undertake, commission and coordinate environmental studies, base mapping and related photographic and survey control functions” (BCEPA 6.2. e)

“...may compile, study and assess information related to the environment for the purpose of better carrying out the minister’s functions and responsibilities under this or any other act with a view to providing that information to ministries of the government, government agencies and the public” (BCEPA 6.2.m)

“...may participate in and coordinate research projects related to matters pertaining to the environment” (BCEPA 6.2.n)

“...may maintain a library consisting of publications and other information related to matters pertaining to the environment” (BCEPA 6.2o)

Remedial measures principle

Where, in respect of a substance or a product containing a substance, there is a contravention of this Part or any regulation made under this Part, the Minister may, in writing,

Requirement to give public notice

(a) direct any manufacturer, processor, importer retailer or distributor of the substance or product to take any or all of the following measures.
-give public notice in a manner directed by the Minister of any danger to the environment or to human life or health posed by the substance or product (CEPA 40 a i)

Direct any manufacturer, processor, distributor, importer or retailer of the substance or product to take any or all of the following measures:

(i) replace the substance or product with one that does not pose a danger to the environment or to human life or health (i)

Accept the return of the substance or product from the purchaser and refund the purchase price, or (ii)

any other measures for the protection of the environment or of human life or health. (CEPA 40.b iii)

Publishing information

publish or otherwise distribute or arrange for the publication or distribution of (i) pertinent information to inform the public in respect of all aspects of the quality of the environment, including **the prevention** and the control and abatement of environmental pollution and

Report on the state of the Canadian environment to be prepared on a periodic basis

Minister may in exercising the powers conferred by paragraphs (1 B to (e) act alone or in cooperation with any government, government department or agency, institution or person and may sponsor or assist in any research, studies or planning and development by a government institution or person in relation to the quality of the environment or **the prevention** the control or abatement of environmental pollution (7.3 CEPA)

Developing and distributing educational materials

may unilaterally or in co-operation with other ministries of the government and government agencies, develop, publish and distribute educational materials with respect to the environment and shall co-ordinate, develop and deliver educational programs and services to assist British Columbians to better understand the environment and become responsibly involved in the protection and stewardship of the environment (BCEPA 6.2.p)

Organizing conferences

organize conferences of individuals, and groups reflecting a wide range of expertise and experience
representatives of industry and labour, provincial and municipal authorities and any interested persons described in paragraph a (CEPA 8.3.b)
individuals, and groups reflecting a wide range of expertise and experience

Formulating of objectives

Shall encourage the maintenance of an optimum quality environment through specific objectives for the management protection and conservation of land, water, air, plant life and animal life, in the Province (BCEPA 6.2.a))

“For the purpose of carrying out the Minister’s functions and duties related to the quality of the environment, the Minister shall formulate

(a) environmental quality objectives specifying goals or purposes toward which an environmental **pollution prevention and control effort** is directed, including goals or purposes stated in quantitative or qualitative terms; (CEPA 8.1a.)

(b) environmental quality guidelines specifying recommendation in quantitative or qualitative terms to support and maintain particular uses of the environment” (CEPA 8.1b.)

(c “...release guidelines recommending limits, including limits expressed a concentrations or quantities, for the release of substances into the environment from works, undertakings or activities; and...” (CEPA 8.1c)

“...may plan, design, construct, operate and maintain works and undertakings for the management, protection or enhancement of the environment, or for

any other purpose of function assigned by the Lieutenant Governor in Council,
“(BCEPA 6.2.h)

The minister, or a person designated by the minister, after engaging in such public consultation as the minister considers appropriate, may develop guidelines, codes, criteria, objectives and standards for emissions, discharges, storage, and ambient environmental quality in qualitative or quantitative terms for management areas in all or part of British Columbia to promote the protection and stewardship of the environment [from Alberta]
undertaking inventories

Establishing management areas

“...for the purposes of subsection 1 the minister may establish management areas in accordance with the regulations providing for land use” (BCEPA 11.1)

“...*may shall* undertake inventories and prepare plans for the effective management, protection and conservation of the environment” (BCEPA 6.2.d)

preservation of nature, conservation of natural resources and sustainable development (CEPA 8.2 d)

“...the minister shall give due consideration to public input that he or she has received in developing objectives and regulations policies under subsection 1” (BCEPA 11.3)

In carrying out the responsibilities conferred by subsection (1) the Minister may consult with the government of any province, any government department or agency or any person interested in the quality of the environment or the control or abatement of environment of environmental pollution; and (CEPA 8.3.a)

Criteria, objectives, standards and regulations developed under subsection (1) shall be made available to the public in accordance with the regulations

organize conferences of individuals, and groups reflecting a wide range of expertise and experience representatives of industry and labour, provincial and municipal authorities and any persons interested in the preservation and improvement of public health. (CEPA 9.2.b)

Establishing Priority Substances List

Ministers shall compile and may amend from time to time a list, to be known as the Priority Substances List, and the List shall specify substances in respect of which the Ministers are satisfied priority should be given in assessing whether they are toxic or capable of becoming toxic (CEPA 12.1)

Ministers shall publish in the Canada Gazette the Priority Substances List and any amendments to the list (CEPA 12.2)

Establishment of priority list

For the purpose of establishing the Priority Substances List, the Ministers may consult the governments of the provinces **individuals, and groups reflecting a wide range of expertise and experience members or representatives of any labour group or industrial sector, associations or persons concerned with environmental and health matters and any other persons** (CEPA 12.3)

“The Ministers shall consider a request filed under subsection (4) and within ninety days after the request is filed the Minister shall inform the person who filed the request of how the Minister intends to deal with the request and the reasons for dealing with it in that manner.”CEPA 12.5)

Determining of toxicity

For the purpose of assessing whether a substance is toxic or is capable of becoming toxic, or for the purpose of assessing the need for measures to control a substance, either Minister may

Collect data and conduct investigations respecting

(a)

The nature of the substance (i)

the presence of the substance in the environment and the effect of its presence on the environment or on human life or health (ii)

the extent to which the substance can become dispersed and will persist in the environment (iii)

The ability of the substance to become incorporated or accumulate in biological tissues or to interfere with biological processes (iv)

methods of controlling the presence of the substance in the environment (v)

methods for testing the effects of the presence of the substance in the environment (vi)

development and use of alternatives to the substance (vii)

quantities used and disposal of the substance, and (viii)

methods of reducing the amount of the substance used, produced or released into the environment (ix)

Developing economic mechanisms

“...may in co-operation with other ministries of the government develop and implement economic and financial instruments and market-based incentives to achieve environmental protection to achieve environmental quality goals and provide methods of financing programs for environmental purposes in a cost-effective manner, and...” (BCEPA 6.2 q)

“the Minister may, in accordance with the regulations, establish programs and other measures for the use of economic and financial instruments and market-based approaches including, without limiting the generality of the foregoing emission trading (BCEPA 14.1.a) incentives (BCEPA 14.1.b)

subsidies (BCEPA 14.1.c)
deposits and refunds (BCEPA 14.1d)
taxes (BCEPA 14.1.e)
emission effluent and waste disposal fees (BCEPA 14.1.f)
differential levies (BCEPA 14.1.g)
product charges and (BCEPA 14.1.h)
grants ... and contributions” (BCEPA 14.1i)

Encouraging recreation

“...shall encourage outdoor recreation. establish parks and conserve the natural scenic and historic features of the Province.” (BCEPA, 6.2.j)

Monitoring

(d) environmental codes of practice specifying procedures, practices or release limits for environmental **protection, pollution prevention, control** relating to works, undertakings and activities during any phase of their development and operation including the location design, construction, start-up, closure, dismantling and clean-up phases and any subsequent monitoring activities. (CEPA 8.1d.)

“...shall monitor, assess and report to the Lieutenant Governor in Council on general environmental conditions in the Province” (6.2.d)

the objectives, guidelines and codes of practice referred to in subsection (1) shall relate to the environment (CEPA 8.2a)

recycling, reusing, treating, storing or disposing of substances or reducing the release thereof into the environment; (CEPA 8.2 b)

works, undertakings or activities that affect or may affect the environment; or (8.2 c)

Designating laboratories

“The minister may designate laboratories as approved laboratories that may conduct laboratory analyzes for the purposes of this Act” (BCEPA 15.1)

Enforcing safety standards

shall administer and enforce safety standards respecting recreational activities and services on Crown land

Ordering an inquiry

“The minister may order an inquiry with respect to the environment whenever he or she considers it necessary. (BCEPA 8.1.)

for the purpose of an inquiry ordered under subsection (1) the minister or a person appointed by the minister to hold the inquiry has the powers, protection and privileges of a commissioner under section 12, 15 and 16 of the Inquiry Act” (BCEPA 8.2.)

“A person appointed under this subsection shall conduct the inquiry in accordance with terms of reference and any procedural guidelines for the inquiry specified by the minister (BCEPA 8.3.)

An inquiry may be ordered under subsection (1) with respect to the socio-economic considerations of an environmental issue.” (BCEPA 8.4.)

“An inquiry may be ordered under subsection (1) with respect to the socio-economic considerations of an environmental issue” (BCEPA 8.4.)

CHECK: THIS SECTION FOLLOWS S7 OF THE ENVIRONMENTAL MANAGEMENT ACT

planning in event of environmental accident

“...shall plan, coordinate, implement and manage a program to protect the welfare of the public in the event of an environmental accident or emergency.” (BCEPA 6.2.h)

INDIVIDUAL INITIATIVE

Any person may file in writing with the Minister a request that a substance be added to the Priority Substances List and the request shall state the reasons for adding the substances to the List. (CEPA 12.4)

Where the Ministers make an assessment referred to in subsection (1) and decide not to recommend that the substance be added to the List of Toxic Substances in Schedule 1, any person may, within sixty days after publication of the decision in the Canada Gazette file a notice of objection with the Minister requesting that a board of review be established under section 89 stating the reason for the objection. (CEPA 13.2)

Where a substance has been specified on the Priority Substances List for a period of five years and the _____ Ministers have not yet assessed whether the substance is toxic or capable of becoming toxic, any person may file a notice of objection with the Minister requesting that a board of review be established under section 89 (CEPA 14)

Additional powers

“In addition to other powers vested in the Minister, the ministry, in respect of the ministry all the powers, duties and authorities had and exercisable by the officers mentioned as the Commissioner of Lands and Surveyor General, the Chief Commissioner of Lands and Surveyor General, the Chief Commissioner of Lands and Works and Surveyor General and the Surveyor General, in an Act, ordinance or proclamation passed or made in the former Colonies of British Columbia and Vancouver Island.”

(BCEPA 6.3)

NOTE IN SOME CASES PROVISIONS IN CEPA HAVE BEEN TAKEN OUT OF THE BCEPA DOCUMENT AND PUT INTO THE B.C. ENVIRONMENTAL BILL OF RIGHTS: Part 2 THE UNIQUE SECTION WILL BE MARKED IN OUTLINE

Environmental Bill of Rights

Public Trust

30. (1) Every resident of British Columbia has a right to protect the environment and the public trust from any pollution, impairment or destruction

(2) The government, as trustee, has a duty to conserve and protect the environment of British Columbia

3. Citizens of British Columbia have the right to have the environment conserved and protected (Suggested Environment meeting, February 19)

4. Citizens of British Columbia have to right to expect that no person shall use **generate or release**, waste or recyclable maters, or any other substance **(including fugitive gas or leachate)** into the environment in such a manner or quantity as to cause pollution

[moved from 41 (1) (Suggested Environment meeting, February 19)

5. Citizens of British Columbia have the right to expect that the government will live up to its obligations (Doctrine of Legitimate Expectation)

6. Present and future generations of British Columbia have the right to an ecological heritage (Suggested Environment meeting, February 19)

7. ensuring that no citizen will be prosecuted for advocating or acting to promote the purposes of the act (Suggested Environment meeting, February 19)

Right to request that a substance be added

Any person may file in writing with the Minister a request that a substance be added to the Priority Substances List and the request shall state the reasons for adding the substances to the List. (CEPA 12.4)

Where the Ministers make an assessment referred to in subsection (1) and decide not to recommend that the substance be added to the List of Toxic Substances in Schedule 1, any person may, within sixty days after publication of the decision in the Canada Gazette file a notice of objection with the Minister requesting that a board of review be established under section 89 stating the reason for the objection. (CEPA 13.2)

Where a substance has been specified on the Priority Substances List for a period of five years and the Ministers have not yet assessed whether the substance is toxic or capable of becoming toxic, any person may file a notice of objection with the Minister requesting that a board of review be established under section 89 (CEPA 14)

Right of action

31. (1) The Attorney General or any resident of British Columbia may commence an action in the Supreme Court against any person who has polluted or otherwise degraded the environment and the public trust or who is likely to do so.

2. A person may commence an action under subsection (1) without having to establish that there is, has been or is likely to be an infringement of an authorization issued under this Act or an approval, permit, licence, standard, regulation, rule or order issued by or under an Act listed in Schedule A.

3. A person who commences an action under subsection (1) shall provide notice of the proceedings to the Attorney General and the Minister.

4. This section does not abrogate those common law rights that would normally be available to a plaintiff to commence an action.

5. the need for intervener funding

Standing

32 A person may commence an action under section 31 without having to show that he or she has

(1) any greater or different right, harm or interest than any other person; or

(2) any pecuniary or proprietary right or interest in the subject matter at issue.

Burden of proof.

33.

(1 a) Every proponent of an intervention in the ecosystem must demonstrate that the intervention will not cause harm to the environment or will not create ecologically unsound wastes

If the proposal involves anything that could be hazardous, 0 emissions and waste must apply; if the proposal involves lowest achievable discharge rate should apply (February 19, discussion)

(1 b) "...the plaintiff shall establish a prima facie case showing that **the defendant's proposed activities are likely to pollute or degrade the environment**

(1) the plaintiff shall establish a prima facie case showing that the defendants' activities have polluted or degraded the environment or is likely to do so

(1 c. In a prosecution for a contravention the burden of proving compliance is on the defendant" [Section 46, ss 4]

2. *"Where a prima facie case under subsection (1) is established, the defendant may rebut the prima facie case by showing that there is no feasible and prudent alternative to the defendant's action."*

[If so, there must be some criteria for determining feasible and prudent alternatives in the light of the purpose of the Act; "providing prevention, conservation and sustainability of the environment" determined by an advisory, non-vested interest board or panel with representation from varied areas of expertise and experience]

3. *It is a defence to an action commenced under this Act that the defendant's action is authorized under this act or an Act listed in Schedule A, unless the plaintiff can establish, on balance of probabilities, that the standard is*

inadequate to protect the environment and that the defendant's action has caused, or is likely to cause, severe or irreparable contamination or degradation of the environment.

The burden of proof must be on the defendant to demonstrate that the defendant's action has not caused or is not likely to cause, severe or irreparable contamination or degradation of the environment (Discussion, February 19)

Limitation Period

34. The limitation period for an action under section 31 of this Act is postponed and time does not commence to run until the plaintiff becomes aware, or ought reasonably to have become aware, of the identity of the defendant and of the material facts surrounding the claim

Appointment of minister's environmental mediator

37 (1) Subject to section 140, the Minister may, *Where he or she deems it advisable* **where it is deemed advisable** and where the conflicting parties concur, appoint an environmental mediator acceptable to the parties to mediate between persons involved in an environmental conflict.

(2) when a mediator is appointed under subsection (1), the mediator shall, within 6 weeks after completion of the mediation, report to the results of the mediation to the Minister and the parties

38 (c) award damages to (iv) any person who has a concern for the environment

39 ...licence, standard, regulation, rule or order issued under an Act listed in Schedule A affects **the environment** and rights of a person, **any** person shall be furnished with a written statement of the decision setting out....**(c) any dissenting opinions should be made public (Discussion, February 19)**

Freedom of information [SHOULD BE ADDED]

under the guise of client/solicit relation or confidentially shall not prevent the revealing, disclosing information about any actions that could have [wording from purpose]

40. Whistleblower protection

(1) for the purposes of this section "employee" includes

(a) a person, including a deceased person, in receipt of or entitled to payment for labour services performed for another

(b) a person whom an employer allows, directly or indirectly, to perform work or service normally performed by an employee, and

(c) a person being trained by an employer for the purpose of the employer's business.

Where a person has knowledge of the occurrence or reasonable likelihood of a release into the environment

of a substance specified in the List of Toxic Substances in Schedule 1, 37

[but the person is not required to report the matter under this Act, the person may report any information relating to the release or likely release to an

inspector or to any person to whom a report may be made under section 36. (CEPA, 37)

of a substance in contravention of a regulation made under section 54. (CEPA 58)

Request of confidentiality

A person may request that the person's identity and any information that could reasonably reveal the identity not be released (CEPA 37.2, and 58.2)

Requirement for confidentiality

Where a person makes a request under subsection (2) no person shall release or cause to be released the identity of the person making the request or any information that could be reasonably be expected to reveal the identity, unless the person making the request authorizes the release in writing (37.3)

2) For the purpose of this section, "employer" includes a person who(a) has control or direction of, or
(b) is responsible, directly or indirectly, for the employment of an employee, and includes a person who was an employer

3. No person shall dismiss, threaten to dismiss, cause to be dismissed, discipline, coerce, discriminate against, or impose any type of penalty on an employee or an authorized representative of an employee, because the employee or representative

(a) has reported or proposed to report any violation or perceived violation of this Act or an Act listed in Schedule A or

(b) refuses to carry out work that the employee reasonably believes would be or would lead to a violation of this Act or an Act listed in Schedule A

Notwithstanding any other Act of Parliament, no employee of a department, board commission or agency of the Government of Canada, or of a corporation named in Schedule III to the Financial Administration Act or of a federal regulatory body shall be disciplined, dismissed or harassed for making a report under subsection (1) (CEPA 37.1 and , 57.4)

(4) Employers shall keep their employees informed of the protection available under this section

(5) a person who alleges that he or she has been treated in a manner contrary to subsection (3) may file a complaint with the board in the manner set out in the regulations.

(6) The board shall cause an investigation to be made upon the filing of a complaint, and may dismiss a complaint without a hearing where it appears to the board that

(a) the employee or representative was proceeding in bad faith or for an improper purpose [**as defined by the purpose of the act**]

7. the board may conduct a hearing into the complaint, and if the board is satisfied that the employer has contravened subsection (3) the board may make an order directing the employer to do any or all of the following:

- (a) cease doing the act or acts complained of
 - (b) rectify the act or acts complained of
 - (c) reinstate the person aggrieved with compensation
 - (d) compensate the person aggrieved in lieu of reinstatement for the loss of earnings or other employment benefits
 - (e) pay general damages, special damages or pecuniary damages to the employee.
- (8) the board may award either party all or a portion of the costs of the hearing as it considers appropriate.

[Further comment to come on subsequent sections]

Since the first United Nations Conference on the Environment in Stockholm in 1972, we have come to realize that the traditional patterns of development have contributed to poverty - denying more than a quarter of the world's population adequate living conditions — to the inequitable distribution of resources to overconsumption, to the violation of human rights, and to the potentially irreversible degradation of the ecosystem.

WE DECLARE THE FOLLOWING PRINCIPLES TO GUIDE HUMANITY TO AN EQUITABLE AND ECOLOGICALLY SOUND FUTURE:

1. The ecosystem of which we are a part shall be protected and preserved, ecologically unsound patterns of development shall be condemned and the inequity of development must be addressed and rectified

2. Development activities that benefit the few while compromising the biological inheritance and quality of life of the many must be condemned as being inherently wrong

4. International ecological standards should be in place so that no short-term individual pursuit of self-interest, or short sighted national or international regulations (GATT) could jeopardize the environment. The purpose of these standards is to address the individual and multinational pursuit of self-interest and consumptive and exploitative use of the environment and not to penalize local communities that wish to function in an interdependent way within the ecosystem. The economic development necessary to eliminate poverty shall not be a mandate to abuse the environment for either short-term gain or economic growth alone. Principle must drive industry not industry driving principle.

5. Environmental processes do not recognize national boundaries; therefore, states shall not have the sovereign right to exploit resources within their territories in isolation from the global ecological needs of the Earth

6. The continued build-up of the military complex must cease, and the use of military force as a means of resolving conflict must be rejected. A radical reduction of the military budgets of the world must occur and the funds released for ecological and humanitarian purposes. Peace is not merely the absence of war but the pursuit of environmental, social justice, economic, spiritual and cultural well-being.

7. 8. the decision-making process should be clearly defined, transparent, accessible and equitable. Criteria in decision making should be revealed, and the public and affected communities should be

involved at the time of the formulation of the terms of reference and through the process.

9. The international community must condemn and disallow the exporting of products deemed to be unsafe in a state where there are advance testing procedures to other states with less advanced testing procedures Since the first United Nations Conference on the Environment in Stockholm in 1972 we have come to realize that the threats to the biosphere which sustains all life on this planet have increased in rate, magnitude and scale that inaction is negligent. The international community has enough information about the pending state of ecological irreversibility that it must act immediately (proposal for NGO Earth Charter, Rio, June, 1992)

The precautionary principle shall be extended to require those who wish to intervene in the ecological commons to have to justify their intervention and demonstrate the safety of their intervention. The full environmental costs shall be considered in any proposed development project. (NGO Earth Charter, Rio, June, 1992)

REGULATIONS RELATED TO PESTICIDES

Authorized body for making regulations related to pesticides

“The Lieutenant Governor in Council may make regulations (BCEPA 112.1) Without limiting subsection (1) the Lieutenant Governor in Council may make regulations

- specifying and defining what constitutes an unreasonable adverse effect in particular or general circumstances ((BCEPA 112.2 a)
- classifying substances as pesticides and designating a pesticide as a restricted use pesticide (BCEPA 112.2)
- respecting the manner in which a pesticide is contained, transported, stored, prepared mixed, applied or sold (BCEPA 112.2c)
- prescribing the conditions for the disposal of a pesticide, pesticide container, equipment or a container used to store, prepare, mix or apply it (BCEPA 112.2d)
- prescribing the records to be maintained by a person or class of persons who stores, prepares, mixes, applies, transports, sells or disposes of a pesticide (BCEPA 112.2e)
- defining standards of competence and requirements for a person to obtain a licence, permit, certificate or pest management plan (BCEPA 112.2f)
- defining standards of competence and requirements for a person training others in the application of pesticides (BCEPA 112.2g)
- requiring that a person or class of persons referred to in paragraph (e) be bonded, subject to terms he or she considers appropriate, under the Bonding Act (BCEPA 112.2h)
- exempting a person, class of persons, body of water or land area from this Act where its application may be unnecessarily restrictive (BCEPA 112.i)

- respecting the requirement and content of pest management plans (BCEPA 112.2j)
prescribing pesticide monitoring standards and practices" (BCEPA 112.2)

() **THAT** in March 1994, I was invited to give a presentation on the Framework Convention on Climate Change at the annual conference on International Environmental Law, at the law School in Eugene Oregon. I pointed out that all signatories had incurred an obligation to reduce greenhouse gas emission to 1990 levels by the end of the century, (2000); and above all the Framework Convention on Climate Change is one of the few International instruments signed and ratified by the US.

EXHIBIT

() **THAT in March 1994 before the Ozone conference, I was interviewed in French on Radio Canada; I had to give the interviewer the French terms so that she could interview me**

EXHIBIT

INTERVIEW ON RADIO CANADA ABOUT OZONE DEPLETION

**ATTENTION SYLVIE BEAUREGARD
FROM JOAN RUSSOW, 380-2563 FAX 385-0068
DRAFT VOCABULAIRE POUR OZONE**

**La conference sur la diminution de la couche d'ozone et sur les impacts de UV Ultraviolette radiation
Du 27 Avril au 29 Avril 1994**

la nature de La couche d' ozone

Ozone notre bouclier protecteur

la couche d'ozone est un couche de gaz constituee d'ozone qui entoure la Terre. Elle est situee a une distance de 15 a 35 Km de la surface du globe. Elle forme un bouclier naturel de 20 Km d'epaisseur qui empeche la plupart des rayons ultraviolets du soleil de parvenir directement usqu'a nous. Sans ce bouclier, nous recevriouns des doses nocives de rayons ultraviets. O₃ la molecule est compose de trois atomes d'oxygene
couche de ozone dans la stratosphere renferme presque tout l'ozone qui existe sur terre

La couche d'ozone agit comme un filtre naturel qui retient la plus grande des rayons UV (ultra-vilets) nocifs

Ce parasol geant d'une epaisseur d'environ 20 kilometre

Importance de conserver la couche d'ozone

Il est tres important de conseerver cette couche d'ozone autour de la planete. Amincement de la couche d'ozone, la quantite de rayons UV produits substitués

"trou dans la couche d'ozone [hole in the ozone layer]

Couche naturelle d'ozone protecteur [natural protective area of ozone]

La couche d'ozone [ozone layer -]

thinning of the ozone layer Amincissement de la couche d'ozone

Troposphere

l'ozone stratospherique diminue

without this layer - sans cette couche

les personnes souffriraient de coups de soleil, de cancers de la peau et de cataractes.

dommages aux récoltes et à la vie aquatique and qui

ils favoriseraient les cancers de la peau ainsi que les cataractes.

decouvertes scientifique

1985 scientifique britanniques on trouve un trou dans la couche d'ozone dans l'antarctique.

après ces scientifiques canadiens ont surveillé l'amincissement de la couche d'ozone dans l'arctique

Cause de diminution de la couche d'ozone Destruction de la Couche d'Ozone

L'utilisation des suivantes

1. climatiseurs

2. les maisons isolées

3. Nous profitons du confort qu'elles nous apportent sans bien souvent nous demander si elles sont dommageables pour l'environnement

4. protection contre les incendies.

produits isolants

les halons représentent un autre groupe de composés chimiques tout aussi importants. Ils servent principalement à la protection contre les incendies.

CFC

Les CFC et les autres produits chimiques qui endommagent la couche d'ozone les CFC s'élevaient tranquillement dans le ciel jusqu'à la couche d'ozone où la lumière ultra-violet les décompose en atomes de chlore.

C'est là que les atomes de chlore détruisent l'ozone

CFC ont été produits dans les années cinquante

Si on réussissait à graduellement ne plus se servir de tous les produits chimiques nocifs pour la couche d'ozone, celle-ci se rétablirait par elle-même un jour

Les utilisations des CFCs

1. d'agents réfrigérants

2. de solvants industriels,

3. de liquides nettoyants

Solutions possibles

0 éliminer les substances qui contribuent à la diminution de la couche d'ozone

1. interdire l'utilisation des substances qui contribuent à la diminution de la couche d'ozone

2. prohibir la production des ces substances

3. prohibir l'utilisation des ces substances

4. prohibir la production des ces substances mais faire recuperation des CFC

5. utiliser un programme de recyclage ou un programme de recuperation de en utilisant de moins en moins les produits a base de CFC et d'autres produits chimiques nocifs pour la couche d'ozone.

eviter de recourir a des systemes de climatisation d'air a base de CFC

D'ici a ce que nous trouvions des produits substitués, on continuera de se servir des CFC dans la refrigeration. [il ya deja en Europe des refrigerateur sans CFC

problemes

Actions a travers de la legislation internationales

1985 Convention de Vienne sur La diminution de la couche d'ozone

1987 Protocol de Montreal

1990 Protocol de Londres

air

Nov. 23, protocol de Copenhagen november 23, 1992 reduction

pour CFC Nov 23, 1992

CFC 75% reduction de'utilisation et production par by Jan 1 1994, 100 % by Jan 1996

exception:

Provision pour utilization essentielle

(subject to essential use provision)

- si il n'ya pas des substituee developpee ou is c'est necessaire pour la sante, sauf? et si c'est essentielle pour la fonctionnment de societe

[essential use exception where acceptable substitutes not deveeloped

exemption only if necessay for the health , safety and is critical for the functioning of society and no available alternate

actions Nationales

Le gouvernement du Canada

1980 Canada et d

autres pays ont interdit l'utilisation des CFC dans les bombes aerosols

Cela prendra du temps avant d'eliminer totalement tous les produits chimiques que deterioent la couche d'ozone.

des facons non nocives de remplacer les CFC

la dimunition de la couche d'ozone

la dimunition de la couche d'ozone est une probleme mondiale

Des alternatives

1. CFC "Greenfreeze" un frigidaire ave propane et butane

On a commence d'utiliser ses frigidaire en Europe, mais la compagnie

Whirlpool n'a pas volue introduire cette technologie en America parce-qu'il a dejar developpe une technologies alternative avec HCFC

[Whirlpool they held back because built an effective HFC solution international prize energy efficient] Un problème avec HCFC est que tandis que il est 100-1000 fois détruisant que HFC, il est quand même un "gaz à effet de serre"

[Air conditioning - HFC, ozone 100-1000 times less depleting but greenhouse gas]
cleaning fluids CFC used to clean floor lemon juice

"gaz à effet de serre" [greenhouse gases]
2. Jus de citron peut être utilisé au lieu de
Northern Telecom got off using environmentally friendly
Car air conditioning replacement HCFCs
not long term solution
solving problem by creating
by creating a problem by solving an old one.
designs climate

() **THAT** in March 17, 1994 I coordinated a conference on Ozone and made a presentation at the conference

EXHIBIT

Updated in 1995 for the publication of the Proceedings

PERIOD OF PRECAUTION IN 1972-1994 failed now in 1995 we must move to the PERIOD OF "CAUTION" with an immediate Global Emergency Action Resolution.

OZONE DEPLETION: NEED TO MOVE FROM THE INEFFECTIVENESS OF THE PERIOD OF PRECAUTION FROM 1972 TO THE EMERGENCY RESOLUTION OF THE PERIOD OF CAUTION in 1995

Presentation by Joan Russow, Sessional Lecturer, Global Issues, Environmental Studies Program, University of Victoria
April 27, 1994, at the International Conference on Ozone Depletion and Ultraviolet Impacts:

EMERGENCE AND EVOLUTION OF THE PRECAUTIONARY PRINCIPLE

In 1972 in the Science Council of Canada Report, *It is Not Too Late—Yet*, published in June 1972 at the same time as the United Nations Conferences on the Human Environment (UNCHE) in Stockholm, concern for the "scope, complexity and inevitability of environmental problems" was expressed (p.10), and the urgency of the environmental crisis, the global impacts and the need for the global action was affirmed:

As an added element, environmental impacts now transcend national and continental limits, and we have gained direct appreciation of the greater quantity of human activity

everywhere in the world. Beginning with the news of world-wide radioactive fallout, there has been increasing evidence of the global air circulation that disperse contaminants widely and imply the need for global action. ...It is now necessary for every nation to ponder not only the abuses it tolerates in its own territories, but also the problems it creates for others or receives from others.” (p. 13)

Also, in 1972 the Declaration of the United Nations Conferences on the Human Environment (UNCHE) designated the natural environment as even the right to life itself:

Recognizing the inherent right of the ecosystem or all forms of life regardless of human purpose

Recognizing the rights of future generations i.e. intergenerational equity

The protection and improvement of the human environment is a major issue which affects the well-being of peoples and economic development throughout the world; it is the urgent desire of the peoples of the whole world and the duty of all Governments.

We see around us growing evidence of man-made harm in many regions of the earth: dangerous levels of pollution in water, air, earth and living beings; major and undesirable disturbances to the ecological balance of the biosphere; destruction and depletion of irreplaceable resources ...

A point has been reached in history when we must shape our actions throughout the world with more prudent care for their environmental consequences.

Through ignorance or indifference, we can do massive and irreversible harm to the earthly environment on which our life and well-being depend.

Calling upon governments and peoples to exert common efforts for the preservation and improvement of the human environment, for the benefit of all the people and for their posterity

II PRINCIPLES

“Man [Humans] has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears [they bear] a solemn responsibility to protect and improve the environment for present and future generations. In this respect, policies promoting or perpetuating apartheid, racial segregation,

discrimination, colonial and other forms of oppression and foreign domination stand condemned and must be eliminated.” (Principle 1, UNCHE, 1972)

“The natural resources of the earth including the air, water, land, flora and fauna and especially representative samples of natural ecosystems must be safeguarded for the benefit of present and future generations through careful planning or management, as appropriate.” (Principle 2, UNCHE, 1972)

“...the discharge of toxic substances or of other substances and the release of heat, in such quantities or concentrations as to exceed the capacity of the environment to render them harmless, must be halted in order to ensure that serious or irreversible damage is not inflicted upon ecosystems. The just struggle of the peoples of all countries against pollution should be supported” (Principle 6, UNCHE, 1972)

“Science and technology, as part of their contribution to economic and social development, must be applied to the identification, avoidance and control of environmental risks and the solution of environmental problems and for the common good of mankind.” (Principle 18, UNCHE, 1972)

To address the above concerns a rudimentary form of the precautionary principle was enunciated:

“A point has been reached in history when we must shape our actions throughout the world with a more prudent care for their environmental consequences. Through ignorance or indifference, we can do massive and irreversible harm to the earthly environment...Declaration of the United Nations Conference on the Human Environment” (Declaration of the United Nations Conference on the Human Environment, 1972)

This principle was further reinforced in 1982, in the World Charter of Nature:

“Activities which are likely to pose a significant risk to nature shall be preceded by an exhaustive examination; their proponents shall demonstrate that expected benefits outweigh potential damage to nature, and where potential adverse effects are not fully understood, the activities should not proceed” (11 b World Charter of Nature, 1982)

“Avoidance of irreversible damage to nature principle
Activities which are likely to cause irreversible damage to nature shall be avoided” (11. a World Charter of Nature, 1982)

In 1992, in the UNCED documents there is the full enunciation of the precautionary principle. This principle is present in all the documents in differing forms: In the Rio Declaration it is expressed in the following way

“ Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing *cost-effective measures* to prevent environmental degradation.”
(Rio Declaration, UNCED1992).

Unfortunately, the resolve necessary in the precautionary principle could be weakened by the phrase “cost effective measures”

The precautionary principle without this phrase would reflect the global commitment to move to the period of caution:

Where there are threats of serious or irreversible damage, lack of scientific certainty shall not be used as a reason for postponing measures to prevent environmental degradation.

INVOKING OF THE CAUTIONARY PRINCIPLE

Rhetoric and notwithstanding clauses and escape phrases have allowed the global community to bypass the precautionary principle, and as a result of the bypassing of the precautionary principle the situation has become increasingly more urgent; it is now, as we move in 1995 toward the 50th Anniversary of the United Nations, time to invoke the "cautionary principle"

The cautionary principle involves a shift in the onus of proof. The proponent of an intervention into the ecosystem has to demonstrate that the intervention will not cause environmental degradation rather than the opponent of the intervention having to demonstrate that environmental degradation will occur or has occurred

The cautionary principle moves away from the usual cycle of attempted rectification, where (1) a substance is introduced, (2) the substance is found to be harmful; (3) the substance is continued in use because the scientific certainty is questioned (4) the environment industry develops a means for disposing of the substance so that the continued production is justified (5) the substance, if production and consumption of it has been curtailed, then the "environment industry's recycled substance is not deemed to be consumption.

- The invoking of the cautionary principle to address one environmental problem should not cause another problem or that the solution to the environmental problem should not itself be an activity or a substance that could potentially cause irreversible harm.

“1991 There is little merit in solving one problem by creating others. The Committee has therefore endeavoured to be responsible in making recommendations that clearly have wider implications beyond the problem of global warming.” Ozone depletion
(Federal Government Standing Committee on the Environment, p. 18)

- The invoking of the cautionary principle might require substantial change in our life as usual

“At the same time, however we need to insist that the character and importance of global warming ozone depletion will demand significant changes in the present situation. If we do not alter our 'life as usual' to reduce the threat of global warming ozone depletion, changes of climate and rises in sea-level will force unpleasant consequences on us. (Federal Government Standing Committee on the Environment,” p. 18)

- the invoking of the cautionary principle could require supportable evidence not necessarily in the certainty of environmental harm but at least in the likelihood

" global warming ozone depletion is real and serious

1.1. Our report is based on three main premises:

- global warming ozone depletion has been proved scientifically;
- It is an inevitable and continuing consequence of past; and present patterns of human activity; and
- it represents a severe threat to both Canada and the planet as a whole”

(Federal Government, Standing Committee on the environment 1991,)

- The invoking of the cautionary principle will require commitment to the principle that even though a particular state may not benefit, for the sake of the global community, the state must act.

1.16.4. “Even if global warming could be shown to benefit Canada, which is far from being the case, there is growing evidence of its potentially severe and even disastrous implications in other parts of the world, and especially in developing countries. Canada cannot adopt a laissez-faire attitude to what is happening. Many millions of people live on the margin of survival not merely in terms of nutrition and similar measures; small changes of climate or of sea-level would make their physical environment uninhabitable. Man-made emissions are substantially increasing the atmospheric concentrations of greenhouse.

environmental policy should be integrated fully into other policies. It should be considered as a fundamental factor when economic decisions are taken. In this context we stress the importance of sustainable development; prevention rather than cure; environmental impact assessment; setting environmental standards on the basis of best technology; and development of less polluting and more cost-effective technologies, including those for controlling emissions at source.” (5 the Way forward Environment ministers London, 1984)

"environmental policy should be integrated fully into other policies. It should be considered as a fundamental factor when economic decisions are taken. In this context we stress ...prevention rather than cure; environmental impact assessment; setting environmental standards on the basis of best technology; and development of less polluting and more cost-effective technologies, including those for controlling emissions at source.” (5 the Way forward Environment ministers London, 1984)

- The invoking of the cautionary principle will require the commitment that the solution lies in prevention not cure or repair

"It is essential, in both developing and developed countries, to manage sustainable resources wisely, and to this end we emphasize that prevention of damage is better than repair. This principle is fully effective only in the framework of intensive international co-operation because many of these problems range far more widely than any one of our countries.” (2) (the Way forward Environment ministers London, 1984)

"the 'polluter pays Principe' is of key importance to ensuring that environmentally correct prices and market signals are given and should be developed and applied more widely” (5) (the Way forward Environment ministers London, 1984)

" we must also be more forward-looking in addressing emerging environmental issues such as possible climatic changes resulting from human activities, the need to examine alternative energy strategies, and the environmental impact of new forms of industry including biotechnology.” (5)(the Way forward Environment ministers London, 1984)

IV Environmental Policies

12. “New approaches and strengthened international co-operation are essential to anticipate and prevent damage to the environment, which knows no national frontiers.... We shall also address other concerns such as climatic change, the protection of the ozone layer...”(1985 Bonn economic Declaration May 4, 1985)

4. "Economic progress and the preservation of the natural environment are necessary and mutually supportive goals. Effective environmental protection is a central element in our national and international policies." 1985 Bonn economic Declaration May 4, 1985

13." We shall harness both the mechanisms of governmental vigilance and the disciplines of the market to solve environmental problems. We shall develop and apply the polluter pays principles more widely. Science and technology must contribute to reconciling environmental protection and economic growth." (1985 Bonn economic Declaration May 4, 1985)

- The invoking of the cautionary principle will require the commitment that the solution calls for new initiatives and the maintaining of options (non-reduction of options)

1980 The Global 2000

" if these trends are to be altered and the problems diminished, vigorous, determined new initiatives will be required worldwide to meet human needs while protecting and restoring the earth's capacity to support life. Basic natural resources — farmlands, fisheries, forests, minerals, energy, air and water — must be conserved and better managed. Changes in public policy are needed around the world before problems worsen and options for effective action are reduced. iv

" If decisions are delayed until the problems become worse, options for effective action will be severely reduced (5)

- The invoking of the cautionary principle will require global actions

Nonetheless, given the urgency, scope, and complexity of the challenges before us, the efforts now underway around the world fall far short of what is needed. An era of unprecedented global co-operation and commitment is essential. iv)

We can avoid polluting our own environment, and we must take care that we do not degrade the global environment.

iv Finally to meet the challenges described in the Global 2000 Study our federal government requires a much stronger capability to project and analyze long-term trends." 1980 The Global 2000

"in a remarkable report to the Economic and Social Council of the UN (in May 1969) U Thant, then Secretary General of the UN, portrayed the extraordinary world-wide dangers to man's environment. HE said:

It has become clear that we all live in one biosphere with which space and resources, though vast are limited.

HE then proposed, and the General Assembly agreed to hold an International Conference on Human Environment, in Stockholm in June 1972. "(Huntly Man's environment and the Atlantic Alliance" 1972)

- The invoking of the cautionary principle will require not waiting for scientific near- certainty

"However, if governments wait for scientific near-certainty, it will often be too late for them to act at all either because of the inertia of the natural phenomena, or because of the time lags associated with policy development and international negotiation. "(1981, Van Lennep, Secretary-General of the OECD The Environment Challenges for the 80s,)

- The invoking of the cautionary principle requires the summoning up of the international political will

" I am sure it is clear to everyone that it will not be easy for our nations collectively to Marshall the political will necessary to deal with these issues.

In the absence of scientific consensus, political consensus, especially international consensus, is hard to achieve. However, if governments wait for scientific near-certainty, it will often be too late for them to act at all either because of the inertia of the natural phenomena, or because of the time lags associated with policy development and international negotiation. "(Van Lennep, Secretary-General of the OECD The Environment Challenges for the 80s)

In Conclusion, the invoking of the cautionary principles would require the immediate implementation of the following measures. As global community nears the 50th Anniversary of the United Nations, the global committee must be urged and compelled to fulfill existing obligations incurred over the past 50 years in relation to the environment, and to undertake the following environmental commitments:

1. ENSURING ECOSYSTEM INTEGRITY

Ecosystem integrity is a prime consideration in developing any criteria. The interdependence of [the biota] and the delicate balance between various components (air, water, aquatic life, wild life, land, etc.) in an ecosystem [are essential to life on earth.] must be considered. The uniqueness of each ecosystem must be respected.

"Ensuring that in all decisions made about the environment that the ecosystem is given primacy. "Ensuring that every form of life is unique, warranting respect regardless of its worth to humans

(World Charter of Nature). "Ecosystem" means a dynamic complex of plant, animal and micro-organism communities and their non-living environment interacting as a functional unit (Convention on Biological Diversity, UNCED, 1992). Biodiversity is defined as "the variability among living organisms from all sources including terrestrial, marine and other aquatic ecosystems, and the ecological complexes of which they are part; this includes diversity within species, between species and of ecosystems" (Convention on Biological Diversity, UNCED, 1992)

2. COMPLYING WITH ALL INTERNATIONAL, NATIONAL, BILATERAL AND REGIONAL AGREEMENTS, PROTOCOLS AND CONVENTIONS AS A MINIMUM. IF THERE IS A CONFLICT BETWEEN INTERNATIONAL, NATIONAL, BILATERAL AND REGIONAL AGREEMENTS, THE MOST STRINGENT ENVIRONMENTAL PROVISIONS SHALL PREVAIL.

A comprehensive listing list of international, national and bilateral and regional agreements, protocols and conventions has been compiled and shall be affixed to this document.

3. ESTABLISHING AND ENFORCING REDUCTION AND ELIMINATION TARGETS

"Ambient criteria, or environmental quality criteria refers to levels of contaminants in the environment that must be zero use, production, and release in all cases where a toxic substance is persistent or bioaccumulative. It also applies when a substance will generate persistent or bioaccumulative toxic byproducts or breakdown products during its productions, use or disposal" (zero Toxics Alliance Statement of Principles)

Given that goals and targets may not have taken into consideration pollution prevention, the goals and targets, consequently, shall be reassessed in the light of recent findings and in the light of the precautionary, anticipatory principle, and other principles

4. ANTICIPATING AND PREVENTING THE ADVERSE EFFECTS OF SUBSTANCES AND ACTIVITIES ON THE ENVIRONMENT (ADHERENCE TO ANTICIPATORY PRINCIPLE)

The anticipatory principle is a pro-active measure to ensure that substances, processes and activities which are harmful to the environment are prevented from entering the environment, and to ensure that costly subsequent means of restoration are avoided, and that irreversible environmental degradation are avoided. Adverse effects include, but are not limited to, toxicity, bioaccumulation, bioconcentration; persistence, depletion] of the stratospheric ozone layer, reduction of carbon sinks, increased greenhouse gases, increased human-induced climate change, reduction or loss of biodiversity, as

well as heat, light and electro-magnetic radiation, atomic radiation, hormone mimicry

5. REQUIRING THE USE OF BEST ECOLOGICALLY SOUND TECHNIQUES (BEST)

There is no guarantee that the Best Available Technology (BAT) will be ecologically sound. The BAT may be the best available but it may not be good enough. It is important to support and promote the development of and the use of BEST. In the event that there is no BEST technology which can prevent the release of persistent or bioaccumulative toxics then the extractive or productive activities which produce the product or substance process should be changed; the activities and product phased out/outlawed, or the demand for the product reduced through public education. In this case, the industry involved shall be assisted in the conversion to alternative processes or products involving BEST.

6. ENFORCING THE POLLUTION PREVENTION PRINCIPLE

Mandatory standards and technical regulations will be developed to prevent adverse effects of substances or activities on the ecosystem including the adverse effects on the health of human and non-human species.

Adverse effects include, but are not limited to, toxicity, bioaccumulation, bioconcentration; persistence, destruction [depletion] of the stratospheric ozone layer, reduction of carbon sinks, increased greenhouse gases, increased human-induced climate change and global climate change , reduction or loss of biodiversity, as well as heat, light and electro-magnetic radiation, atomic radiation, hormone mimicry

7. ENSURING ENVIRONMENTAL AUDITS AND TAKING INTO ACCOUNT ALL ECOLOGICAL CONSEQUENCES PRINCIPLE

The environmental audit and ecological consequences principle is the following:
to assess both the environmental costs of not converting to ecologically sound practices, the environmental costs of permitting ecologically unsound practices,
(including the costs to future generations of irreversible environmental degradation) and the environmental costs of potential mitigation, and restoration.

In international documents there is the recognition of the importance of environmental audits, and of the taking into consideration of ecological consequences:

“Governments,...should develop procedures for monitoring the application of the cradle to grave approach, including environmental audits” (Agenda 21, 20.20 e)

“Ensure that relevant decisions are preceded by environmental impact assessments and also take into account the costs of any ecological consequences” (Agenda 21, 7.42)

In addition, assessment of full costs of violating the rights of the disenfranchised shall be carried out. The groups bearing the greatest impact from ecologically unsound practices are usually the disenfranchised in society—the poor and the members of minority groups.

8• REQUIRING A LEGITIMATE ENVIRONMENTAL IMPACT ASSESSMENT

An actual assessment of the short and long term potentially adverse environmental effects of existing and proposed projects and activities shall be carried out. It is understood that a review of a project or activity to assess the "environmental, economic, social, cultural, heritage, health effects of the reviewable projects" is not a legitimate environmental impact assessment.

9• ADDITIONAL PRINCIPLE: INSTITUTING THE REVERSE ONUS PRINCIPLE

The onus of proof shall shift from the opponent of an intervention into the ecosystem having to demonstrate harm to the proponent of an intervention into the Ecosystem having to demonstrate the safety of the intervention. Every proponent of an intervention in the ecosystem must demonstrate that the intervention will not cause harm to the environment or will not create ecologically unsound wastes

10. ENSURING AND ENFORCING THE POLLUTER PAY PRINCIPLE

Enforcing the Polluter Pay Principle to ensure that those who may release polluting substances into the environment pay the full-cost of environmentally safe handling, treatment, disposal, and remediation; in addition, permits shall be suspended and canceled, if the polluter has caused serious irreversible ecological damage.

11• PRINCIPLE: ENFORCING ENVIRONMENTAL COMPENSATION PRINCIPLE

Given that throughout history sympathetic government regimes have failed to enforce their own statutory legislation, and given that there has been resultant environmental degradation, the current government shall seek environmental compensation from companies that can be shown to have consistently contributed to environmental degradation. The funds from environmental compensation shall be put into developing BEST (Best Ecologically Sound Techniques).

12• ENSURING THAT COMPENSATION IS NOT USED AS JUSTIFICATION FOR NON-FULFILLING OF DUTY

Ensuring that compensation can never be used as reason for not exercising the duty to preserve, protect, conserve and the environment

13. ENSURING CONSISTENT PROTECTION OF AMBIENT AIR AND WATER AND SOIL QUALITY

Ensuring consistent protection throughout the province means ensuring both the variation in air, water, and soil conditions across British Columbia and the variation in effects of different substances emitted. That all discharges, no matter where they are located in the province will be equally affected by the criteria. Ensuring consistent protection also means that a state will not transfer its pollution problems onto other jurisdictions, nor will it relax its standards in order to attract industry. No particular area should be penalized due to a pre-existing high-quality environment

- In no way shall the requirement to ensure consistency be used as a justification for the relaxing of standards and technical regulations. There must be tough standards that stand the test and everyone has to follow.
- No proposal to relax standards or technical regulations shall be used to attract industry [see principle enunciated in NAFTA. (re: relaxation of standards to attract industry)]

14 • ENSURING THAT STANDARDS AND TECHNICAL REGULATION WILL NOT BE RELAXED TO ATTRACT INVESTMENT

- the argument that in a pristine environment that has not yet been polluted by industrial activity shall be able to have emission standards relaxed is inherently invalid and should be discounted. In other words, a licence to pollute could be given to industry in a pristine area because the area is not yet officially been designated as being polluted.
- Polluting industries that have been regulated under statutory law, shall not through redefinition of practice be excluded from the previous regulations [Current situation in Delta where a plant with “industrial ? ” [air emissions is redefined as a recycling plant and thus the regulations related to “industrial.... ” is deemed inapplicable.

15• ENSURING INCLUSIVENESS OF ACTIVITIES AND SUBSTANCES

“Ensuring that every activity or substance that could prevent the protection and, conservation of the environment will be included under this Act, regardless of whether the activity or substance is presumed to be covered under another Act” (proposed, February 19, BCEPA DRAFT)

16• ENSURING THAT POLLUTING SUBSTANCES ARE NOT TRANSFERRED FROM ONE MEDIA TO ANOTHER (FOR EXAMPLE FROM WATER TO AIR). IN OTHER WORDS, POLLUTION PREVENTION IS COMPLETE PREVENTION INSTEAD OF DISPLACEMENT OF PROBLEM

17• ENSURING THAT THE NON-TRANSFERENCE OF SUBSTANCES OR ACTIVITIES, HARMFUL TO THE ENVIRONMENT OR HUMAN HEALTH TO OTHER PARTS OF CANADA OR TO OTHER STATES.

18• HARMONIZING UPWARD OF THE “PLAYING FIELD,” STRIVING TO ENSURE THAT THE TARGETS I SHALL DRAW UPON THE HIGHEST POSSIBLE EQUITABLE AND ECOLOGICAL STANDARDS

19• RESPECTING AND ADHERING TO THE INTERGENERATIONAL EQUITY PRINCIPLE

20• AFFIRMATION OF POSITIVE-DUTY-TO PROTECT-INDIGENOUS-LANDS PRINCIPLE.

21• ENSURING THE NON-PROSECUTION FOR ADVOCATING THE COMPLIANCE WITH OBLIGATIONS, AND MANDATORY STANDARDS AND TECHNICAL REGULATIONS

22• ENSURING THAT POLLUTING SUBSTANCES ARE NOT TRANSFERRED FROM ONE MEDIA TO ANOTHER (FOR EXAMPLE FROM WATER TO AIR). IN OTHER WORDS POLLUTION PREVENTION IS COMPLETE PREVENTION INSTEAD OF DISPLACEMENT OF PROBLEM

() **THAT** in March 1994 I attended the Globe 1994, meeting where I attended the session on international law, regulations and I continually advocated Mandatory International Normative Standards to drive industry. I circulated a petition Globe 1994 related to compliance with the Convention on Biological Diversity .

() **THAT** at the session on regulations at Globe 1994, corporations held a panel on environmental reporting. A representative from Monsanto was declaring that they had been working with environmental groups and that they had had fewer legal suits as a result of environmental reporting. I intervened and commented that I was surprised that he would not have been called into court for misrepresentation through his claiming that the production of genetically engineered foods would be supported by environmental groups.

() **THAT** in 1994, I drafted a formal petition for the Green Party of BC related to Clayoquot Sound
EXHIBIT

PETITION

TO THE HONOURABLE HOUSE OF COMMONS OF CANADA

IN PARLIAMENT ASSEMBLED

The Petition of the undersigned residents of Canada who now avail themselves of their ancient and undoubted right thus to present a grievance common to your Petitioners in the certain assurance that your Honourable House will therefore provide a remedy

THE GREEN PARTY OF BC.

calls upon the Government of Canada

(1)

to seek an advisory opinion from the International Court of Justice on Canada's compliance with the Convention on Biological Diversity as it applies to forests including community watersheds.

(2)

to seek an advisory opinion on whether the granting of an injunction (internal law) may not be in violation of section 27 of the Convention of the Law of Treaties

3

to seek an advisory opinion from the International Court of Justice on whether trials of indigenous peoples and forest protectors have not been in violation of sections of the International Covenant on Civil and Political Rights.

call upon the Attorney General of British Columbia to cease all proceedings against citizens who have been arrested in Clayoquot Sound, and press the prosecution against Mac Millan Bloedel for its infractions, and prosecute the known people who have imprisoned the bus, and attacked the peace camp.

WHEREAS

• The "World Charter for Nature" passed by the General Assembly" in 1982, enunciated the following principles that

Every form of life is unique, warranting respect regardless of its worth to [humans] and to accord other organisms such recognitions, humans must be guided by a moral code of action"

"Lasting benefits from nature depend upon the maintenance of essential ecological processes and life support systems, and upon the diversity of life forms, which are jeopardized through excessive exploitation and habitat destruction by {Humans}" [humans] must acquire the knowledge to maintain and enhance [their] ability to use natural resources in a manner which ensures the preservation of the species and ecosystems for the benefit of present and future generations.

"Activities which are likely to pose a significant risk to nature shall be preceded by an exhaustive examination; their proponents shall demonstrate that expected benefits outweigh potential damage to nature, and where potential adverse effects are not fully understood, the activities should not proceed."

- Since 1972, Canada has made significant international commitments to human rights, equity, social justice, ecological preservation, and ecologically sound practices, (Universal Declaration of Human Rights, 1948; International Covenant on Civil and Political Rights International Covenant of Social, Cultural Rights; Environmental Conference in Stockholm, 1972; UN Conservation of Natural Heritage, 1972; the World Charter of Nature, 1982; Global Biodiversity Strategy, 1992; the Caracas Declaration 1992; Biodiversity Convention, Climate Change Convention and Agenda 21, 1992). The action to condemn and in some cases imprison individuals who call for Canada's compliance to these international, national and provincial commitments has been in direct violation of principles of equity, social justice and human rights.

- For years, through its forest practices, Canada as well as the forest industry has been in violation of international law, and even in violation of its own federal and provincial law. Through non-compliance with its international obligations, and with national and provincial Acts, the government has permitted devastation of its forests; this devastation is now recognized widely and condemned by the international community. This recognition is reflected in the statement by the German Biologist, Dr. Schutt.

“The practice of clearcutting, followed by [broadcast burn] artificial reforestation has undoubtedly many technical and organizational advantages. In the course of time, however, soil scientists and ecologists found out that the practice of clearcutting automatically leads to considerable drawbacks:
-wounding of the soil surface through logging operations. risk of erosion
-high irradiation and higher climatic extremes alter the microclimate, the flora and the microflora and deteriorate the growing conditions for a number of valuable tree species. Soil compression and a reduction of species richness occur
-An accelerated decomposition of organic matter occurs, combined with a wash out of nutrients, and the eutrophication of ground water, rivers and lakes” (Environmental Ethics Conference, 1992, Vancouver)

as well as in the recent IUCN (World Conservation Union) Resolution January 25, 1994

MINDFUL of the fact that such ancient forests on Vancouver Island and on the mainland-coast of British Columbia are disappearing at a rapid rate as a result of practices that have, to date, not been ecologically sustainable;

- Section 60 of the Forest Act calls for suspension of tree farm licensees if the licence holder has caused harm to the natural environment. Throughout B.C. environmentalists have been documenting evidence of non-compliance to the Forest Act. The Fisheries Department has documented evidence of violation by the forest industry of section 33 of the Fisheries Act.

- as a result of industry's violation of the law and Governments' failure to enforce the federal and provincial Acts, irreparable harm to the environment has ensued. Over 1000 Vancouver Island citizens have been arrested,

condemned as criminals and in some cases imprisoned because they call for compliance to obligations, attempt to prevent irreparable harm, and demand that environmental law be enforced.

In the latest case, the protesters in Clayoquot Sound have been condemned as criminals because of their non-compliance with an injunction to prevent them from preventing irreparable harm. On the other hand, McMillan Bloedel has been causing irreparable harm, and governments have failed to suspend tree farm licence as required under section 60 of the Forest Act of British Columbia.

Traditionally, the equitable remedy of injunctions is deemed necessary to prevent irreparable harm. In 1985, the court concurred with this conception in McMillan Bloedel vs. Mullin where it was decided that

“Indians, ...will be deprived of valuable ecological rights, and in further light of the fact that irreparable harm will not result to the Logging Company if timber harvest is delayed pending an expedited adjudication of issue” [1985, BCD Civ 1892-08]

Now, the courts have appeared to misconstrue the concept of irreparable harm: those who cause irreparable harm (industry) through non-compliance with international obligations, national and provincial legislation are granted injunctions to facilitate their continuing to cause irreparable harm , while citizens are condemned as criminals for not complying with the injunctions granted to facilitate irreparable harm.

- Section 15 of the Canadian Charter of Rights guarantees citizens equality before and under the law
- the current court proceedings against citizens in Clayoquot are in contravention of the International Covenant on Civil and Political Rights, to which Canada is a signatory

WE THE GREEN PARTY OF CANADA

call upon the Attorney General of British Columbia to cease all proceedings against citizens who have been arrested in Clayoquot Sound, and press the prosecution against Mac Millan Bloedel for its infractions, and prosecute the known people who have imprisoned the bus, and attacked the peace camp.

() **THAT I wrote and circulated** CHARTER OF ECOLOGICAL PRINCIPLES

PRINCIPLE MUST DRIVE INDUSTRY NOT INDUSTRY DRIVING PRINCIPLES

Legend

Underlined: what has already been agreed to internationally

Bold: what still needs to be done

CHARTER OF ECOLOGICAL PRINCIPLES

This Charter draws from international obligations that have already been agreed to internationally. The Charter draws from both obligations undertaken by states through UN resolutions such as the "World Charter of Nature", globally agreed to documents such as the United Nations Conference on Humans and the Environment (Stockholm, 1972), The Rio Declaration (UNCED, 1992) and Agenda 21 (UNCED, 1992) and the legally binding documents such as the Vienna Convention on Ozone (1986), the Montreal Protocol (1987), The Basel Convention; Convention on Biological Diversity (UNCED, 1992, in Force, 1993) and the Convention on Climate Change (UNCED, 1992, in force 1993), and the Law of the Sea (in force 1994).

NOTE: Article 18 of the Vienna Convention Treaty stipulates that if a state has signed a treaty there is an "obligation not to defeat the object and purpose of a treaty prior to the entry into force"

The following principles have been agreed to internationally

International obligations must be fulfilled as being not the maximum but the minimum standards to follow

Transference of agreed to principles to state practices

The principles set forth in the present Charter shall be reflected in the law and practice of each State, as well as at the international level (World Charter of Nature)

Inherent worth of nature

ensuring that every form of life is unique, warranting respect regardless of its worth to man

[human], and to accord other organisms such recognition's, man [human] must be guided by a moral code of action (World Charter of nature)

Respect for essential processes

Nature shall be respected and its essential processes shall not be impaired

Urgency of conserving nature

Humans can alter nature and exhaust natural resources by their actions or the consequences and, therefore, must fully recognize the urgency of maintaining the stability and quality of nature and of conserving natural resources and nature (World Charter of Nature)

Moral code of action

ensuring that every form of life is unique, warranting respect regardless of its worth to man [humans], and to accord other organisms such recognition's, man [human] must be guided by a moral code of action (World Charter of nature)

Enunciation of the primacy of the ecosystem

Ensuring that in all decisions made about the environment that the ecosystem be given primacy

Invocation of the precautionary principle

where there is a threat of serious or irreversible damage, lack of full scientific certainty *should* shall not be used as a reason for postponing measures to avoid or minimize such a threat (from the Biodiversity Convention)

Enunciation of the principle of doubt

Activities which are likely to pose a significant risk to nature shall be preceded by an exhaustive examination; their proponents shall demonstrate that expected benefits outweigh potential damage to nature, and where potential adverse effect are not fully understood, the activities should shall not proceed (World Charter of Nature)

Enunciation of the "Cautionary" Principle

Every proponent of an intervention in the ecosystem must demonstrate that the intervention will not cause harm to the environment or will not create ecologically unsound wastes

Adoption of "prevention technologies — technologies that emphasize "protecting, conserving and sustaining the environment from the beginning, and thus avoiding the cycle of rectification of error.

Non introduction of hazardous products in the environment

the onus of proving the non-hazardous nature of the product will be on the proponent of this new type of product [after a full life cycle analysis of all the potential environmental harm by non-vested interest parties]

Environmental Assessment review

Introduce appropriate procedures requiring environmental impact assessment of its proposed projects that are likely to have significant adverse effects on Biological diversity with a view to avoiding or minimizing such effects, and where appropriate, allow for public participation in such procedures (Article 14, 1A, Convention on Biological Diversity)

Assertion of the avoidance of activities

Activities which are likely to cause irreversible damage to nature shall be avoided (World Charter of Nature)

Recognition of interconnectedness with nature

Humankind is a part of nature and life depends on the uninterrupted functioning of natural systems which ensure the supply of energy and nutrients

Reaffirmation of intergenerational equity

Reaffirming that man [humans] must acquire the knowledge to maintain and enhance their ability to use natural resources in a manner which ensures the preservation of the species and ecosystems for the benefit of present and future generations

(World Charter of Nature)

Commitment to non-transference of harmful substances and activities
States should [Shall] *effectively cooperate to discourage or prevent the relocation and transfer to other States of any activities and substances that cause severe environmental degradation or are found to be harmful to human health* (Rio Declaration)

(b) identifying, preserving and preventing the loss or reduction of Biological Diversity
[wording in part from the Convention on Biological Diversity]

(b 1) mitigating climate change by addressing anthropogenic emissions by sources and removals by sinks of all greenhouse gases not controlled by the Montreal Protocol, and measures to facilitate adequate adaptation to climate change [wording from the Climate Change Convention]

(c) Achieving the goal of zero pollution in the province

(e) applying the principles of pollution prevention as the foundation of environmental protection

[from definition of "pollution prevention"]

(a 0) _ the prevention of the use, generation and release of any substance into the environment in such a manner or quantity as to cause pollution [repeated from 41 1)

(a) the elimination of the use of polluting substances

(b 0) the substitution of polluting substance with non-polluting substances

(b) the substitution of polluting substances with less polluting substances

(c) the reduction in the introduction and use of **[non-renewable]** resources and polluting substances

(d) the elimination and reduction in the generation of polluting substances

[e, f, g removed because not deemed appropriate for prevention;
Discussion Environmental Group, February 19]

(f0) "Confirming the responsibility of government to set up a non-vested interest board or panel with varying levels of expertise and experience to do "arms-length" research into the true environmental impacts of substances and activities by carrying out "life cycle analyses" (recommendations from various chapters of UNCED Agenda 21) (Suggested Environment meeting, February 19)

(f) Confirming the responsibility of producers for sound environmental stewardship of products through all phases of a product's life;

(g) *“..ensuring the comprehensive and integrated consideration of environmental and socioeconomic effects in public policy-making in British Columbia. [Deemed to be inconsistent with the overriding purpose of the Act]* **Ensuring that in all decisions made about the environment that the ecosystem be given primacy”** (Suggested Environment meeting, February 19)

(h0) “International obligations must be fulfilled as being not the maximum but the minimum standards to follow” (proposed, Discussion, February 19)

(h) **“Recognizing that British Columbia residents have an interest in and a responsibility of minimizing their impact upon the regional, national and global environment and global environmental well-being”** (Suggested Environment meeting, February 19)

(i) using the knowledge and experience of British Columbia residents in the formulation of decisions affecting the environment,

(j) confirming the responsibility of polluters to pay for the costs of their actions **(also recommended in Agenda 21) but also recognizing that no pecuniary payment of costs for environmental destruction can ever fully redress the loss to the environment, and reaffirming that the prevention of pollution and environmental destruction should be by using "prevention technologies"**

(k) “...ensuring that every activity or substance that could prevent the protection, conservation and sustainability of the environment will be included under this Act, regardless of whether the activity or substance is presumed to be covered under another Act” (proposed, February 19)

(l) ensuring that no citizen will be prosecuted for advocating or acting to promote the purposes of the act (Suggested, February 19)

(m) promoting the research into the development and introduction of renewable, non-polluting (protection technologies)

(n) ensuring that compensation can never be used as reason for not exercising the duty under the act to protect, conserve and sustain the environment (proposed, Discussion, February 19)

(o) agreeing that any compensation given shall be assessed on the basis of past environmental performance and environmental costs and subsidies, and that any awarded money shall be (used by the compensated party to create employment within B.C.) placed in a job creation fund (Suggested, Discussion, February 20)

(p) ensuring the maintenance and enhancement of the quality of the environment (moved from section 2.a, February 20)

2. To achieve the purposes of this Act, all persons who exercise functions and powers under this Act shall have regard to the importance **of the purposes of this act** ((proposed, February 20)

(a) the maintenance and enhancement of the quality of the environment

(b) the actual or potential effect of an activity or natural process on the whole of the environment, including its actual or potential effect on the health and safety, and the economic, cultural and social well-being of people and communities

(c) the potential costs and benefits of any objective, policy, or proposal to the environment

Scope

(1) For the purposes of this Act, introduction of a substance into the environment means depositing the substance on or in or allowing or causing the substance to flow or seep on or into any land or water or allowing or causing the substance to be emitted into the air and includes indirect means of introduction into the environment

(1*) For the purpose of this Act, the impact of an activity on the environment means the engaging in any activity which could prevent the protection, conservation and sustainability of the environment will be included under this Act, regardless of whether the activity or substance is presumed to be covered under another Act (proposed, February 19)

2. Except where this Act or the regulations specifically provides to the contrary, this Act applies to the whole environment of British Columbia **{The onus of proof for exclusion from the Act must reside in the proponent for exclusion (proposed, February 20)}**

3. Where there is conflict between this Act, its regulations or an authorization under this Act and any other act or regulations there under, this Act its regulations and authorizations issued or subsisting under this Act apply, **except when provisions in other Acts or regulations contribute to the fulfillment of the purposes of the Environmental Protection Act better than those contained in this Act**

(a) where this Act or its regulations provide to the contrary, or

(b) as may be prescribed by the Lieutenant Governor in Council

4. Nothing in the Soil Conservation Act shall be taken to prevent the establishment within a local authority of any facility for the disposal of waste in accordance with this Act **providing that the establishment is deemed to fulfill the purposes of the Environment Protection Act. (Proposed, February 20)**

5. *The Crown is bound by this Act, except where this Act or the regulations specifically provide to the contrary*

[Not yet commented on rest of section]

Part 2

Environmental Bill of Rights

Public Trust

30. (1) Every resident of British Columbia has a right to protect the environment and the public trust from any pollution, impairment or destruction

(2) The government, as trustee, has a duty to conserve and protect the environment of British Columbia

3. Citizens of British Columbia have the right to have the environment conserved and protected (Suggested Environment meeting, February 19)

4. Citizens of British Columbia have to right to expect that no person shall use **generate or release**, waste or recyclable maters, or any other substance **(including fugitive gas or leachate)** into the environment in such a manner or quantity as to cause pollution

[moved from 41 (1) (Suggested Environment meeting, February 19)

5. Citizens of British Columbia have the right to expect that the government will live up to its obligations (Doctrine of Legitimate Expectation)

6. Present and future generations of British Columbia have the right to an ecological heritage (Suggested Environment meeting, February 19)

7. ensuring that no citizen will be prosecuted for advocating or acting to promote the purposes of the act (Suggested Environment meeting, February 19)

Right of action

31. (1) The Attorney General or any resident of British Columbia may commence an action in the Supreme Court against any person who has polluted or otherwise degraded the environment and the public trust or who is likely to do so.

2. A person may commence an action under subsection (1) without having to establish that there is , has been or is likely to be an infringement of an authorization issued under this Act or an approval, permit, licence, standard, regulation, rule or order issued by or under an Act listed in Schedule A.

3. A person who commences an action under subsection (1) shall provide notice of the proceedings to the Attorney General and the Minister.

4. This section does not abrogate those common law rights that would normally be available to a plaintiff to commence an action.

5. the need for intervener funding

Standing

32 A person may commence an action under section 31 without having to show that he or she has
(1) any greater or different right, harm or interest than any other person; or
(2) any pecuniary or proprietary right or interest in the subject matter at issue.

Burden of proof.

33.

(1 a) Every proponent of an intervention in the ecosystem must demonstrate that the intervention will not cause harm to the environment or will not create ecologically unsound wastes

If the proposal involves anything that could be hazardous, 0 emissions and waste must apply; if the proposal involves lowest achievable discharge rate should apply (February 19, discussion)

(1 b) "the plaintiff shall establish a prima facie case showing that **the defendant's proposed activities are likely to pollute or degrade the environment**

(1) the plaintiff shall establish a prima facie case showing that the defendants' activities have polluted or degraded the environment or is likely to do so

(1 c. In a prosecution for a contravention the burden of proving compliance is on the defendant" [Section 46, ss 4]

2. Where a prima facie case under subsection (1) is established, the defendant may rebut the prima facie case by showing that there is no feasible and prudent alternative to the defendant's action

[If so, there must be some criteria for determining feasible and prudent alternatives in the light of the purpose of the Act; "providing prevention, conservation and sustainability of the environment" determined by an advisory, non-vested interest board or panel with representation from varied areas of expertise and experience]

3. "It is a defence to an action commenced under this Act that the defendant's action is authorized under this act or an Act listed in Schedule A, unless the plaintiff can establish, on balance of probabilities, that the standard is inadequate to protect the environment and that the defendant's action has caused, or is likely to cause, severe or irreparable contamination or degradation of the environment.

The burden of proof must be on the defendant to demonstrate that the defendant's action has not caused or is not likely to cause, severe or irreparable contamination or degradation of the environment"
(Discussion, February 19)

Limitation Period

34. The limitation period for an action under section 31 of this Act is postponed and time does not commence to run until the plaintiff becomes aware, or ought reasonably to have become aware, of the identity of the defendant and of the material facts surrounding the claim

Appointment of minister's environmental mediator

37 (1) Subject to section 140, the Minister may, *where he or she deems it advisable where it is deemed advisable* and where the conflicting parties concur, appoint an environmental mediator acceptable to the parties to mediate between persons involved in an environmental conflict.

(2) when a mediator is appointed under subsection (1), the mediator shall, within 6 weeks after completion of the mediation, report to the results of the mediation to the Minister and the parties

38 (c) award damages to (iv) any person who has a concern for the environment

39 ...licence, standard, regulation, rule or order issued under an Act listed in Schedule A affects **the environment** and rights of a person, **any** person shall be furnished with a written statement of the decision setting out.... **(c) any dissenting opinions (Discussion, February 19)**

KEY ISSUE; UNREMUNERATED WORK

() **THAT** I had input into the CIDA FEARO international guidelines for CIDA projects

EXHIBIT

Joan Russow, Chair,
BCEN International Caucus
1230 St Patrick, St.
Victoria, B.C. V8S 4Y4

Martin Green
Director General
Intergovernmental and Regulatory Affairs

March 27, 1994

Dear Dr. Green

As I mentioned in the message that I left for you at your office, I just received the copy of your document today on my return from GLOBE 94. I have not had the opportunity to see the UN Convention on Environmental Impact Assessment on trans-boundary Activities or the Basel Convention; I think both these Conventions would be useful.

Because of the short time line available for me to comment, I will only pass on to you some notes and initial response that I had to the January 20 DRAFT.

I hope that some of my comments will be useful.

Sincerely,

Joan Russow

DRAFT:

General Comments:

Since I have not been part of the previous discussions related to the regulations, I am not aware of whether the points that I am raising have already been addressed. From the discussion paper, January 20 Draft, I sense that these issues have not yet been addressed. In some cases, I have typed up the original draft and suggested changes; in other cases, I have suggested potentially applicable considerations.

It is encouraging to note that Canada has agreed in recent international forum to not transfer hazardous waste [hazardous should include toxic as well as atomic]. I just became aware of this information today. I think this is particularly relevant in relation to the fulfillment of the non-transference -of-substances-and-activities-that-could-be-harmful-to-human-health-and the-environment principle from the Rio Declaration.

In general, I think that it is important to apply, in all cases, anticipatory and precautionary principles, international principles, prevention technology and public consultation with non-vested interest members of the public with a wide range of expertise and experience.

I would suggest that the environmental assessment review should be carried out on existing projects that could have potential significant adverse environmental effects, and through invoking the precautionary principle governments should not permit any future projects or activities which could have or could potentially have significant adverse environmental effects.

Legend:

plain text: January 20 Draft

italics: suggested deletions

underlined: references to statements from other documents

Bold: proposed additions

Submitted by Joan Russow
Member, IUCN Commission on Education and Communication
Chair, B.C.E.N. International Affairs Caucus
Co-chair, ERA Ecological Rights Association

GENERAL PRINCIPLES UNDERLYING CONSIDERATIONS OF PROJECTS AND ACTIVITIES: INTERNATIONAL OBLIGATIONS AS A MINIMUM

Whereas Canada in the Canadian Environmental Assessment Act (CEAA) [is it now an act or is it still Bill C 13] states that the Government of Canada "is committed to exercising leadership with Canada and internationally in anticipating and preventing the degradation of environmental quality and at the same time ensuring that economic development is compatible with the high value Canadians place on environmental quality" (Bill C-13)

and Canada undertakes "encouraging and promoting economic development that conserves and enhances environmental quality"

Whereas Canada must be able to fulfill its international obligations in respect of the environment (Preamble CEPA, 1988)

From these statements it would appear that Canada will at least fulfill its international obligations and that leadership should require the fulfillment of international obligations as a minimum not a maximum.

Canada should be obliged to fulfill the following international obligations:

- RECOGNITION OF INHERENT WORTH OF NATURE

As agreed to in the World Charter of Nature,

(a) Every form of life is unique, warranting respect regardless of its worth to man [human], and to accord other organisms such recognition's, man [must be guided by a moral code of action. (1982)

- APPLICATION OF NON-TRANSFERENCE OF HARMFUL SUBSTANCES OR ACTIVITIES PRINCIPLE

States should [Shall] *effectively cooperate to discourage or prevent the relocation and transfer to other States of any activities and substances that cause severe environmental degradation or are found to be harmful to human health* (Principle 14, Rio Declaration)

For years obsolete or harmful products or hazardous (including atomic), or toxic wastes have been "dumped" in developing countries or within states on the land of indigenous populations.

The granting of permission by the sovereign state should not be a reason to justify the relaxing of standards related to the transfer of harmful substances and activities.

• APPLICATION OF ANTICIPATORY AND PRECAUTIONARY PRINCIPLE

The precautionary principle was enunciated in its rudimentary form in the UN Convention on Humans and the Environment (UNCHE, 1972); reasserted in the World Charter of Nature (1982) and reaffirmed in the UN Convention on Environment and Development (UNCED); it could be considered to have become international customary law and thus binding on the international community. It has been adopted in the Rio Declaration and Agenda 21, and in the legally binding documents such as the Convention on Biological Diversity and the Framework Convention on climate change.

A proposed definition from the B.C. documents drawn from the different versions of the precautionary principle in the UNCED documents is Where there are threats of serious or irreversible damage, the lack of full scientific certainty shall not be used as a reason for postponing measures to prevent environmental degradation (proposed wording for BC Pollution Prevention Act).

It is important to recognize that the precautionary principle is essential; unfortunately, in the context of the EPA, CEPA and ARET lists, the principle followed is usually "the innocent until proven guilty" or the converse of the precautionary principle: if there is not scientific certainty that harm will occur the potentially harmful activities will proceed.

If the precautionary principle were truly applied the emphasis would be on

- (1) the prohibition and banning of harmful substances or activities which would be in violation of the precautionary principle
- (2) the reliance on arms-length research:
note in part 1, section 7c of CEPA there is no discussion about the need to have arms-length. Often government decisions are based on vested interest research by industry, and consequently projects and activities that could be harmful to human health or to the environment could exist in Canada and be transferred to recipient countries
- (3) the transfer of funding for research into long term ecologically safe and sound projects, substances, technologies and activities within Canada
- (4) the adoption of prevention technologies—doing it right the first time
- (5) the calculation of the true environmental costs of the use of substances and the engaging in activities
- (6) decisions about standards would not be made by an "interest-based" round table or consultative panel with industry involvement
- (7) the standards developed would be mandatory not voluntary as they are in the ARET program
- (8) the ecosystem would be given primacy.

**ENSURING THAT CIDA PROJECTS AND ACTIVITIES DO NOT
JEOPARDIZE THE CONSERVATION OF NATURE**

Through the Biodiversity Convention Canada has made obligations, that Canada has yet to fulfill, such as the following recognitions and commitments to conservation and protection of biodiversity

Affirming that the conservation of biological diversity is a common concern of humankind (Preamble)

Noting also that where there is a threat of significant reduction or loss of biological diversity, lack of full scientific certainty should not be used as a reason for postponing measures to avoid or minimize such a threat (Preamble)

The objectives of this Convention, to be pursued in accordance with its relevant provisions, are the conservation of biological diversity, the sustainable use of its components and the fair and equitable sharing of the benefits arising out of the utilization of genetic resources, including by appropriate access to genetic resources and by appropriate transfer of relevant technologies, taking into account all rights over those resources and to technologies, and by appropriate funding. (Biodiversity Convention)

(a) Introduce appropriate procedures requiring environmental impact assessment of its proposed projects that are likely to have significant adverse effects on biological diversity with a view to avoiding or minimizing such effects and, where appropriate, allow for public participation in such procedures;(Article 14)

SECTION 8 (2) D CEPA states; the objectives, guidelines and codes of practices shall relate to Conservation of natural resources but CEPA does not refer to Conservation of nature or biodiversity. Given that Canada is committed to the Conservation of nature through the Biodiversity Convention, as well as through the United Nations Convention for the Protection of Cultural and Natural Heritage (1972), and in order to fulfill our international obligations all documentation must recognize that one of the objectives shall be the conservation of nature. In CEAA "conserving environmental quality" is used but no mention appears to be made to the importance of conserving nature or biodiversity. For this reason, I have added this phrase to the draft document.

As indicated in Section 4 of CEAA, one of the purposes of the Act is to "encourage responsible authorities to take actions that promote conservation of nature and equitable and ecologically sustainable use *sustainable Development* and thereby achieve or maintain a healthy environmental and an equitable distribution of resources. *a healthy economy.*" The interrelationship of conservation of nature, equitable and ecological sound use, *trade, economic growth and a healthy environment* is also a factor in the application of CEAA to projects and activities outside Canada. It is thus important that the POC regulation take into account the necessity of ensuring that the environment is given primacy and that projects and activities should facilitate above all humanitarian, equitable and ecologically sound development, not exploitative development. The development of local prevention technologies that generate not wastes but resources shall not be

interfered with by Canadian industry. *that such broad issues as the competitiveness of Canadian industry, transfer of and cooperation in science and technology, trade flows and the emergence of new international arrangements.*

Finally, it should be noted that attempts at cooperating in this area are being carried out bilaterally and in international fora such as the OECD, the World Bank, and the European Community. *With respect to the international context, special attention must be paid to existing and emerging guidelines and practices for environmental assessment of other countries and multilateral institutions. In short, while environmental issues are being integrated into public policy by most countries, a coherent international approach could be achieved by following the principles that have already been agreed to internationally (see Russow, J., Content analysis of international principles) has not yet been achieved.*

International principles that have become ratified by the Canadian government should be the minimum standards.

[I have not had the opportunity of seeing the criteria by which these projects and activities are to be judged]

Some suggested criteria:

1. No project or activity should introduce technologies that interfere with the development of prevention technologies that are indigenous to the recipient state and that generate resources not wastes
2. No introduced project or activity should introduce technologies that rectify an existing problem in a way that could promote the continuation of another ecologically unsound project or activity
3. The onus of proof shall be on the proponent of the project or activity to demonstrate that the project will not interfere with locally developed projects and activities or with internationally agreed to principles
4. There should be a list of prohibitive projects and activities; this would be a list of projects that could have or could potentially have significant adverse environmental effects. If the anticipatory and precautionary principles would apply and if Canada wishes to be a leader internationally, then any project that has or potentially could have significant adverse effects would not be permissible
5. The environmental assessment shall be preventive rather than mitigative: to determine whether the project or activity should be embarked upon at all, rather than to proceed with the project or activity and then try to mitigate the impacts

6. No project should solve one problem by creating another which could be equally or more serious. For example, the promotion of a CANDU nuclear reactor to address the problem of climate change

7. All projects and activities should be approached not as a transfer of technology from North to South but as a drawing upon different areas of inventive, creative solutions from both the North and South. The promotion of Northern technology as the solution must be discouraged. The notion that only the Northern technology is acceptable is outdated. In many cases the most exciting innovative ecologically sound prevention technology is being developed from the South. The presumption of "Northern wisdom" as the solution must be discouraged, and the emphasis should be on interchanging of knowledge and technology

8. All projects and activities that promote a particular technology should be questioned. Even, and in particular the new technologies emerging from the "environment industries" Often the "environmental" technological fixes are used to justify the perpetuation of the use of the technologies the fixes were developed to prevent. For example, often the "environmental technology for clean-up of toxic wastes is used to justify the continued use of the toxic substances. In this case because the clean-up technology is in place there will be less incentive to develop prevention technology in the first place.

9. In an environmental assessment review a full life cycle analysis should be carried out on environmental and cultural implications of introducing the project or activity

10. If the term of "development" is to be used, it should be clarified. From an environmental point of view, the most developed, in a good sense, state is one that has succeeded in having the least impact on the environment. By this criterion the industrialized states could be perceived to be the least developed. A developed state would then be one in which the state succeeds in integrating human development and environmental integrity with the least impact on the environment.

A distinction could also be made between exploitative and humanitarian development. CIDA should refrain from projects in its business section that essentially promote Canada Business interests rather than the interests of the recipient state. A delegate from Senegal at the New York Prep Com described this type of development as "increasing."

11- Human development and cultural integrity should be encouraged.

12. No regulatory agency shall be a promoter. For example, IAEA — the regulator of nuclear energy is also a promoter of nuclear energy

DISTINCTION BETWEEN "ENVIRONMENTALLY BENIGN", "CAUTIONARY" "PROHIBITION", "EXEMPTION" [EXCLUSION],

Section 59, SS c (i) should definitely not apply to anything that CIDA is involved in; the bypassing through Orders in Council, for example of environmental Assessment Reviews, that has occurred under EARP on the grounds of "national security" and Royal Prerogative is unacceptable.

June 22

If the anticipatory, and precautionary principles are to apply, any project or activity that has or could have potential significant adverse environmental effects should not even be entertained; it should be placed on a "prohibition" list

If anticipatory and precautionary principles are followed, a long list of projects and activities that should not even be entertained could be developed; included in this list would be projects and activities for which there is already substantial evidence that harm could occur, and those for which there are or could be potentially significant adverse environment effects.

"Prohibited" should apply to projects and activities that should not even be considered for an environmental assessment review. This should include those projects and activities that would normally be under Section 59 (d) "Comprehensive study" is "required where the Governor in Council is satisfied that the project or any project within that class is likely to have significant adverse environmental effects"

If there are significant adverse effects are likely or potential, the project and activity should be on a prohibition list and not considered by CIDA.

Prohibitive projects and activities would include those that generate toxic (including pesticides), hazardous and atomic wastes

The term Hazardous wastes should include toxic, and atomic wastes.

"Cautionary projects and activities" Lists. A list should also be compiled of projects and activities whose impacts have been seriously questioned but have been permitted to occur in Canada without an environmental assessment review. These are the projects that should have a multimedia, life cycle analysis before they could be justified as CIDA projects. Under this category, would be "clear cut logging." If clear-cut logging were not banned and put on the "Prohibitive list" then at least a comprehensive environmental assessment review should be carried out on the impact on biodiversity.

The assisting of developing states to "manage" their forests through ecologically unsound technology such as clear-cut logging should be discontinued.

"Environmentally benign" lists

The term, "exclusion" used in Bill C13 or CEAA is ambiguous; although it refers to projects that are excluded from having to have an Environmental assessment under section 59 c, it may not be clear that at least in this subsection (ii) ...the environmental effects of the project are insignificant or the contribution of the responsible authority to the project in exercising powers or performing duties or functions referred to in section 5 in relation to the project is minimum.

For clarity, I would think a term like "environmentally benign" projects would be more appropriate. Projects and activities that are deemed to be completely benign with minimum cultural impact, with a positive impact on humanitarian development, and with prevention technology, and supported by both the country of origin and the recipient country and not interfering with locally developed prevention technology could be described as environmentally benign.

"Inclusion" should be projects and activities that may have a little or no effect but that it is important to examine what the effect might be

CRITERIA FOR EXEMPTION OF PROJECTS AND ACTIVITIES

No projects and activities shall be exempt [excluded] because the substances or activities would usually be examined under another statute. In B. C, forest practices are not included under the B.C. Environmental Assessment Act because they are purported to be examined under the Forest Act or the emerging Forest Practice Code.

To ensure that projects and activities are equitable and ecologically sound, no projects or activities that have been questioned in state of origin because of their impact on the environment should be permitted to be transferred to a recipient state. Although in Canada many practices continue either without there having been an environmental assessment review or with their having been a less than adequate review. The acceptance of the projects and activities in Canada should not be sufficient to determine that these projects and activities are acceptable enough to be transferred to other states. In many cases ENGOs seriously question practices in Canada. No practices that could be banned or discontinued through the invocation of the precautionary principle [should continue in Canada] shall be transferred outside of Canada. For example, the precautionary principle of the Biodiversity Convention could be used to justify the banning of ecologically unsound practices such as clear-cut logging.

EXEMPTION BECAUSE OF NOTWITHSTANDING CLAUSE

Under no circumstances shall existing projects or activities, which could have significant adverse environmental effects, be exempted because of notwithstanding clauses such as section 59, c i
No notwithstanding clauses such as the clause in C 113 related to national security

EXEMPTION THROUGH PASSING OF ORDERS IN COUNCIL

in no case shall orders in council be issued to bypass the environmental assessment review of existing projects or activities which could have significant adverse environmental effects

REGULATIONS

VI POLICY ISSUES

1. One Regulation or More?

The Canadian Environmental Assessment Act provides for a varying and *exclusion* regulation for two types of projects and activities outside Canada: projects and activities to be carried out outside Canada and any federal lands; and projects and activities to be carried out under international agreements or arrangements. Many, if not most, projects and activities outside Canada are those involving Official Development Assistance (ODA) funding provided by the Canadian International Development agency. Decisions about projects and activities outside Canada are made in two different ways: by federal authorities acting alone, or in collaboration with international agencies and organizations.

Two types of international agreements are relevant for the purposes of a POC regulation:

- multilateral or bilateral agreements, involving projects and activities whose essential details are specified
- multilateral or bilateral agreements involving a financial contribution for a generally defined purpose involving projects and activities whose essential details are not specified but are to be identified later; or

A third type of international agreement involves general commitments relating to policies or programmes of the Government of Canada that do not involve projects and activities, as defined in CEAA. This type of agreement will not trigger the proposed Projects Outside Canada regulation [WHY?].

Although the Government's original intention was to develop a regulation for ODA projects and activities and then a second regulation for all other projects and activities occurring outside of Canada, given the similarity of issues involved and the desire to minimize confusion, a decision was taken to develop a single POC regulation.

This single POC regulation should also apply to Crown Corporations such as IDRC, EDC, CCC. Enough principles have been established in international documents to indicate international agreement about export support activities.

2. Interaction with other Regulations

[the regulation-making authority for a POC regulation set out in Paragraph 59

(i) subsections

(ii) and

(iii) of CEAA authorizes the Governor in Council to make regulations "varying or excluding, in the prescribed circumstances, any procedure of requirement of the environmental assessment process set out in the Act or the regulations ..." Thus, the Governor in Council is empowered to vary or exclude

in the prescribed circumstances Sections 14 to 45 of the Act in the POC regulation. The Governor in Council should seek the advice of a panel of citizens with a range of expertise and experience, not from a National Round Table representing various vested interests.

Once Canadian Environmental Assessment Act is proclaimed, four regulations will come into force. These are the Law List (LL), the inclusion List (IL), the Exclusion List (EL) and the Comprehensive Study List (CSL). *With the exception of the Law List, which deals exclusively with domestic and international legislation, these regulations will apply to projects and activities outside Canada.*

The entries on the Law List Regulation lists international principles from UNCED documents, the Vienna Convention on Ozone, and Montreal, London, and Copenhagen protocols, Basel Convention, Law of the Seas, Universal Declaration of Human Rights, International Covenants of Civil and Political Rights, and the International Covenant on Social, economic and cultural Rights, START, UNCHE, World Charter of Nature UN Convention on Environmental Impact Assessment on trans-boundary Activities and other international environmental documents; sections of statutes and regulations empowering federal departments, ministers or Cabinet to issue permits or licenses for projects and activities in Canada that could have environmental effects; such projects and activities require an environmental assessment under CEAA.

The Inclusion List? Regulation includes physical activities not relating to physical works that are subject to an environmental assessment under CEAA

The exclusion Environmentally Benign List Regulation consists of a list of undertakings in relation to physical works that have insignificant environmental effects and thus require no environmental assessment.

The "prohibition" List Regulations consists of a list of substances and activities that would be in violation of the precautionary principle and should be excluded from consideration

The "prohibition" Comprehensive Study List Regulations contains a list of major categories of projects and activities likely to have significant adverse environmental effects. If triggered under CEAA, the projects and activities on the list are subject to a comprehensive study according to a process prescribed in CEAA

note: As the segment of the "environment" industry dealing with preventive and innovative environmental technology thrives on the establishment of high standards with correspondingly high technical regulations, projects and activities, high environmental standards and regulations should be in place so that those who are striving to find real solutions will not be deterred. Projects and activities that have or are likely to have significant adverse environmental effects should not be entertained by the government of Canada.

Given that Canada agreed at UNCED to not transfer substances or activities that could be harmful to human health or to the environment Canada should

undertake to promote environmental technologies that are prevention technology and that do not interfere with the development of local prevention innovative technologies.

Canada should contribute to the cleaning up of previously ecologically unsound practices providing the technology that is used does not itself become part of the problem. In no case should an environmental technology that has been used for clean-up be used to justify the continuation or the introduction of ecologically unsound or culturally inappropriate practices. Technology which has been developed to mitigate original ecologically unsound practices could be used to promote the original ecologically unsound practices. For example, environmental technology to eliminate hazardous waste could be used to promote or justify the continued use of the hazardous waste.

Even technology which is ecologically sound prevention technology within Canada may become a problem because the technology could be used to replace an existing or emerging technology in the recipient country.

Another regulation currently under development which, once promulgated, will apply to projects and activities outside Canada relates to minimum federal involvement. Under the eventual minimum federal involvement regulation, certain projects and activities or classes of projects and activities will not be *excluded* exempted from environmental assessment where the responsible authority's involvement in the project is minimal.

Each of these regulations (i.e., LL, II, EI and MFI) can be varied to reflect different situations of projects and activities outside Canada providing at all times internationally established principles will be followed as a minimum

DEVELOPMENT OF "PROHIBITION" LISTS

It is important to carry out the following in the development of "prohibition" lists — lists of substances, projects or activities that shall be reduced or eliminated are lists excluding certain projects and activities as being ecologically unsound and consequently not even entertained as being worthy of an environmental assessment review:

- to ensure that "prohibition" lists are:
 - not developed through consensus with vested interest involvement because vested interests will prevent the establishment of strong standards and regulations
 - based on research that has been arms-length [note the results of the International Biotesting Laboratory's non-arm's length scandal in the 1970's].
 - not voluntary standards but mandatory technical regulations.
 - compiled as a result of a full environmental analysis, multimedia, life cycle of all the environmental impacts (toxicity, persistence and bioaccumulation) from the production, modification, processing, refining, and disposal had not been carried out to develop the list.

- to place projects and activities on a prohibition list "need not apply list" if there is any evidence that a project or activity has or could have potentially significant adverse effects then the project or activity shall not proceed (apply principle from World Charter of Nature)
- to not fund "sunset industries" — industries being phased out because of environmental impact. For example, AECL received at least \$150 million for research related to the nuclear industry; Given the impossibility of dealing with atomic wastes, the Canadian government shall not permit the transfer of any activity that could produce atomic wastes. The government must finally be committed to funding research into ecologically safe and sound alternatives focusing on prevention technology
- the government shall not support any projects and activities in recipient countries that perpetuate sunset industries or obsolete ecologically unsound.

EXTENT OF JURISDICTION OF STANDARDS

3. Given that Section 59 (j) of CEEA empowers Governor in council to make regulations outline environmental assessment procedures for Crown Corporations.

The Governor in Council shall make regulations consistent with the recommendations for CIDA for projects and activities that shall apply to all projects and activities of crown corporations even those within the meaning of the Financial Administration Act such as IDRC, the export Development Corporation EDC and the Canadian Commercial Corporation (CCC) Environmental assessment of export support activities shall be developed.

4. Given that subsection 7(2) applies to situations where a federal authority is providing funding for domestic or international projects and activities. An environmental assessment shall be required where a federal authority makes or authorizes financial assistance to a project even where the essential details of the project are not specified before or at the time the financial assistance is provided.

Subsection 54 (2) elaborates on subsection: This subsection requires the federal authority responsible to ensure, to the extent practicable, that the funding agreement or arrangement will require the recipient state to assess those projects and activities which will benefit from the financial assistance once the essential details of the projects and activities have been specified.

EXTENSION OF APPLICATION OF ENVIRONMENTAL ASSESSMENT REVIEW

- projects and activities already existing shall also be subject to an environmental assessment review

GOVERNMENT AS AN INSTRUMENT OF CHANGE THROUGH ADVOCATING PREVENTION

- If Canada is serious about being a world leader, and if the Canadian government is serious about being an instrument of environmental change moving from a reactive to a proactive preventive stance, Canada will have to consider incorporating the following principles:
- to revisit the terms of reference for environmental assessment review basing it on the anticipatory and precautionary principles founded on anticipation and prevention of harm, and on prevention not mitigative technologies
- to acknowledge the urgency of the current environmental situation and of the years of persistent accumulation and indeterminate interaction of pollutants.
- to move to the anticipatory or "cautionary" principle where there is a shift in the onus of proof from the opponents of an intervention having to demonstrate harm to the proponents having to demonstrate safety
- To bring about change within industry by rewarding those industries that have devoted all of their time and money to the development of prevention technology [providing these prevention technologies are not used to interfere with the endogenous capacities of receiver countries]

ENVIRONMENTAL FACADE AS PUBLIC RELATIONS

- To ensure that industry does not use the government associated projects and activities to promote an environmental facade that will cover ecologically unsound practices engaged in elsewhere by the industry
- To ensure if industry is involved that the total activity of the industry is ecologically sound [so many industries have an environmental wing that allows them to be part of the decision-making process, while continuing to engage in ecologically unsound projects and activities].

PUBLIC INVOLVEMENT

3 Who is the "Public"

While a definition for the term "public" is not provided in CEAA, guidelines will have to be developed to determine who constitutes the "public" for purposes of projects and activities outside of Canada. In developing these guidelines, one will have to consider *consideration will have to be given to* a number of broad issues including: the sovereignty of foreign nations, the spirit and intent of CEAA, the widely differing institutional capabilities and socio-political context of recipient countries, international agreements and arrangement to which Canada is party, timeliness and cost. These suggest the need for a definition rigorous enough to reflect the principles that underline CEAA, yet sufficiently flexible to be relevant in a variety of circumstances providing that

the flexibility permits the relaxing of the precautionary principle and the non-transference of harmful substances principle.

- to address the issue of "who is the 'public'" the government could bring together informed and concerned members of the public, drawing upon a wide range of expertise and experience, as well as upon the local members of the community that are concerned about humanitarian development. Canada should under no circumstances, in the recipient state be involved in the promotion of particular vested interests. A distinction could be made between vested interest for individual gain and public concern for the commons. The current round table process which sets up an arena of competing interests through "multistake-holders" rarely brings together the people that have a larger vision of comprehensive solution for the commons.
- To ensure that the "public" is involved in establishing the terms of reference and throughout the project

ROLE OF STANDARDS AS INSTRUMENTS OF CHANGE

Given that the NAFTA indicated a distinction between 'standards' and 'technical regulations' ["standards are not mandatory but technical regulations are mandatory" standards shall be translated into mandatory technical regulations]

Underlying principle: principles, standards and regulations must drive industry, not industry compromising principles, standards and regulations.

- technical standards shall become increasingly high so as to encourage the development of environmental sound prevention technology.
- to ensure that the technical regulations are so high that no innovative prevention technology will be at a disadvantage [At Globe 94, several innovators working in prevention technology indicated that they were having difficulty promoting their products because the government regulations were not mandatory and were too low. A principle could emerge from this that no innovative prevention technology shall be discouraged because the government fails to have mandatory and high standards.]
- to ensure that those who are part of the solution do not become part of the problem, where mitigative technology is used to promote ecologically unsound technology
[Several engineering firms have come up with prevention technology — doing it right the first time; other engineering firms have come up with mitigative technology— attempting to rectify previous errors; this mitigative technology is often used to promote the continuation of the ecologically unsound technology for which the mitigative technology was devised to rectify.]
- to ensure that a full life cycle analysis of substances and activity [as required in Agenda 21] is carried out in a way that would examine the environmental consequences of introducing the activity or substance into the ecosystem;

[this would be moving away from the approach in the ARRET program where only the substances and not the waste products were examined] No substances or activities that could impact on the environment shall be permitted.

- to ensure that no projects or activities that are in violation of international obligations are supported; it is not enough to just state that the projects and activities must comply with these principles; the principles need to be enunciated and the way these principles will be fulfilled must be indicated [this would entail closely examining actual international principles and the translation of these principles into action, to determine what would constitute compliance with these principles, and to establish a list of exclusionary projects and activities based on the application of these principles]

SOVEREIGNTY AND EXTRATERRITORIALITY

- the concept of "Extraterritoriality" must not be used as a means of justifying the relaxing of standards. Note provision in NAFTA which states that no country should relax its environmental standards to attract industry.

One of the reasons for establishing international principles, standards and technical regulations is to ensure that origin states not carry out activities in recipient states that are unacceptable by the standards in the state where the project or activity originated. Where standards for substances and activities in the state of origin are lower than those at the international levels then those substances and activities should not be transferred to the recipient state. In the case of Canada, if Canada wishes to be a leader in the environment, standards and technical regulations for projects and activities in Canada and for projects supported by Canada outside of Canada should be above international standards. [Canadian standards are not as yet above international; and in many cases Canada is in violation of international obligations]

Projects or activities that are in non-compliant with international standards should be prohibited projects and activities even though the recipient state agrees to the lower standards.

In developing states, ecologically unsound activities, occurring as projects emanating from developed states, are often justified on the grounds that the recipient states have the sovereign right to accept what the state of origin would not accept.

V. THE INTERNATIONAL CONTEXT

As noted previously, the Canadian Environmental Assessment Act provides for a varying and exclusion regulation for two types of projects and activities outside Canada: projects and activities to be carried out outside Canada and any federal lands; and projects and activities to be carried out under international agreements or arrangements. When considering how to ensure that the spirit and intent of CEAA is reflected in the environmental assessment of these categories of projects and activities, both the international context

and the realities of Canada's foreign policy objectives, commitments and responsibilities must be taken into account.

Respect for the sovereignty of States is a fundamental principle of international law. In developing and applying the new POC regulations, Canada must avoid any illegal extraterritorial application of its laws, for precisely the same reasons that it has consistently resisted attempts of other States to exercise such extraterritorial jurisdiction in Canada. Thus, care must also be taken to avoid action which may be perceived as excessively intrusive. [Re: extraterritoriality: care must also be taken to avoid action which may be perceived as excessively intrusive] This section must not preclude the compliance throughout the world with international principles enunciated in international obligations, as well as those with legally binding Conventions and treaties. Any state that has signed any of the legally binding Conventions such as the Biodiversity or Climate Change is bound by Article 18 of the Vienna Convention Treaty stipulates that if a state has signed a treaty there is an "obligation not to defeat the object and purpose of a treaty prior to the entry into force"

[Re: extraterritoriality: care must also be taken to avoid action which may be perceived as excessively intrusive] This section V in the draft document must not preclude the compliance throughout the world with international principles enunciated in international obligations, as well as those with legally binding Conventions and treaties. Any state that has signed any of the legally binding Conventions such as the Biodiversity or Climate Change is bound by Article 18 of the Vienna Convention Treaty stipulates that if a state has signed a treaty there is an "obligation not to defeat the object and purpose of a treaty prior to the entry into force"

5. THE DEPARTMENT OF EXTERNAL AFFAIRS ACT

The Department of External Affairs Act assigns powers for the Conduct of Canada's external affairs. The Secretary of State for Foreign Affairs is responsible for:

- official communications with other countries and international agencies
- the conduct and management of international negotiations as they relate to Canada
- the coordination of Canada's international economic relations - fostering the expansion of Canada's international trade
- the control and supervision of CIDA
- fostering the development of international law

The Minister of International Trade has a mandate to promote international trade by:

- assisting Canadian marketers
- improving Canadians' access to external markets
- promoting trade relations with other countries

-enhancing overall world trade conditions

VI CONSULTATION ON THE POC REGULATIONS

Consultation with the public on the POC regulations before it is finalized is essential. As with other regulations, the primary mechanism for consultation outside of the federal government on the first four regulations has been the Regulatory Advisory Committee (RAC). Members include representatives of industry associations, environmental groups, aboriginal organizations, and provincial governments. The RAC presented its first report on the four regulations in April 1993. From the perspective of governments and most stakeholders, RAC has been a notable success so far. It should also be used for the POC regulation.

A subcommittee should be created under RAC and report to RAC on the POC regulation. It could include RAC members as well as other individuals who represent constituencies not on the RAC, who have the needed experience and knowledge. The subcommittee would report back to RAC which, in turn would submit its recommendations to the Environment Minister.

VII GUIDELINES FOR DRAFTING A PROJECTS OUTSIDE CANADA (POC) REGULATION

- For purposes of the POC regulation, the definitions included in Section 2 of CEAA will apply
- A single regulation will be established that will vary or exclude in prescribed circumstances Sections 14 to 45 of CEAA for projects and activities outside of Canada
- The POC process will apply to all projects and activities outside of Canada as triggered by CEAA
- Responsible authorities will develop and apply their own administrative procedures for conducting an environmental assessment as required by the POC regulations and CEAA
- A Users Guide explaining how the new POC process works will be prepared for general circulation within six months of the POC regulations coming into force
- The inclusion, Exclusion and Comprehensive Study List Regulations that will come into force with the proclamation of the CEAA will apply to projects and activities outside of Canada
- The responsible authority will decide at what point in the environmental assessment process the public will be involved.
- Responsible authorities will inform the public and make relevant information available as early as is practicable for projects and activities outside Canada which will require environmental assessment as required by Section 55 of the CEAA

- for projects and activities outside of Canada where the responsible authority is not the Minister for Foreign Affairs, the responsible authority will coincidentally provide the Minister of Environment, the Minister for Foreign Affairs and the Canadian Environmental Assessment Agency with the environmental assessment of projects and activities on the Comprehensive Study list or other projects and activities likely to have potentially significant environmental effects. Where the responsible authority is the Minister for Foreign Affairs, the Minister for Foreign Affairs will provide the Minister of Environment with the environmental assessment as described above. Where the results of comprehensive studies suggest that a project is not likely to cause significant environmental effects, the Minister of Environment will refer it back to the responsible authority for decision.

Where the results of a comprehensive study suggest that a project's environmental effects are 1) uncertain 2) significant even with mitigation or 3) where there are deemed to be significant public concern, the responsible authority may, in consultation with the Minister of Environment and Minister of Foreign Affairs, establish an Advisory Committee to review the project. The mandate and membership of such advisory Committees will be determined on a case-by case basis by the responsible authority, in consultation with the Minister of the Environment, and when applicable the Minister of Foreign Affairs.

In either case, the Minister of Environment's response to the comprehensive study will be public and the responsible authority will decide whether the significant adverse effects of the project that cannot be mitigated are justified in the circumstances.

A Federal responsible authority may use whatever information it deems appropriate in making its decision. Thus, they may use information generated by previous studies, by other countries or international agencies and other non-Canadian jurisdictions. In the end, the responsible authorities are responsible for their decisions to support or not support a project.

inclusion regulations

Most of my comments relate to what I perceive to be the need to have fundamental principles underlying the principles referred to as GUIDING PRINCIPLES RELATED TO the regulation for projects and activities outside Canada.

States have ...the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other states or of areas beyond the limits of national jurisdiction (principle 1 Rio Declaration)

1. Projects that are conducted outside Canada which are supported financially by the Government of Canada will be subject to the Canadian Environmental Assessment Act. [this should be extended to cover projects and activities that are conducted outside of Canada and extended to companies that are registered in Canada. Too often projects and activities that are conducted by Canadian companies could be in violation of the principles enunciated by

what is needed is a charter based on ecological principles agreed to by the international community and what form the basis of all Canadian development. What is done by

Commitment to non-transference of harmful substances and activities
States should [Shall] *effectively cooperate to discourage or prevent the relocation and transfer to other States of any activities and substances that cause severe environmental degradation or are found to be harmful to human health* (Rio Declaration)

2. Environmental assessment shall *be taken into account as early as is practicable in the decision making process*; be undertaken in all CIDA projects and activities [too often a project is proposed and initiated and is too far along to ensure a preventive review, which will determine whether or not the project should proceed; the review then become a "mitigative" review which minimizes the impacts of the project once it has proceeded.
the assessment criteria may not include that would be deemed ecologically inappropriate

4. Environmental assessment of projects and activities outside Canada will be conducted in accordance with generally-accepted principles of respect for the sovereignty of foreign states, international law and the international agreements and arrangement to which Canada is a part.

Unfortunately, in the name of respecting sovereignty has been used to justify a number of government projects and activities for example for years DDT which was restricted in use in Canada was shipped to India to be used for purposes that would not be permitted in Canada on the ground that they have the sovereign right to determine whether or not they wish to use the chemical we cannot impose our standards on them.

Similarly, with the commitment to non-transference of harmful substances and activities

States should [Shall] *effectively cooperate to discourage or prevent the relocation and transfer to other States of any activities and substances that cause severe environmental degradation or are found to be harmful to human health* (Rio Declaration)

the principle has been altered considerably in practice by the notwithstanding clause that unless 3. In the absence of equally strict or higher standards in the

receiving State or express agreement by the receiving State to the contrary, the relevant standards of the State of origin shall apply the highest or the most strict of the following standards — international standards , state of origin standards or the receiving state standards — shall apply

the onus of proof for the ecological soundness of the project must fall on the proponent of the project.

So that not every project or activity will require an environmental assessment review process a set of exclusionary principles must be established. based on prevention

No project that generates waste that are potentially toxic, hazardous (including atomic wastes) No project or activity that introduces a harmful substance should be introduced

No project that could detract from innovative endogenous technologies should be no matter how safe or ecologically sound the introduced technology might be.

1. Nothing that is proposed should impact on the Conservation and protection of biodiversity
2. No project would contribute to

DRAFT IDEAS RE: PROJECT INDO-CANADIAN INITIATIVES IN SUSTAINABLE DEVELOPMENT

ISSUE 1. One of the shortcomings of UNCED was that there was the perpetuation of the myth that technology transfer should come from North to South. At that time, few people sufficiently entertained the notion that the North could learn from the South and that what was necessary was the interchange or intertransfer of ecologically sound technology.

POSSIBLE RESEARCH AREAS IN INITIATIVES

PROJECT 1 A.

"PREVENTION" TECHNOLOGY AS A MEANS OF ACHIEVING EQUITABLE AND ECOLOGICALLY SOUND DEVELOPMENT.

"PREVENTION TECHNOLOGY COULD BE DESCRIBED AS PRECAUTIONARY RATHER THAN MITIGATIVE, OR AS "DOING IT RIGHT THE FIRST TIME."

- Preservation/nature involvement/ ecologically sound practices

_ Innovative initiatives Case studies:

- E.g., Innovative initiatives in a region in India that could be relevant to Canada

Such as those suggested in publications like "Down to Earth" from the Institute in New Delhi or in Chipko region

- E.g., Innovative initiatives in Vancouver Island such as those related to forest practices by Merv Wilkinson who has been using Selection logging for 50 years

_ Sewage Treatment resource or waste)

- E.g., Innovative initiatives in a region in India and on Vancouver Island where they are working on alternative technologies so that what was formerly consider as waste is now used as a resource

Relevant International principles such as the following

Precautionary principle

" Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation." (Rio Declaration, 1992).

Positive-long-term-research-into-biodiversity- in ecosystems principle

" Long-term research into the importance of biodiversity for the functioning of ecosystems and the role of ecosystems in producing good, environmental services and other values supporting sustainable development with particular reference to the biology and reproductive capacities of key terrestrial and

aquatic species, including native, cultivated and cultured species; observation and inventory techniques; ecological conditions necessary for biodiversity conservation and continued evolution; and social behaviour and nutrition habits dependent on natural ecosystems, where women play key roles. The work should be undertaken with the widest possible participation, especially of indigenous people and their communities, including women.” (Agenda 21, 15.5 f,)

Ecologically-unsound-practices-accumulation-impact principle

" Despite mounting efforts over the past 20 years, the loss of the world' biological diversity, mainly from habitat destruction, over-harvesting, pollution and the inappropriate introduction of foreign plants and animals has continued." (Agenda 21, 15.3)

CHARTER OF ECOLOGICAL PRINCIPLES

This Charter draws from international obligations that have already been agreed to internationally. The Charter draws from both obligations undertaken by states through UN resolutions such as the "World Charter of Nature", globally agreed to documents such as the United Nations Conference on Humans and the Environment (Stockholm, 1972), The Rio Declaration (UNCED, 1992) and Agenda 21 (UNCED, 1992) and the legally binding documents such as the Vienna Convention on Ozone (1986), the Montreal Protocol (1987), The Basel Convention (); Convention on Biological Diversity (UNCED, 1992, in Force, 1993) and the Convention on Climate Change (UNCED, 1992, in force 1993), and the Law of the Sea (in force 1994). NOTE: Article 18 of the Vienna Convention Treaty stipulates that if a state has signed a treaty there is an "obligation not to defeat the object and purpose of a treaty prior to the entry into force"

The following principles have been agreed to internationally

International obligations must be fulfilled as being not the maximum but the minimum standards to follow

Transference of agreed to principles to state practices

The principles set forth in the present Charter shall be reflected in the law and practice of each State, as well as at the international level (World Charter of Nature)

Inherent worth of nature

"...ensuring that every form of life is unique, warranting respect regardless of its worth to man

[human], and to accord other organisms such recognition's, man [human] must be guided by a moral code of action (World Charter of nature)

Respect for essential processes

Nature shall be respected and its essential processes shall not be impaired

Urgency of conserving nature

Humans can alter nature and exhaust natural resources by their actions or the consequences and, therefore, must fully recognize the urgency of maintaining the stability and quality of nature and of conserving natural resources and nature (World Charter of Nature)

Moral code of action

ensuring that every form of life is unique, warranting respect regardless of its worth to man [humans], and to accord other organisms such recognition's, man [human] must be guided by a moral code of action (World Charter of nature)

Enunciation of the primacy of the ecosystem

Ensuring that in all decisions made about the environment that the ecosystem be given primacy

Invocation of the precautionary principle

where there is a threat of serious or irreversible damage, lack of full scientific certainty should shall not be used as a reason for postponing measures to avoid or minimize such a threat (from the Biodiversity Convention)

Enunciation of the principle of doubt

Activities which are likely to pose a significant risk to nature shall be preceded by an exhaustive examination; their proponents shall demonstrate that expected benefits outweigh potential damage to nature, and where potential adverse effect are not fully understood, the activities should shall not proceed (World Charter of Nature)

Enunciation of the "Cautionary" Principle

Every proponent of an intervention in the ecosystem must demonstrate that the intervention will not cause harm to the environment or will not create ecologically unsound wastes

Adoption of "prevention technologies — technologies that emphasize "protecting, conserving and sustaining the environment from the beginning, and thus avoiding the cycle of rectification of error.

Non introduction of hazardous products in the environment

the onus of proving the non-hazardous nature of the product will be on the proponent of this new type of product [after a full life cycle analysis of all the potential environmental harm by non-vested interest parties]

Environmental Assessment review

Introduce appropriate procedures requiring environmental impact assessment of its proposed projects and activities that are likely to have significant adverse effects on Biological diversity with a view to avoiding or minimizing such effects, and where appropriate, allow for public participation in such procedures (Article 14, 1A, Convention on Biological Diversity)

Assertion of the avoidance of activities

Activities which are likely to cause irreversible damage to nature shall be avoided (World Charter of Nature)

Recognition of interconnectedness with nature

Humankind is a part of nature and life depends on the uninterrupted functioning of natural systems which ensure the supply of energy and nutrients

Reaffirmation of intergenerational equity

Reaffirming that man [humans] must acquire the knowledge to maintain and enhance their ability to use natural resources in a manner which ensures the preservation of the species and ecosystems for the benefit of present and future generations
(World Charter of Nature)

Commitment to non-transference of harmful substances and activities

States should [Shall] *effectively cooperate to discourage or prevent the relocation and transfer to other States of any activities and substances that cause severe environmental degradation or are found to be harmful to human health* (Rio Declaration)

(b) identifying, preserving and preventing the loss or reduction of Biological Diversity

[wording in part from the Convention on Biological Diversity]

(b 1) mitigating climate change by addressing anthropogenic emissions by sources and removals by sinks of all greenhouse gases not controlled by the Montreal Protocol, and measures to facilitate adequate adaptation to climate change [wording from the Climate Change Convention]

(c) Achieving the goal of zero pollution in the Province

(e) applying the principles of pollution prevention as the foundation of environmental protection

[from definition of "pollution prevention"]

(a 0) _the prevention of the use, generation and release of any substance into the environment in such a manner or quantity as to cause pollution [repeated from 41 1)

(a) the elimination of the use of polluting substances

(b 0) the substitution of polluting substance with non-polluting substances

- (b) the substitution of polluting substances with less polluting substances
- (c) the reduction in the introduction and use of **[non-renewable]** resources and polluting substances
- (d) the elimination and reduction in the generation of polluting substances
- [e, f, g removed because not deemed appropriate for prevention;
Discussion Environmental Group, February 19]

(f0) "Confirming the responsibility of government to set up a non-vested interest board or panel with varying levels of expertise and experience to do "arms-length" research into the true environmental impacts of substances and activities by carrying out "life cycle analysis" (recommendations from various chapters of UNCED Agenda 21) (Suggested Environment meeting, February 19)

(f) Confirming the responsibility of producers for sound environmental stewardship of products through all phases of a product's life;

(g) *"...ensuring the comprehensive and integrated consideration of environmental and socioeconomic effects in public policy-making in British Columbia. [Deemed to be inconsistent with the overriding purpose of the Act]*
Ensuring that in all decisions made about the environment that the ecosystem be given primacy" (Suggested Environment meeting, February 19)

(h0) International obligations must be fulfilled as being not the maximum but the minimum standards to follow (proposed, Discussion, February 19)

(h) "Recognizing that British Columbia residents have an interest in **and a responsibility of minimizing their impact upon** the regional, national and **global environment** and global environmental well-being." **(Suggested Environment meeting, February 19)**

(i) using the knowledge and experience of British Columbia residents in the formulation of decisions affecting the environment,

(j) confirming the responsibility of polluters to pay for the costs of their actions **(also recommended in Agenda 21) but also recognizing that no pecuniary payment of costs for environmental destruction can ever fully redress the loss to the environment, and reaffirming that the prevention of pollution and environmental destruction should be by using "prevention technologies"**

(k) "ensuring that every activity or substance that could prevent the protection, conservation and sustainability of the environment will be included under this Act, regardless of whether the activity or substance is presumed to be covered under another Act" (proposed, February 19)

(l) ensuring that no citizen will be prosecuted for advocating or acting to promote the purposes of the act (Suggested, February 19)

(m) promoting the research into the development and introduction of renewable, non-polluting (protection technologies)

(n) ensuring that compensation can never be used as reason for not exercising the duty under the act to protect, conserve and sustain the environment (proposed, Discussion, February 19)

(o) agreeing that any compensation given shall be assessed on the basis of past environmental performance and environmental costs and subsidies, and that any awarded money shall be (used by the compensated party to create employment within B.C.) placed in a job creation fund (Suggested, Discussion, February 20)

(p) ensuring the maintenance and enhancement of the quality of the environment (moved from section 2.a, February 20)

2. To achieve the purposes of this Act, all persons who exercise functions and powers under this Act shall have regard to the importance **of the purposes of this act**" ((proposed, February 20)

(a) the maintenance and enhancement of the quality of the environment

(b) the actual or potential effect of an activity or natural process on the whole of the environment, including its actual or potential effect on the health and safety, and the economic, cultural and social well-being of people and communities

(c) the potential costs and benefits of any objective, policy, or proposal to the environment

Scope

(1) For the purposes of this Act, introduction of a substance into the environment means depositing the substance on or in or allowing or causing the substance to flow or seep on or into any land or water or allowing or causing the substance to be emitted into the air and includes indirect means of introduction into the environment

(1*) "For the purpose of this Act, the impact of an activity on the environment means the engaging in any activity which could prevent the protection, conservation and sustainability of the environment will be included under this Act, regardless of whether the activity or substance is presumed to be covered under another Act" (proposed, February 19)

2. Except where this Act or the regulations specifically provides to the contrary, this Act applies to the whole environment of British Columbia **{The onus of**

proof for exclusion from the Act must reside in the proponent for exclusion (proposed, February 20)

3. Where there is conflict between this Act, its regulations or an authorization under this Act and any other act or regulations there under, this Act its regulations and authorizations issued or subsisting under this Act apply, **except when provisions in other Acts or regulations contribute to the fulfillment of the purposes of the Environmental Protection Act better than those contained in this Act**

(a) where this Act or its regulations provide to the contrary, or

(b) as may be prescribed by the Lieutenant Governor in Council

4. Nothing in the Soil Conservation Act shall be taken to prevent the establishment within a local authority of any facility for the disposal of waste in accordance with this Act **providing that the establishment is deemed to fulfill the purposes of the Environment Protection Act.” (Proposed, February 20)**

5. The Crown is bound by this Act, except where this Act or the regulations specifically provide to the contrary

[Not yet commented on rest of section]

Part 2

Environmental Bill of Rights

Public Trust

30. (1) Every resident of British Columbia has a right to protect the environment and the public trust from any pollution, impairment or destruction

(2) The government, as trustee, has a duty to conserve and protect the environment of British Columbia

3. “Citizens of British Columbia has the right to have the environment conserved and protected (Suggested Environment meeting, February 19)

4. Citizens of British Columbia have to right to expect that no person shall use **generate or release**, waste or recyclable maters, or any other substance **(including fugitive gas or leachate)** into the environment in such a manner or quantity as to cause pollution

[moved from 41 (1) (Suggested Environment meeting, February 19)

5. Citizens of British Columbia have the right to expect that the government will live up to its obligations (Doctrine of Legitimate Expectation)

6. Present and future generations of British Columbia have the right to an ecological heritage (Suggested Environment meeting, February 19)

7. ensuring that no citizen will be prosecuted for advocating or acting to promote the purposes of the act (Suggested Environment meeting, February 19)

Right of action

31. (1) The Attorney General or any resident of British Columbia may commence an action in the Supreme Court against any person who has polluted or otherwise degraded the environment and the public trust or who is likely to do so.

2. A person may commence an action under subsection (1) without having to establish that there is, has been or is likely to be an infringement of an authorization issued under this Act or an approval, permit, licence, standard, regulation, rule or order issued by or under an Act listed in Schedule A.

3. A person who commences an action under subsection (1) shall provide notice of the proceedings to the Attorney General and the Minister.

4. This section does not abrogate those common law rights that would normally be available to a plaintiff to commence an action.

5. the need for intervener funding

Standing

32 A person may commence an action under section 31 without having to show that he or she has

(1) any greater or different right, harm or interest than any other person; or

(2) any pecuniary or proprietary right or interest in the subject matter at issue.

Burden of proof.

33.

(1 a) Every proponent of an intervention in the ecosystem must demonstrate that the intervention will not cause harm to the environment or will not create ecologically unsound wastes

“If the proposal involves anything that could be hazardous, 0 emissions and waste must apply; if the proposal involves lowest achievable discharge rate should apply (February 19, discussion)

(1 b) the plaintiff shall establish a prima facie case showing that **the defendant's proposed activities are likely to pollute or degrade the environment**

(1) the plaintiff shall establish a prima facie case showing that the defendants' activities have polluted or degraded the environment or is likely to do so

(1 c. In a prosecution for a contravention the burden of proving compliance is on the defendant [Section 46, ss 4]

2. Where a prima facie case under subsection (1) is established, the defendant may rebut the prima facie case by showing that there is no feasible and prudent alternative to the defendant's action

[If so, there must be some criteria for determining feasible and prudent alternatives in the light of the purpose of the Act; "providing prevention,

conservation and sustainability of the environment" determined by an advisory, non-vested interest board or panel with representation from varied areas of expertise and experience]

3. *It is a defence to an action commenced under this Act that the defendant's action is authorized under this act or an Act listed in Schedule A, unless the plaintiff can establish, on balance of probabilities, that the standard is inadequate to protect the environment and that the defendant's action has caused, or is likely to cause, severe or irreparable contamination or degradation of the environment.*

The burden of proof must be on the defendant to demonstrate that the defendant's action has not caused or is not likely to cause, severe or irreparable contamination or degradation of the environment"

(Discussion, February 19)

Limitation Period

34. "The limitation period for an action under section 31 of this Act is postponed and time does not commence to run until the plaintiff becomes aware, or ought reasonably to have become aware, of the identity of the defendant and of the material facts surrounding the claim

Appointment of minister's environmental mediator

37 (1) Subject to section 140, the Minister may, *where he or she deems it advisable where it is deemed advisable* and where the conflicting parties concur, appoint an environmental mediator acceptable to the parties to mediate between persons involved in an environmental conflict.

(2) when a mediator is appointed under subsection (1), the mediator shall, within 6 weeks after completion of the mediation, report to the results of the mediation to the Minister and the parties

38 (c) award damages to (iv) any person who has a concern for the environment

39 ...licence, standard, regulation, rule or order issued under an Act listed in Schedule A affects **the environment** and rights of a person, **any** person shall be furnished with a written statement of the decision setting out....**(c) any dissenting opinions"** **(Discussion, February 19)**

[Further comment to come in subsequent sections]

Since the first United Nations Conference on the Environment in Stockholm in 1972, we have come to realize that the traditional patterns of development have contributed to poverty - denying more than a quarter of the world's population adequate living conditions — to the inequitable distribution of resources to overconsumption, to the violation of human rights, and to the potentially irreversible degradation of the ecosystem.

WE DECLARE THE FOLLOWING PRINCIPLES TO GUIDE HUMANITY TO AN EQUITABLE AND ECOLOGICALLY SOUND FUTURE:

1. The ecosystem of which we are a part shall be protected and preserved, ecologically unsound patterns of development shall be condemned and the inequity of development must be addressed and rectified

2. Development activities that benefit the few while compromising the biological inheritance and quality of life of the many must be condemned as being inherently wrong

4. International ecological standards should be in place so that no short-term individual pursuit of self-interest, or short sighted national or international regulations (GATT) could jeopardize the environment. The purpose of these standards is to address the individual and multinational pursuit of self-interest and consumptive and exploitative use of the environment and not to penalize local communities that wish to function in an interdependent way within the ecosystem. The economic development necessary to eliminate poverty shall not be a mandate to abuse the environment for either short-term gain or economic growth alone. Principle must drive industry not industry driving principle.

5. Environmental processes do not recognize national boundaries; therefore, states shall not have the sovereign right to exploit resources within their territories in isolation from the global ecological needs of the Earth

6. The continued build-up of the military complex must cease, and the use of military force as a means of resolving conflict must be rejected. A radical reduction of the military budgets of the world must occur and the funds released for ecological and humanitarian purposes. Peace is not merely the absence of war but the pursuit of environmental, social justice, economic, spiritual and cultural well-being.

7. 8. the decision-making process should be clearly defined, transparent, accessible and equitable. Criteria in decision making should be revealed, and the public and affected communities should be

involved at the time of the formulation of the terms of reference and through the process.

9. The international community must condemn and disallow the exporting of products deemed to be unsafe in a state where there are advance testing procedures to other states with less advanced testing procedures Since the first United Nations Conference on the Environment in Stockholm in 1972 we have come to realize that the threats to the biosphere which sustains all life on this planet have increased in rate, magnitude and scale that inaction is negligent. The international community has enough information about the pending state of ecological irreversibility that it must act immediately (proposal for NGO Earth Charter, Rio, June, 1992)

The precautionary principle shall be extended to require those who wish to intervene in the ecological commons to have to justify their intervention and demonstrate the safety of their intervention. The full environmental costs shall be considered in any proposed development project. (NGO Earth Charter, Rio, June, 1992)

ISSUE 2:

PROJECT 1 B.

DEVELOPMENT OF CRITERIA FOR IMPLEMENTING INTERNATIONAL LEGISLATION TO ENSURE THAT "SUBSTANCES AND ACTIVITIES" HARMFUL TO HUMAN HEALTH OR TO THE ENVIRONMENT WILL NOT BE TRANSFERRED FROM THE NORTH TO THE SOUTH OR FROM AN INDUSTRIAL AREA TO AN INDIGENOUS AREA OF A COUNTRY.

- Transfer of potentially harmful substances or activities from North to South
- E.g. examination of such transfers from Canada to India
- E.g. examination of such transfers from India to other countries

Case studies

- E.g. Transfer from Vancouver Island - British Columbian logging practices -impact on Chipko et.
- E.g., Transfer from India to other less developed countries???

_ Transfer of potentially harmful substances or activities from industrial area to disadvantaged or indigenous area on Vancouver Island

Case studies:

- E.g., transfer within India....
- E.g., Pulp mill in Gold river adjacent and on Indian Reserve

_ Sewage Treatment resource or waste)

- E.g., Innovative initiatives in a region in India and on Vancouver Island where they are working on alternative technologies so that what was formerly considered as waste is now used as a resource

Relevant International principles such as the following

“Not-transferring-environmentally-harmful-activities or substances principle
States should effectively cooperate to discourage or prevent the relocation and transfer to other states of any activities and substances that cause severe environmental degradation or are found to be harmful to human health
(Principle 14, Rio Declaration)

Positive-duty-to protect principle

Recognition that the lands of indigenous people and their communities should be protected from activities that are environmentally unsound or that the indigenous people concerned consider to be socially and culturally inappropriate;
recommendations (Agenda 21, 16.3 ii)

Positive-duty-or-responsibility principle

the responsibility to conserve their biodiversity and use their biological resources sustainably, and to ensure that activities within their jurisdiction or control do not cause damage to the biological diversity of other states or of areas beyond the limits of national jurisdiction. " (Agenda 21, 15.3)

ISSUE: 3 Often practices which are considered to be in violation of human rights are condoned because they are justified through religious or cultural traditions. Can or should the exploitation of women and the assigning of a lesser role to women be justified by cultural norms?

PROJECT 1. C. DEVELOPMENT OF A CONCEPTUAL
FRAMEWORK FOR EXAMINING THIS ISSUE ON VANCOUVER
ISLAND AND IN THE CHIPKO REGION

Relevant International principles such as the following

UN Declaration of Human Rights and discussions and contributions from the South during the Human Rights discussion in Vienna in June 1993.

Legend

Underlined: what has already been agreed to internationally

Bold: what still needs to be done

PUBLIC INVOLVEMENT

3 Who is the "Public"

While a definition for the term "public" is not provided in CEAA, guidelines will have to be developed to determine who constitutes the "public" for purposes

of projects and activities outside of Canada. In developing these guidelines, consideration will have to be given to a number of broad issues including: the sovereignty of foreign nations, the spirit and intent of CEAA, the widely differing institutional capabilities and socio-political context of recipient countries, international agreements and arrangement to which Canada is party, timeliness and cost. These suggest the need for a definition rigorous enough to reflect the principles that underline CEAA, yet sufficiently flexible to be relevant in a variety of circumstances.

- to address the issue of "who is the 'public'" the government could bring together informed and concerned members of the public, drawing upon a wide range of expertise and experience, as well as upon the local members of the community that are concerned about humanitarian development. In no way should the involvement of the public be based on the promotion of particular vested interests. A distinction could be made between vested interest for individual gain and public concern for the commons. The current round table process which sets up an arena of competing interests through "multistakeholders" rarely brings together the people that have a larger vision of comprehensive solution for the commons.
- To ensure that the "public" is involved in establishing the terms of reference and throughout the project

[all contained in UNCED documents].

in 1983 the science council of Canada made an important distinction between a "reasoned outcome" and a "negotiated outcome," the establishment of standards should not be part of a negotiated outcome.

- There must be a continuous vigil on substance. Perhaps given that we do not understand the long-term synergistic effects or the long-term effect of combinations. Introduction of no new chemicals should become a policy. An assumption is often made that the effects are additive or independent rather than exponential or....
- The problem of limitation of knowledge must be recognized. often scientists are not capable of anticipating impacts because they don't even know what they are looking for and consequently are not able to find it. for example, CFCs were initially considered to be non-toxic, not bioaccumulation, and were hailed as the solution. no one would have anticipated the problem with the ozone.
The precautionary principle, eliminating potentially harmful pollutants, and funding research into ecologically safe and sound alternatives is priority policy. Governments\ strive to ban and phase out the use of potentially harmful pollutants, and rather than spend time and money on testing substances that could with time prove harmful, engage in funding research into ecologically safe and sound alternatives.

What is needed is also an anticipatory principle and a cautionary principle ?
The only projects and activities that should require an environmental assessment review are those that have some impact but not any impact that could potentially have significant adverse effects.

context Bruce Morgan management
signed but not ratified
kind of projects

Rather than wait until there is significant public concern that a project or activity could be harmful, it would be important to ensure that the project be put on the "prohibitory list — the list of projects and activities to be automatically not permitted
Exclusion or exemption? Are projects or activities excluded if they are deemed to be harmless or excluded from the list of projects or activities worthy of consideration because these projects or activities are already deemed to be harmful. I think exempt should be used for projects and activities that are clearly benign and exclusion for projects and activities that are clearly harmful (uranium mining, nuclear energy, use of hazardous or toxic materials)]

() **THAT** in May 24, 1994, I drafted a new version of a Charter of Ecological principles
CHARTER OF ECOLOGICAL PRINCIPLES

This Charter draws from international obligations that have already been agreed to internationally. The Charter draws from both obligations undertaken by states through UN resolutions such as the "World Charter of Nature", globally agreed to documents such as the United Nations Conference on Humans and the Environment (Stockholm, 1972), The Rio Declaration (UNCED, 1992) and Agenda 21 (UNCED, 1992) and the legally binding documents such as the Vienna Convention on Ozone (1986), the Montreal Protocol (1987), The Basel Convention (); Convention on Biological Diversity (UNCED, 1992, in Force, 1993) and the Convention on Climate Change (UNCED, 1992, in force 1993), and the Law of the Sea (in force 1994).
NOTE: Article 18 of the Vienna Convention Treaty stipulates that if a state has signed a treaty there is an "obligation not to defeat the object and purpose of a treaty prior to the entry into force"

Ecological principles: either agreed to internationally or proposed

Legend

Underlined: what has already been agreed to internationally (agreed to principles)

Bold: what still needs to be done (proposed principles or changes)

Italics: What should be left out

Acknowledgement that international obligations must be fulfilled as being not the maximum but the minimum standards to follow

Recognition of the urgency of global situation

Humanity stands at a defining moment in history. We are confronted with a perpetuation of disparities between and within nations, a worsening of poverty, hunger, ill health and literacy and the continuing deterioration of the ecosystem on which we depend for our well-being (Agenda 21, UNCED)

We have come to realize that the traditional consumptive patterns of development have contributed to poverty, to the inequitable distribution of resources, to over-consumption, to the violation of human rights and to the potentially irreversible degradation of the ecosystem

Acknowledgment of the need for action

We have come to realize that the threats to the biosphere which sustains all life on this planet have increased in rate, magnitude and scale that inaction is negligent. The international community has enough information about the pending state of ecological irreversibility that it must act immediately.

Undertaking of transferring agreed to principles to state practices

The principles set forth in the present Charter shall be reflected in the law and practice of each State, as well as at the international level (World Charter of Nature)

Ensuring of the Inherent worth of nature

ensuring that every form of life is unique, warranting respect regardless of its worth to man

[human], and to accord other organisms such recognition's, man [human] must be guided by a moral code of action (World Charter of nature)

Recognition of interconnectedness with nature

Humankind is a part of nature and life depends on the uninterrupted functioning of natural systems which ensure the supply of energy and nutrients (World Charter of Nature)

Respect for essential processes

Nature shall be respected and its essential processes shall not be impaired

Acknowledgement of urgency of conserving nature

Humans can alter nature and exhaust natural resources by their actions or the consequences and, therefore, must fully recognize the urgency of maintaining the stability and quality of nature and of conserving natural resources and nature (World Charter of nature)

Acceptance of need for Moral code of action in respect of nature

ensuring that every form of life is unique, warranting respect regardless of its worth to man [humans], and to accord other organisms such recognition's, man [human] must be guided by a moral code of action (World Charter of nature)

Enunciation of the primacy of the ecosystem
Ensuring that in all decisions made about the environment that the ecosystem be given primacy

Invocation of the precautionary principle
where there is a threat of serious or irreversible damage, lack of full scientific certainty should shall not be used as a reason for postponing measures to avoid or minimize such a threat (from the Biodiversity Convention)

Enunciation of the principle of doubt
Activities which are likely to pose a significant risk to nature shall be preceded by an exhaustive examination; their proponents shall demonstrate that expected benefits outweigh potential damage to nature, and where potential adverse effect are not fully understood, the activities should shall not proceed (World Charter of Nature)

Enunciation of the "Cautionary" Principle
Every proponent of an intervention in the ecosystem must demonstrate that the intervention will not cause harm to the environment or will not create ecologically unsound wastes

Adoption of "prevention technologies — technologies that emphasize "protecting, conserving and sustaining the environment from the beginning, and thus avoiding the cycle of rectification of error.

Non introduction of hazardous products in the environment
the onus of proving the non-hazardous nature of the product will be on the proponent of this new type of product [after a full life cycle analysis of all the potential environmental harm by non-vested interest parties]

Environmental Assessment review
Introduce appropriate procedures requiring environmental impact assessment of its proposed projects that are likely to have significant adverse effects on biological diversity with a view to avoiding or minimizing such effects, and where appropriate, allow for public participation in such procedures (Article 14, 1A, Convention on Biological Diversity)

Assertion of the avoidance of activities
Activities which are likely to cause irreversible damage to nature shall be avoided (World Charter of Nature)

Affirmation of intergenerational equity
Reaffirming that man [humans] must acquire the knowledge to maintain and enhance their ability to use natural resources in a manner which ensures the preservation of the species and ecosystems for the benefit of present and future generations (World Charter of Nature)

Commitment to non-transference of harmful substances and activities

States should [Shall] *effectively cooperate to discourage or prevent the relocation and transfer to other States of any activities and substances that cause severe environmental degradation or are found to be harmful to human health* (Rio Declaration)

Affirmation of positive-duty-to protect-indigenous-lands principle.
recognition that the lands of indigenous people and their communities should be protected from activities that are environmentally unsound or that the indigenous people concerned consider to be socially and culturally inappropriate (Agenda 21, 16.3. ii)

Elimination of weapons of mass destruction
Man [Humans] and their environment must be spared the effects of nuclear weapons and all other means of mass destruction. States must strive to reach prompt agreement in the relevant international organs on the elimination and complete destruction of such weapons (Principle 26)

Prepared by the ERA Ecological Rights Association
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(b) identifying, preserving and preventing the loss or reduction of Biological Diversity
[wording in part from the Convention on Biological Diversity]

(b 1) mitigating climate change by addressing anthropogenic emissions by sources and removals by sinks of all greenhouse gases not controlled by the Montreal Protocol, and measures to facilitate adequate adaptation to climate change [wording from the Climate Change Convention]

(c) Achieving the goal of zero pollution in the province
(e) applying the principles of pollution prevention as the foundation of environmental protection

[from definition of "pollution prevention"]

(a 0) _ the prevention of the use, generation and release of any substance into the environment in such a manner or quantity as to cause pollution [repeated from 41 1)

(a) the elimination of the use of polluting substances

(b 0) the substitution of polluting substance with non-polluting substances

(b) the substitution of polluting substances with less polluting substances

(c) the reduction in the introduction and use of **[non-renewable]** resources and polluting substances

(d) the elimination and reduction in the generation of polluting substances

[e, f, g removed because not deemed appropriate for prevention;
Discussion Environmental Group, February 19]

(f0) Confirming the responsibility of government to set up a non-vested interest board or panel with varying levels of expertise and experience to do "arms-length" research into the true environmental impacts of substances and activities by carrying out "life cycle analysis" (recommendations from various chapters of UNCED Agenda 21) (Suggested Environment meeting, February 19)

(f) Confirming the responsibility of producers for sound environmental stewardship of products through all phases of a product's life;

(g) *"...ensuring the comprehensive and integrated consideration of environmental and socioeconomic effects in public policy-making in British Columbia."* [Deemed to be inconsistent with the overriding purpose of the Act]
Ensuring that in all decisions made about the environment that the ecosystem be given primacy (Suggested Environment meeting, February 19)

(h0) International obligations must be fulfilled as being not the maximum but the minimum standards to follow (proposed, Discussion, February 19)

(h) “Recognizing that British Columbia residents have an interest in **and a responsibility of minimizing their impact upon** the regional, national and **global environment** and global environmental well-being” (**Suggested Environment meeting, February 19**)

(i) using the knowledge and experience of British Columbia residents in the formulation of decisions affecting the environment,

(j) confirming the responsibility of polluters to pay for the costs of their actions **(also recommended in Agenda 21) but also recognizing that no pecuniary payment of costs for environmental destruction can ever fully redress the loss to the environment, and reaffirming that the prevention of pollution and environmental destruction should be by using "prevention technologies"**

(k) “...ensuring that every activity or substance that could prevent the protection, conservation and sustainability of the environment will be included under this Act, regardless of whether the activity or substance is presumed to be covered under another” Act (proposed, February 19)

(l) “...ensuring that no citizen will be prosecuted for advocating or acting to promote the purposes of the act” (Suggested, February 19)

(m) promoting the research into the development and introduction of renewable, non-polluting (protection technologies)

(n)”... ensuring that compensation can never be used as reason for not exercising the duty under the act to protect, conserve and sustain the environment” (proposed, Discussion, February 19)

(o) “...agreeing that any compensation given shall be assessed on the basis of past environmental performance and environmental costs and subsidies, and that any awarded money shall be (used by the compensated party to create employment within B.C.) placed in a job creation fund” (Suggested, Discussion, February 20)

(p) ensuring the maintenance and enhancement of the quality of the environment (moved from section 2.a, February 20)

2. “To achieve the purposes of this Act, all persons who exercise functions and powers under this Act shall have regard to the importance **of the purposes of this act**” ((proposed, February 20)

(a) the maintenance and enhancement of the quality of the environment

(b) the actual or potential effect of an activity or natural process on the whole of the environment, including its actual or potential effect on the health and safety, and the economic, cultural and social well-being of people and communities

(c) the potential costs and benefits of any objective, policy, or proposal to the environment

Scope

(1) For the purposes of this Act, introduction of a substance into the environment means depositing the substance on or in or allowing or causing the substance to flow or seep on or into any land or water or allowing or causing the substance to be emitted into the air and includes indirect means of introduction into the environment

(1*) “For the purpose of this Act, the impact of an activity on the environment means the engaging in any activity which could prevent the protection, conservation and sustainability of the environment will be included under this Act, regardless of whether the activity or substance is presumed to be covered under another Act” (proposed, February 19)

2. “Except where this Act or the regulations specifically provides to the contrary, this Act applies to the whole environment of British Columbia” **{The onus of proof for exclusion from the Act must reside in the proponent for exclusion (proposed, February 20)}**

3. Where there is conflict between this Act, its regulations or an authorization under this Act and any other act or regulations thereunder, this Act its regulations and authorizations issued or subsisting under this Act apply, **except when provisions in other Acts or regulations contribute to the fulfillment of the purposes of the Environmental Protection Act better than those contained in this Act**

(a) where this Act or its regulations provide to the contrary, or

(b) as may be prescribed by the Lieutenant Governor in Council

4. Nothing in the Soil Conservation Act shall be taken to prevent the establishment within a local authority of any facility for the disposal of waste in accordance with this Act **providing that the establishment is deemed to fulfill the purposes of the Environment Protection Act. (Proposed, February 20)**

5. The Crown is bound by this Act, except where this Act or the regulations specifically provide to the contrary

[Not yet commented on rest of section]

Part 2

Environmental Bill of Rights

Public Trust

30. (1) Every resident of British Columbia has a right to protect the environment and the public trust from any pollution, impairment or destruction

(2) The government, as trustee, has a duty to conserve and protect the environment of British Columbia

3.” Citizens of British Columbia has the right to have the environment conserved and protected” (Suggested Environment meeting, February 19)

4. “Citizens of British Columbia have to right to expect that no person shall use **generate or release**, waste or recyclable maters, or any other substance **(including fugitive gas or leachate)** into the environment in such a manner or quantity as to cause pollution”

[moved from 41 (1) (Suggested Environment meeting, February 19)

5. “Citizens of British Columbia have the right to expect that the government will live up to its obligations” (Doctrine of Legitimate Expectation)

6. “Present and future generations of British Columbia have the right to an ecological heritage” (Suggested Environment meeting, February 19)

7. ensuring that no citizen will be prosecuted for advocating or acting to promote the purposes of the act (Suggested Environment meeting, February 19)

Right of action

31. (1) The Attorney General or any resident of British Columbia may commence an action in the Supreme Court against any person who has polluted or otherwise degraded the environment and the public trust or who is likely to do so.

2. A person may commence an action under subsection (1) without having to establish that there is , has been or is likely to be an infringement of an authorization issued under this Act or an approval, permit, licence, standard, regulation, rule or order issued by or under an Act listed in Schedule A.

3. A person who commences an action under subsection (1) shall provide notice of the proceedings to the Attorney General and the Minister.

4. This section does not abrogate those common law rights that would normally be available to a plaintiff to commence an action.

5. the need for intervener funding

Standing

32 A person may commence an action under section 31 without having to show that he or she has

(1) any greater or different right, harm or interest than any other person; or

(2) any pecuniary or proprietary right or interest in the subject matter at issue.

Burden of proof.

33.

(1 a) Every proponent of an intervention in the ecosystem must demonstrate that the intervention will not cause harm to the environment or will not create ecologically unsound wastes

“If the proposal involves anything that could be hazardous, 0 emissions and waste must apply; if the proposal involves lowest achievable discharge rate should apply” (February 19, discussion)

(1 b) “the plaintiff shall establish a prima facie case showing that **the defendant’s proposed activities are likely to pollute or degrade the environment**

(1) the plaintiff shall establish a prima facie case showing that the defendants’ activities have polluted or degraded the environment or is likely to do so

(1 c. In a prosecution for a contravention the burden of proving compliance is on the defendant” [Section 46, ss 4]

2. *“Where a prima facie case under subsection (1) is established, the defendant may rebut the prima facie case by showing that there is no feasible and prudent alternative to the defendant’s action*

[If so, there must be some criteria for determining feasible and prudent alternatives in the light of the purpose of the Act; "providing prevention, conservation and sustainability of the environment" determined by an advisory, non-vested interest board or panel with representation from varied areas of expertise and experience]

3. *It is a defence to an action commenced under this Act that the defendant’s action is authorized under this act or an Act listed in Schedule A, unless the plaintiff can establish, on balance of probabilities, that the standard is inadequate to protect the environment and that the defendant’s action has caused, or is likely to cause, severe or irreparable contamination or degradation of the environment.*

The burden of proof must be on the defendant to demonstrate that the defendant’s action has not caused or is not likely to cause, severe or irreparable contamination or degradation of the environment” (Discussion, February 19)

Limitation Period

34. The limitation period for an action under section 31 of this Act is postponed and time does not commence to run until the plaintiff becomes aware, or ought reasonably to have become aware, of the identity of the defendant and of the material facts surrounding the claim

Appointment of minister’s environmental mediator

37 (1) Subject to section 140, the Minister may, *where he or she deems it advisable* **where it is deemed advisable** and where the conflicting parties concur, appoint an environmental mediator acceptable to the parties to mediate between persons involved in an environmental conflict.

(2) when a mediator is appointed under subsection (1), the mediator shall, within 6 weeks after completion of the mediation, report to the results of the mediation to the Minister and the parties

38 (c) award damages to (iv) any person who has a concern for the environment

39 "...licence, standard, regulation, rule or order issued under an Act listed in Schedule A affects **the environment** and rights of a person, **any** person shall be furnished with a written statement of the decision setting out..."**(c) any dissenting opinions (Discussion, February 19)**

Since the first United Nations Conference on the Environment in Stockholm in 1972, we have come to realize that the traditional patterns of development have contributed to poverty - denying more than a quarter of the world's population adequate living conditions — to the inequitable distribution of resources to over-consumption, to the violation of human rights, and to the potentially irreversible degradation of the ecosystem.

WE DECLARE THE FOLLOWING PRINCIPLES TO GUIDE HUMANITY TO AN EQUITABLE AND ECOLOGICALLY SOUND FUTURE:

1. The ecosystem of which we are a part shall be protected and preserved, ecologically unsound patterns of development shall be condemned and the inequity of development must be addressed and rectified

2. Development activities that benefit the few while compromising the biological inheritance and quality of life of the many must be condemned as being inherently wrong

4. International ecological standards should be in place so that no short-term individual pursuit of self-interest, or short sighted national or international regulations (GATT) could jeopardize the environment. The purpose of these standards is to address the individual and multinational pursuit of self-interest and consumptive and exploitative use of the environment and not to penalize local communities that wish to function in an interdependent way within the ecosystem. The economic development necessary to eliminate poverty shall not be a mandate to abuse the environment for either short-term gain or economic growth alone. Principle must drive industry not industry driving principle.

5. Environmental processes do not recognize national boundaries; therefore, states shall not have the sovereign right to exploit resources within their territories in isolation from the global ecological needs of the Earth

6. The continued build-up of the military complex must cease, and the use of military force as a means of resolving conflict must be rejected. A radical reduction of the military budgets of the world must occur and the funds released for ecological and humanitarian purposes. Peace is not merely the absence of war but the pursuit of environmental, social justice, economic, spiritual and cultural well-being.

7. 8. the decision-making process should be clearly defined, transparent, accessible and equitable. Criteria in decision making should be revealed, and the public and affected communities should be

involved at the time of the formulation of the terms of reference and through the process.

9. The international community must condemn and disallow the exporting of products deemed to be unsafe in a state where there are advance testing procedures to other states with less advanced testing procedures. Since the first United Nations Conference on the Environment in Stockholm in 1972 we have come to realize that the threats to the biosphere which sustains all life on this planet have increased in rate, magnitude and scale that inaction is negligent. The international community has enough information about the pending state of ecological irreversibility that it must act immediately (proposal for NGO Earth Charter, Rio, June, 1992)

The precautionary principle shall be extended to require those who wish to intervene in the ecological commons to have to justify their intervention and demonstrate the safety of their intervention. The full environmental costs shall be considered in any proposed development project. (NGO Earth Charter, Rio, June, 1992)

KEY ISSUE; UNREMUNERATED CONSULTATION TO NGO

() THAT in May 25, 1994, I was contacted by a member of the CEN International Affairs Caucus who was drafting an Environmental Ethics and Conduct [probably a paid contract]

EXHIBIT

Many of these problems have arisen from a development model that is environmentally destructive and from a lack of protection. Ecological and human health effects are the measurable consequences... although the means to monitor them are inadequate or non-existent in many countries. (Agenda 21, UNCED18.45)

Jean Arnold
Falls Brook Centre
RR1 Hartland
New Brunswick E0J 1N0

MAY 25. 1994

Dear Jean,

Thank you for sending me a copy of the Code of Environmental Ethics and Conduct (revised final draft discussion document, April 1994)

Although the document is good, it contains what I think are some fundamental flaws:

(1) the drafters present the Code as the 'environmental' component of sustainable development. This is dangerous because it suggests that the provisions are subject to vested interest negotiation through "stakeholder"

participation. What is important is to demonstrate what Canada has already agreed to internationally or nationally, and then indicate what still needs to be done.

It seems that every time a Charter or a Code is developed by ENGO's in Canada, the drafters appear to ignore all precedents and thus the documents produced are perceived as being "wish lists" that are negotiable.

Almost every item in the Vision Statement and the Preamble has already been agreed to internationally through UN documents or resolutions. By ignoring these international obligations, the CEN is ignoring significant precedents that those participating in the "development" component would not be able to discard as being nothing more than an environmental wish list.

For example, rather than making an important but not substantiated statement "every life form is unique and has intrinsic value regardless of any perceived value that it may have for humans" the CEN could cite the following principle, agreed to by Canada under the World Charter of Nature

(a) Every form of life is unique, warranting respect regardless of its worth to man, and to accord other organisms such recognition's, man [human] must be guided by a moral code of action,

Even though the World Charter of Nature is not legally binding, it was a UN resolution and I think an argument could be made that Canada should at least as a minimum fulfill international recommendations

NOTE THAT AT ALL COSTS INTERNATIONAL OBLIGATIONS MUST BE PRESENTED AS THE MINIMUM. IN THE RECENT DECISION BY THE SCIENTIFIC PANEL IN B.C. THE PANEL RECOMMENDED THAT INTERNATIONAL OBLIGATIONS SHOULD BE THE MINIMUM. I THINK THAT THE CODE SHOULD CONTAIN AS A MINIMUM WHAT CANADA HAS ALREADY AGREED TO THROUGH INTERNATIONAL AGREEMENTS, THEN WHERE NOTHING HAS BEEN AGREED TO BY GOVERNMENTS, CITE RECOMMENDATIONS FROM ORGANIZATIONS SUCH AS THE IUCN WHICH HAS BOTH STATE AND NGO INVOLVEMENT AND REPRESENTS 125 COUNTRIES, THEN CITE RECOMMENDATIONS COMING FROM INTERNATIONAL NGO MEETINGS SUCH AS TREATIES FROM NGO GLOBAL FORUM., THEN RECOMMENDATIONS FROM SIGNIFICANT GROUPS "NOBEL LAURATE DECLARATION" OR CONCERNED SCIENTIST WARNING TO HUMANITY, OR SIGNIFICANT INDIVIDUALS SUCH AS DAVID SUSUKI'S "CHARTER OF INTERDEPENDENCE"

-ON "SUSTAINABLE DEVELOPMENT" THERE IS A REVISED VERSION FROM THE IUCN. For example, IUCN - the organization that originally introduced the notion of sustainable development in 1980 is now using instead "sustainable development" "conservation and equitable and ecologically sound use" in mission statement. (Jan 1994, Annual General Meeting)

-ON POPULATION, THERE IS AN EXCELLENT NGO PRECEDENT FROM THE WOMEN'S ACTION COMMISSION STATEMENT,
-ON THE MILITARY THERE ARE STATEMENTS FROM STOCKHOLM, AND FROM NGO

-ON PHASING OUT FOSSIL FUELS AND NUCLEAR ENERGY " THE NOBEL LAUREATE DECLARATION

-ON "THE RIGHT TO ECOLOGICAL HERITAGE

Another element that is not included in international document is the enshrining of the right of future generations to not just a safe environment but also an ecological heritage.

AND WHEN THERE ARE NO SUBSTANTIVE REFERENCES THEN PUT IN OWN WORDING.

2: When the drafters do take from international sources, they fail to give the appropriate acknowledgement, and thus the weight of the international precedent is not conveyed

In the Code the following statement is made: "all life depends on the uninterrupted functioning of natural systems that ensure the supply of energy and nutrients"; this wording is taken directly from the World Charter of Nature

(a) {Mankind} is part of nature and life depends on the uninterrupted functioning of natural systems which ensure the supply of energy and nutrients (WCN)

3. The drafters have omitted several strong principles that have been agreed to internationally: e.g., non-transference of harmful substances; Non harmful activities on native lands; environmental assessment requirement; etc.

4. the drafters have weakened several principles: such as the precautionary principle. In the Code, the precautionary principle is referred to not as a principle but as a recommendation

THE BEST VERSION OF THIS PRINCIPLE IS NOW DERIVED FROM THE BIODIVERSITY CONVENTION AND IS BEING PROPOSED BY THE "BEST AVAILABLE TECHNOLOGY" COMMITTEE IN THE POLLUTION PREVENTION BRANCH B.C.

where there is a threat of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing measures to avoid or minimize such a threat (from the Biodiversity Convention)

Where there are threats of serious or irreversible damage, the lack of full scientific certainty shall not be used as a reason for postponing measures to prevent environmental degradation (proposed wording for BC Pollution Prevention Act)

5. The drafters have prepared an "amorphous" form without explicitly stating principles that can be effectively used.

It would appear also that the whole code is a preamble; and given that usually preambles are given less weight than the bodies of texts are, it would be important to indicate where the text begins

I THINK THAT THE CODE NEEDS A LOT OF WORK STILL

Let me know if you would like me to work on it. I have about 200 principles that I have extracted from the UNCED documents, plus additional principles from other documents. I have already circulated many documents where I indicate what Canada has already agreed to internationally, submitted a document to CIDA for guidelines for development where I indicate these principles, and to the IUCN Covenant on Ethics and the Environment.

Joan Russow (Chair, B.C.E.N. International Affairs Caucus) 604-380-2563;
Fax 385-0068

P.S. AS YOU PROBABLY KNOW I PRESENTED A RESOLUTION THAT WAS PASSED UNANIMOUSLY AT THE CEN INTERNATIONAL AFFAIRS CAUCUS MEETING IN PEI, ON ISSUING AN ENGO REPORT ON CANADA'S COMPLIANCE TO UNCED DOCUMENTS. PRIOR TO THE COMMONWEALTH GAMES THE BCEN INTERNATIONAL AFFAIRS CAUCUS WILL BE ISSUING THIS REPORT. INITIALLY IT WAS ONLY TO REFER TO B.C. BUT WHEN I HEARD ON CBC ABOUT THE PLIGHT OF THE LAST REMAINING ORIGINAL FOREST IN NEW BRUNSWICK, I THOUGH WE SHOULD REFER TO ALL OF CANADA. WE WILL PROBABLY BE PUBLISHING A FOUR PAGE PAPER ON THIS AS WELL. COULD YOU SEND ME A STATEMENT ABOUT A SERIOUS VIOLATION IN NEW BRUNSWICK SUCH AS THE DESTRUCTION OF THE LAST REMAINING ORIGINAL FOREST. THE ELIMINATION OF THIS FOREST WOULD BE IN VIOLATION OF THE BIODIVERSITY CONVENTION. THE VIENNA CONVENTION OF TREATIES COULD BE USED TO SUPPORT THE CLAIM THAT THE FEDERAL GOVERNMENT SIGNING AND RATIFICATION OF THE BIODIVERSITY CONVENTION ALSO BINDS THE PROVINCE.

Legend

Underlined: what has already been agreed to internationally

Bold: what still needs to be done

CHARTER OF ECOLOGICAL PRINCIPLES

This Charter draws from international obligations that have already been agreed to internationally. The Charter draws from both obligations undertaken by states through UN resolutions such as the "World Charter of Nature", globally agreed to documents such as the United Nations Conference on Humans and the Environment (Stockholm, 1972), The Rio Declaration (UNCED, 1992) and Agenda 21 (UNCED, 1992) and the legally binding documents such as the Vienna Convention on Ozone (1986), the Montreal Protocol (1987), The Basel Convention (); Convention on Biological Diversity (UNCED, 1992, in Force, 1993) and the Convention on Climate Change (UNCED, 1992, in force 1993), and the Law of the Sea (in force 1994).

NOTE: Article 18 of the Vienna Convention Treaty stipulates that if a state has signed a treaty there is an "obligation not to defeat the object and purpose of a treaty prior to the entry into force"

The following principles have been agreed to internationally

International obligations must be fulfilled as being not the maximum but the minimum standards to follow

Transference of agreed to principles to state practices

The principles set forth in the present Charter shall be reflected in the law and practice of each State, as well as at the international level (World Charter of Nature)

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ensuring that every form of life is unique, warranting respect regardless of its worth to man

[human], and to accord other organisms such recognition's, man [human] must be guided by a moral code of action (World Charter of nature)

Respect for essential processes

Nature shall be respected and its essential processes shall not be impaired

Urgency of conserving nature

Humans can alter nature and exhaust natural resources by their actions or the consequences and, therefore, must fully recognize the urgency of maintaining the stability and quality of nature and of conserving natural resources and nature (World Charter of nature)

Moral code of action

ensuring that every form of life is unique, warranting respect regardless of its worth to man [humans], and to accord other organisms such recognition's, man [human] must be guided by a moral code of action (World Charter of nature)

Enunciation of the primacy of the ecosystem

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Every proponent of an intervention in the ecosystem must demonstrate that the intervention will not cause harm to the environment or will not create ecologically unsound wastes

Adoption of "prevention technologies — technologies that emphasize "protecting, conserving and sustaining the environment from the beginning, and thus avoiding the cycle of rectification of error.

Non introduction of hazardous products in the environment

the onus of proving the non-hazardous nature of the product will be on the proponent of this new type of product [after a full life cycle analysis of all the potential environmental harm by non-vested interest parties]

Environmental Assessment review

Introduce appropriate procedures requiring environmental impact assessment of its proposed projects that are likely to have significant adverse effects on Biological diversity with a view to avoiding or minimizing such effects, and where appropriate, allow for public participation in such procedures (Article 14, 1A, Convention on Biological Diversity)

Assertion of the avoidance of activities

Activities which are likely to cause irreversible damage to nature shall be avoided (World Charter of Nature)

Recognition of interconnectedness with nature

Humankind is a part of nature and life depends on the uninterrupted functioning of natural systems which ensure the supply of energy and nutrients (World Charter of Nature)

Reaffirmation of intergenerational equity

Reaffirming that man [humans] must acquire the knowledge to maintain and enhance their ability to use natural resources in a manner which ensures the preservation of the species and ecosystems for the benefit of present and future generations

(World Charter of Nature)

Commitment to non-transference of harmful substances and activities

States should [Shall] *effectively cooperate to discourage or prevent the relocation and transfer to other States of any activities and substances that cause severe environmental degradation or are found to be harmful to human health* (Rio Declaration)

undertaken by

The General Assembly,

Reaffirming the fundamental purposes of the United Nations, in particular the maintenance of international peace and security, the development of friendly relations among nations and the achievement of international co-operation in solving international problems of an economic, social, cultural, technical, intellectual or humanitarian character,

(WCN)

Aware that:

(a) {Mankind} is part of nature and life depends on the uninterrupted functioning of natural systems which ensure the supply of energy and nutrients (WCN)

(b) Civilization is rooted in nature, which has shaped human culture and influences all artistic and scientific achievement, and living in harmony with nature gives man the best opportunities for the development of his creativity, and for rest and recreation,

(WCN)

Convinced that:

(a) Every form of life is unique, warranting respect regardless of its worth to man, and to accord other organisms such recognition's, man must be guided by a moral code of action,

(b) Man can alter nature and exhaust natural resources by his action or its consequences and, therefore, must fully recognize the urgency of maintaining the stability and quality of nature and of conserving natural resources, (WCN)

Persuaded that:

(a) Lasting benefits from nature depend upon the maintenance of essential ecological processes and life

support systems, and upon the diversity of life forms, which are jeopardized through excessive exploitation and habitat destruction by man (WCN)

(b) The degradation of natural systems owing to excessive consumption and misuse of natural resources as well as to failure to establish an appropriate economic order among peoples and among States, leads to the breakdown of the economic, social and political framework of civilization, (WCN)

(c) Competition for scarce resources creates conflicts, whereas the conservation of nature and natural resources contributes to justice and the maintenance of peace and cannot be achieved until mankind learns to live in peace and to forsake war and armaments, (WCN)

Reaffirming that man must acquire the knowledge to maintain and enhance his ability to use natural resources in a manner which ensures the preservation of the species and ecosystems for the benefit of present and future generations, (WCN)

Firmly convinced of the need for appropriate measures, at the national and international, individual and collective, and private and public levels, to protect nature and promote international co-operation in this field. (WCN)

Adopts, to these ends, the present World Charter for Nature, which proclaims the following principles of conservation by which all human conduct affecting nature is to be guided and judged. (WCN)

1. General Principles

1. Nature shall be respected and its essential processes shall not be impaired (WCN)

2. The genetic viability on the earth shall not be compromised: the population levels of all life forms, wild and domesticated, must be at least sufficient for their survival, and to this end necessary habitats shall be safeguarded (WCN)

3. all areas of the earth, both land and sea, shall be subject to these principles of conservation; special protection shall be given to unique areas, to representative samples of all the different types of ecosystems and to the habitats of rare or endangered species. (WCN)

4. Ecosystems and organisms, as well as the land, marine and atmospheric resources that are utilized by man, shall be managed to achieve and maintain optimum sustainable productivity, but not in such a way as to endanger the integrity of those other ecosystems or species with which they coexist. (WCN)

5. Nature shall be secured against degradation caused by warfare or other hostile activities. (WCN)

II Functions

6. In the decision-making process it shall be recognized that man's needs can be met only by ensuring the proper functioning

of natural systems and by respecting the principles set forth in the present Charter. (WCN)

7 In the planning and implementation of social and economic development activities, due account shall be taken of the fact that the conservation of nature is an integral part of those activities. (WCN)

8. In formulating long-term plans for economic development, population growth and the improvement of standards of living, due account shall be taken of the long-term capacity of natural systems to ensure the subsistence and settlement of the populations concerned, recognizing that this capacity may be enhanced through science and technology. (WCN)

9. The allocation of areas of the earth to various uses shall be planned and due account shall be taken of the physical constraints, the biological productivity and diversity and the natural beauty of the areas concerned. (WCN)

10. Natural resources shall not be wasted, but used with a restraint appropriate to the principles set forth in the present Charter, in accordance with the following rules: (WCN)

(a) Living resources shall not be utilized in excess of their natural capacity for regeneration; (WCN)

(b) The productivity of soils shall be maintained or enhanced through measures which safeguard their long-term fertility and the process of organic decomposition and prevent erosion and all other forms of degradation; (WCN)

(c) Resources, including water, which are not consumed as they are used shall be reused or recycled; (WCN)

(d) Non-renewable resources which are consumed as they are used shall be exploited with restraint, taking into account their abundance, the rational exploited with restraint, taking into account their abundance, the rational possibilities of converting them for consumption, and the compatibility of their exploitation with functioning of natural systems. (WCN)

11. Activities which might have an impact on nature shall be controlled, and the best available technologies that minimize significant risks to nature or other adverse effects shall be used; in particular, (WCN)

(a) activities which are likely to cause irreversible damage to nature shall be avoided; (WCN)

(b) Activities which are likely to pose a significant risk to nature shall be preceded by an exhaustive examination; their proponents shall demonstrate that expected benefits outweigh potential damage to nature, and where potential adverse effect are not fully understood, the activities should not proceed; (WCN)

(c) Activities which may disturb nature shall be preceded by assessment of their consequences, and environmental impact studies of development projects shall be conducted sufficiently in advance, and if they are to be undertaken, such activities

shall be planned and carried out so as to minimize potential adverse effects; (WCN)

(d) Agriculture, grazing forestry and fisheries practices shall be adapted to the natural characteristics and constraints of given areas; (WCN)

(e) Areas degraded by human activities shall be rehabilitated for purposes in accord with their natural potential and compatible with the well-being of affected populations (WCN)

12. Discharge of pollutants into natural systems shall be avoided and: (WCN)

(a) Where this is not feasible, such pollutants shall be treated at the source, using the best practicable means available; (WCN)

(b) special precautions shall be taken to prevent discharge of radioactive or toxic wastes (WCN)

13. Measures intended to prevent, control or limit natural disasters, infestations and diseases shall be specifically directed to the causes of these scourges and shall avoid adverse side-effects on nature. (WCN)

III Implementation

14. The principles set forth in the present Charter shall be reflected in the law and practice of each State, as well as at that international level. (WCN)

15. Knowledge of nature shall be broadly disseminated by all possible means, particularly by ecological education as an integral part of general education. (WCN)

16. All planning shall include, among its essential elements, the formulation of strategies for the conservation of nature, the establishment of inventories of ecosystems and assessments of the effects on nature of proposed policies and activities; all of these elements shall be disclosed to the public by appropriate means in time to permit effective consultation and participation. (WCN)

17. Funds, programmes and administrative structures necessary to achieve the objective of the conservation of nature shall be provided. (WCN)

18. constant efforts shall be made to increase knowledge of nature by scientific research and to disseminate such knowledge unimpeded by restrictions of any kind. (WCN)

19. The status of natural processes, ecosystems and species shall be closely monitored to enable early detection of degradation or threat, ensure timely intervention and facilitate the evaluation of conservation policies and methods. (WCN)

20 Military activities damaging to nature shall be avoided (WCN)

21. States and, to the extent they are able, other public authorities, international organizations, individuals, groups and corporations shall: (WCN)

- (a) Co-operate in the task of conserving nature through common activities and other relevant actions, including information exchange and consultations; (WCN)
- (b) Establish standards for products and manufacturing processes that may have adverse effects on nature, as well as agreed methodologies for assessing these effects; (WCN)
- (c) Implement the applicable international legal provisions for the conservation of nature and the protection of the environment; (WCN)
- (d) Ensure that activities within their jurisdiction or control do not cause damage to the natural systems located within other States or in the areas beyond the limit of national jurisdiction; (WCN)
- (e) Safeguard and conserve nature in areas beyond national jurisdiction. (WCN)

22. Taking fully into account the sovereignty of States over their natural resources, each State shall give effect to the provisions of the present Charter through its competent organs and in co-operation with other States. (WCN)

23. All persons, in accordance with their national legislation, shall have the opportunity to participate, individually or with others, in the formulation of decisions of direct concern to their environment, and shall have access to means of redress when their environment has suffered damage or degradation. (WCN)

24. Each person has a duty to act in accordance with the provisions of the present Charter; acting individually, in association with others or through participation in the political process, each person shall strive to ensure that the objectives and requirements of the present Charter are met. (WCN)

() **THAT** in 1994 May I had been asked by a professor at the University of Victoria, if I would be a stand-in for a speaker at a conference on Population, Religion, and Ethics. In the event that I might be called to give a presentation, I prepared a draft. When the other speaker did confirm, I decided I would send on my comments. Supposedly, the deliberation from this conference was going to be sent on to the Canadian delegation for the International Conference on Population and Development.

EXHIBIT

MAY 28 1994

From a conference Stand-in

This comment resulted from the preliminary draft I was making for the presentation that I would have given if I had been required to stand-in for one of the presenters at your conference in "Population, Religion and Ethics."

For student course material that I am preparing at the University, for one course in "Global Issues in Sustainability" in the Environmental Studies and, for another course in "Principle-based education" in the faculty of education, I have been surveying an extensive range of international

documents. These documents include United Nations Conventions, Declarations, Covenants and Charters, such as the Human Rights Declaration, World Charter of Nature and UNCED documents; Regional Declarations, such as ASEAN 1985 document, National statements on Policy; Institutional Proclamations, such as "the Global Energy Charter" and the World Scientists Warning; Specific perspective documents, such as the Woman's Action Agenda, Youth Recommendations; political divisions; Group of Fifteen, subject area, such as the Caracas Declaration; and NGO Treaties on Militarism and Population.

Because of the possibility of my having been included in the deliberations if there had been a cancellation, I prepared the rough draft of what I would have presented at the Conference if I had participated.

5. the natural growth of population continuously presents problems on the preservation of the environment, and adequate policies and measures should be adopted, as appropriate, to face these problems. UNCHE

Principle 16

Demographic policies, which are without prejudice to basic human rights and which are deemed appropriate by Governments concerned, should be applied in those regions where the rate of population growth or excessive population concentrations are likely to have adverse effects on the environment or development, or where low population density may prevent improvement of the human environment and impede development. (UNCHE)

1. General Principles

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8. In formulating long-term plans for economic development, population growth and the improvement of standards of living, due account shall be taken of the long-term capacity of natural systems to ensure the subsistence and settlement of the populations concerned, recognizing that this capacity may be enhanced through science and technology. (WCN)

11 (e) Areas degraded by human activities shall be rehabilitated for purposes in accord with their natural potential and compatible with the well-being of affected populations" (WCN)

POVERTY, POPULATION, PRODUCTION AND CONSUMPTION

"The time has come for a massive attack on mass poverty. Poverty, environment and population can no longer be death with — or even thought of — as separate issues; they are interlinked in practice and must be linked in policy formulation. (WCED)

Unless poverty is alleviated, there is little chance that we will be able to stabilize world population, which has grown by 500 million since the Commission last met (WCED)

Human resource development, which is essential for sustainable development, itself requires effective population management through programmes that recognize the linkages between poverty and population growth. Such programmes deal with population growth through an integrated approach which includes the education and enhancement of the status of women, and improved public health, as well as family planning. (WCED)

As a minimum step, all countries must provide opportunities for couples to exercise freely their human right to determine the number and spacing of their children. (WCED)

The vast difference in resource use between the rich and the poor is incompatible with sustainable development. A global partnership must start with a commitment by the industrial countries to reduce sharply the burden they impose on the carrying of the Earth's Ecosystems. (WCED)

4. the issue is not merely one of population size but the distribution of resources, sustainable development can only be pursued if demographic development is in harmony with the changing productive potential of the ecosystem (WCED) (ULNA)

6. Growth has no set limits in terms of population or resource use beyond which lies ecological disaster...but ultimate limits there are, and sustainability requires that long before these are reached the world must ensure equitable access to the constrained resources and reorient technological efforts to relieve the pressure." (WCED)(UNA)

POPULATION

33. "The high rates of population growth in almost all developing countries may represent a real mortgaging of their social and economic development. It is becoming imperative for those involved politically and culturally at national and international levels to be effectively called on to help to raise public awareness and mobilize political and popular commitment and the necessary financial and technical means to take a conclusive step towards the formulation and implementation of appropriate demographic policies. The World Conference on Population and development planned for 1994 ought to be the opportunity for working out and adopting policies and programmes aimed at achieving global demographic objectives. (GOF)

Women's Rights, Population Policies and Health

Knowing that the major causes of environmental degradation are industrial and military pollutants, toxic wastes, and economic systems that exploit and misuse nature and people, we are outraged by suggestions that women's fertility rates (euphemistically called population pressures) are to blame, (WAG)

Recognizing that this analysis, if unchallenged, lays the ground work for these-emergency of top-down, demographically-driven population policies and programs that are deeply disrespectful of the basic human rights of

women as guaranteed in the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) (WAG)

Knowing that it is the number of people plus their consumption of resources plus their wastes that determine their environmental impact, we note that a person in the industrialized world has a far greater negative impact on the environment than a person living in a poor country, (WAG)

Aware that the right to reproductive health and choice is a basic human right of all individuals, we point out that the World Fertility Survey estimates that there are 500 million couples who wish to plan their family size but have no access to the means to do so. (WAG)

Fearful of the threat to women's lives by the HIV pandemic and recognizing that women's ability to protect themselves from AIDS and other sexually transmitted diseases and to determine when-and-if to have children is a prerequisite for women's health, self-determination, and empowerment, (WAG)

We condemn any attempt to deprive women of reproductive freedom or the knowledge to exercise that freedom. (WAG)

We demand women-centred, women-managed comprehensive reproductive health care and family planning including the right to prenatal care, safe and legal voluntary contraceptive and abortion, sex education and information (WAG)

We urge governments, multilateral and donor agency to increase investments in comprehensive reproductive health services and to include men as beneficiaries of family planning education and services. Family support services should include child care and parental leave. (WAG)

We call on policy-makers to recognize that raising the economic, health, education, and social status of women are essential to ending environmental degradation. (WAG)

We call for recognition of the existence of a global, environmentally induced cancer epidemic and demand removal from the environment of carcinogenic substances, which have particularly adverse effects on women and children. Particular attention in medical research and treatment should be paid to women's cancers: breast, ovarian, cervical, uterine, and vaginal. Research and remedial action should also focus on the effects on health of toxic chemicals, nuclear wastes, radiation, pesticides and fertilizers. (WAG)

We demand that all governments systematically alert their citizens to the danger of AIDS and provide them with the information on how to avoid contamination. (WAG)

We ask the World Health Organization, International Labour Organization, national governments, public health groups, corporations, and unions to increase efforts to eliminate environmental occupational hazards in factories, offices, and on the land." (WAG)

(Women's action agenda)

Whereas the Montreal Accord did not address the required changes in the three key elements of development -- aid, trade and technology - which would assure ensure that such development in the South did not commit the errors of the past but would be consistent with the conservation of the environment and natural resources and would avoid the twin penalties of pollution and depletion. The time has come to make the decisions to combine the forces of

the North and South in an operationalized plan of mutual benefit to sustain the earth's burgeoning population while moving rapidly to implement policies and programs which would stabilize population and while moving towards limiting growth and over-consumption. The next decade will determine whether we can avoid the inevitable tragedy of a global environmental crash. To do so we must alter our present course. The security of the planet is at stake. (RFB)

Whereas while the population issue is complex and contentious, we should recognize that poverty is possibly the major factor in high population growth. We also know that the transfer of [humanitarian not exploitative] development from the North to the South is necessary to achieve population stabilization. But in order to avoid the potential ecological disasters that might occur, we must make certain that the forms of development transfer are environmentally benign and that the North be further obliged to cut back its much larger share of the burden of global pollution, and to cut back on its over-consumptive practices. [The great bonus] we would derive from this combined attack on the equity/environment problems [would be to lay] the basis for a durable world peace. (RFB)

As we suggested in the preamble, the North and the South must become partners in the transfer of a form of development that leads to the conservation of the environment, population stabilization and consumption reduction in both global regimes. {This is the only way in which all of us will win} The north for example, must be prepared to trade massive reductions in the use of fossil fuels in exchange for the South preserving the rainforests while at the same time transferring forms of development to the South that are environmentally benign, and that are socially equitable, and undertaking to seriously address over-consumption. This is the essential type of global trade-off [cooperation] that can prevent impending environmental disasters [continued inequity and impending environmental disasters]. To facilitate this trade-off [cooperation], the International Equity Fund (IEF) dedicated to a global anti-poverty mission must be established and the only major source of discretionary funds which rests in the radical reduction of the military budgets (the realization of the peace dividend) must be activated. (RFB)

NOBEL LAUREATE STATEMENT TO UNCED 92 (NLSU)

"The primary goal of the summit will be to lay the foundation for a global partnership between developing and developed countries based on mutual need and common interest, to ensure the future of the planet. This partnership will undoubtedly require the mutual solution of the population and overconsumption issues. Equity and environment problems are linked and must be solved together. Further, the only major source of the discretionary funds necessary for addressing these issues rests in the radical reduction of the military budgets of the Nations of the World" — Dr Fred Knelman, Vice President of the Whistler foundation For a Sustainable Environment; and Dr David Krieger, President of the Nuclear Age Peace Foundations. (NLSU)

- to initiate a global program of population stabilization; (NLSU)

Although they comprise only 20 % of the World's population, they consume two thirds of the metals and three fourths of the energy produced the world over. (CA)

Forests disappear, deserts grow, thousands of millions of tons of fertile soil end up in the oceans every year. Numerous species face extinction. Over-population and poverty lead to desperate efforts for survival, even at the expense of nature. (CA)

2. As long as 20% of the world's population devours 80% of the world's resources and energy, military force will be used to maintain this inequitable situation. Poverty and hunger generate tensions and pressures which can only be perpetuated by military oppression. Militarization, originating in economic exploitation and in all forms of domination including patriarchal systems, destroys the Earth and the various forms of life on it. Militarism, during periods of war and peace, has an immensely negative impact on the environment, as it uses up the natural and human resources needed for economic and social development. (NGO MED)

- the unwillingness to redefine development in terms of ecologically sound practices; such as
 - (i) the degree to which a state has been able to integrate with the ecosystem through ecological sound practices causing its human activity to have little deleterious impact on the environment
 - ii) The degree to which there is an equitable distribution of resources
 - iii) the extent to which a state refrains from contributing to global ecological or military harm
 - iv) The degree of condemnation, and avoidance of over-consumption
 - v) the ability to minimize the human impact on the environment through stabilization of population
 - vi) the degree of compliance with the enshrining of positive rights (right to ecologically sound work, to food, to shelter as well as with negative rights)
 - (vii) the ability to live within the carrying capacity of the ecosystem; in which case the US could possibly be the least developed
- the stereotyping of countries into categories of "developed, underdeveloped, and developing" rather than designating behaviours and attitudes as being "developed, underdeveloped and developing";
- the simplistic distinction between North (environment) and South (development)
- the presumption that technological transfer should always pass from "North" to "South"
- the reluctance to deal with essential issues such as the link between "Nuclear civil reactors and Nuclear Arms Industry" or the Link between Poverty and lack of universal "secondary" as well as "primary" health care system (3.6. e Combating Poverty)
- the reluctance to address the environmental degradation caused by military operations
("Systemic Constraints preventing change," Russow J. & White, D. in progress)

"The growth of world population and production combined with unsustainable consumption patterns places increasingly severe stress on the life-supporting capacities of our planet. . (5.2, Demographic dynamics)

- **Linking of population and over-consumption**

["Health and development are intimately interconnected; both insufficient development leading to poverty and inappropriate development resulting in over-consumption, coupled with an expanding world population, can result in severe environmental health problems in both developing and developed nations.] 6.1 Health

_Desertification affects about one sixth of the world's population, 70% of all drylands, amounting to 3.6 billion hectares, and one quarter of the total land areas of the world. The most obvious impact of desertification, in addition to widespread poverty, is the degradation of 3.3 billion hectares of the total area of rangeland, constituting 73 per cent of the rangeland with a low potential for human and animal carrying capacity decline in soil fertility and soil structure on about 47 per cent of the dryland areas constituting marginal rainfed cropland; and the degradation of irrigated cropland, amounting to 30 % of the dryland areas with a high population density and agricultural potential. (12.2. Desertification)

- **Extent of environmental damage from waste accumulation**

" The environment is threatened in all its biotic and abiotic components: animals, plants, microbes and ecosystems comprising biological diversity; water, soil and air, which form the physical components of habitats and ecosystem; and all the interactions between the components of biodiversity and their sustaining habitats and ecosystem. With the continued increase in the use of chemicals, energy and non-renewable resources by expanding global population, associated environmental problems will also increase. Despite increasing efforts to prevent waste accumulation and to promote recycling, the amount of environmental damage caused by over-consumption, the quantities of waste generated and the degree of unsustainable land use appear likely to continue growing. (16.22 Biotechnology)

- **Increased impact of population growth and industrialization**

" Rapid urban population growth and industrialization are putting severe strains on the water resources and environmental protection capabilities of many cities (18.67, Fresh water)

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POPULATION

“The earth is finite. Its ability to absorb waters and destructive effluent is finite. Its ability to provide food and energy is finite. and we are fast approaching many of the earth's limits. Current economic practices which damage the environment, in both developed and underdeveloped nations, cannot be continued without the risk that vital global systems will be damaged beyond repair. (WSWH)

Pressures resulting from unrestrained population growth put demands on the natural world that can overwhelm any efforts to achieve a sustainable future. If we are to halt the destruction of our environment, we must accept limits to that growth. A World Bank estimate indicates that world population will not stabilize at less than 12.4 billion, while the United Nations concludes that the eventual total could reach 14 billion, a near tripling of today's 5.4 billion. But, even at this moment, one person in five lives in absolute poverty without enough to eat, and one in ten suffers serious malnutrition. (WSWH)

3. WE must stabilize population. This will be possible only if all nations recognize that it requires improved social and economic conditions and the adoption of effective, voluntary family planning. (WSWH)

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Acting on this recognition is not altruism, but enlightened self-interest; whether industrialized or not, we all have but one lifeboat. No nation can escape from injury when global biological systems are damaged. No nations can escape from conflicts over increasingly scarce resources. In addition, environmental and economic instabilities will cause mass migrations with incalculable consequences for developed and undeveloped nations alike. 3. WE must stabilize population. This will be possible only if all nations recognize that it requires improved social and economic conditions and the adoption of effective, voluntary family planning. (WSWH)

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Developing nations must realize that environmental damage is one of the gravest threats they face and that attempt to blunt it will be overwhelmed if their populations go unchecked. The greatest peril is to become trapped in spirals of environmental decline, poverty, and unrest, leading to social, economic and environmental collapse. 3. WE must stabilize population. This will be possible only if all nations recognize that it requires improved social and economic conditions and the adoption of effective, voluntary family planning. (WSWH)

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No more than one or a few decades remain before the change to avert the threats we now confront will be lost and the prospects for humanity immeasurably diminished (WSWH)

5. We must ensure sexual equality, and guarantee women control over their own reproductive decisions" (WSWH)

To achieve sustainable development and a higher quality of life for all people, states should shall reduce and eliminate unsustainable patterns of production and consumption (Principle 8)

[We agree to alter [unsustainable] patterns of production and consumption to ensure the eradication of poverty and to end the abuse of Earth.] **The fundamental principle which calls for limiting growth shall be internationally adhered to. Current patterns of overconsumption shall be reduced and eventually eliminated, and efforts shall be made to stabilize population**

To achieve sustainable development and a higher quality of life for all people, states should shall reduce and eliminate unsustainable patterns of production and consumption (Principle 8)

Development activities that benefit the few while compromising the biological inheritance, and quality of life of the many must be condemned as being inherently and ethically wrong

" An expansionist world-view is presently engulfing us in a lose/lose situation for environment and humankind alike." (Taylor, 1991)

" Excessive population growth has outstripped the capacity to provide these basic requirements." (Fendall, 1991)

" Technology and population pressure make human beings a leading cause of habitat destruction and fragmentation throughout the world. " (Fenton, 1991)

"For the first time in the history of the earth, one species is causing a mass extinction and has the rest of the living world in its grasp. We are permanently altering the course of evolution in ways we cannot foresee." (Scudder, 1991)

NGO TREATY ON POPULATION, ENVIRONMENT AND DEVELOPMENT (PED)

Preamble

"Women's empowerment to control their own lives is the foundation for all action linking population, environment and development (PED)

We reject and denounce the concept of control of women's bodies by governments and international institutions. We reject and denounce forced sterilization, the misuse of women as subjects for experimental contraceptives and the denial of women's free choice (PED)

We affirm and support women's health and reproductive rights and their freedom to control their own bodies. We demand the empowerment of women, half of the World's population, to exercise free choice and the right to control their fertility and to plan their families (PED)

The international community must address problems arising from the relationship between population, and environment, and the fact that one-quarter of the world's population — predominantly in the industrialized nations — consumes over 70% of Earth's resources and is responsible for most of the global environmental degradation

Demands and Commitments

“Birth rates decline when women's social, economic mechanism operating within the prevailing world order and within each country which create and perpetuate poverty, inequality and marginalization of people in the South — and increasingly in the North — must be transformed.

Militarism, debt and structural adjustment and trade policies being promoted by corporations and international financial and trade institutions such as the IMF, the World Bank and GATT are degrading the environment, impoverishing the majority of the World's people and perpetuating the inequality of the existing world order. WE condemn these policies and call for the immediate adoption of alternative policies and call for the immediate adoption of alternative policies based on principles of justice, equity and sustainability. (PED)

Nuclear testing and toxic waste dumping are poisoning the environment, threatening food security and causing sterility, births defects and disease. WE demand an end to environmental hazards that deprive women and men of their right to health and healthy children. (PED)

Patterns of consumption and production in the North and among the privileged of the South which are the main threat to the survival of life on Earth, must be changed in order to halt the squandering of natural resources and the exploitation of human beings. (PED)

We condemn and call for an immediate end to policies and programs, whether by governments, institutions, organizations or employers, that attempt to deprive women of their freedom of choice or the full knowledge or means to exercise their reproductive rights, including the right to interrupt unwanted pregnancies. WE denounce and reject the violence against women, who are victims of racial and class discrimination and suffer from extreme poverty, who are subjected to coercion, sterilization abuse, experimental drugs, and lack of proper medical care and information about health risks and alternatives. (PED)

We pledge to expose and oppose any coercive population control programs support or conducted by governments, funding agencies,

multilateral institutions, corporations and NGOs, and to hold them accountable (PED)

We demand women-centered, women-managed and women-controlled comprehensive reproductive health care, including pre- and post-natal care, safe and legal voluntary contraceptive and abortion facilities, sex education and information for girls and boys, and programs that also educate men on male methods of contraception and their parental responsibilities (PED)

...

We demand that scientific experimentation related to reproduction, particularly in the field of genetic engineering and contraception, be transparent as well as accountable to women's concerns and ethical criteria rooted in the defence of the human species and human rights. (PED)

We demand that governments honor international law and commitments on reproductive rights, and fulfill their responsibilities in implementing the Nairobi Forward Looking Strategies, the report of the 1984 Conference on Population and the UNCED agreements. We also demand the urgent and full ratification and implementation of the United Nations Convention on the Elimination of all forms of Discrimination Against Women. (PED)

We demand that national and international communities act now to support community-based responses to the AIDs epidemic, and other sexually transmitted diseases, respecting the human rights of those affected. (PED)

These demands embody our commitments, and we pledge to integrate them into our lives and our organizations' practices and policies. WE further pledge to see that these demands are met at all levels, locally, nationally and internationally. And we pledge to work together on this treaty, affirming our solidarity and our cultural diversity" (PED)

**() THAT I had been asked, by protesters arrested in Clayoquot, if I would act as a witness and raise the issue of international law. During the two years of trials only one witness, Merv Wilkinson, was allowed to speak on behalf of the arrestees. I submitted the following affidavit.
EXHIBIT**

June 10 1994

IN THE MATTER OF CIVIL DISOBEDIENCE: ADHERENCE TO
INTERNATIONAL OBLIGATIONS IN THE CLAYOQUOT TRIALS

A F I D A V I T

I, Joan Russow, of 1230 St. Patrick St. of the city of Victoria, Province of British Columbia MAKE OATH AND SAY AS FOLLOWS:

1. THAT I am a Sessional lecturer in Global Issues in the Environmental Studies Program at the University of Victoria; the Chair of the International Affairs Caucus of the British Columbia Network (BCEN); a member of an

International Commission-the IUCN (World Conservation Union) Commission on Education and Communication, and founder of the International Law and Obligations Institute (ILOI) — an institute established to monitor compliance to International obligations. [note I was told by the Law Society that I could not use international law in a name for an organization]. This edict was Ironic because lawyers in BC rarely use international law.

2. THAT I attended the New York Prep Com (March 1992), the UNCED Earth Summit and Global Forum (June, 1992), the meeting of the World Heritage Committee, and the Annual General Meeting of the IUCN.

3. a. THAT I am a researcher in an international Harvard-based project, which examines climate change, ozone depletion and acid rain documentation and implementation of policy in eight different countries; and that I am involved in co-coordinating a "Global Compliance Project" for the 1995 UN Conference in Beijing.

3. b. THAT I have extensive experience in analyzing and categorizing research data and in carrying out content analysis in different disciplines. Since 1985 I have been doing a content analysis of international documents. I have analyzed statements in the following International legal instruments and UN resolutions:

Universal Declaration of Human Rights, 1948; Stockholm Conference on the Human Environment, 1972; UN Conservation of Natural Heritage, 1972; UN Convention on International Trade in Endangered Species of Wild Fauna and Flora, 1973; International Covenant of Social, Cultural Rights; International Covenant on Civil and Political Rights, 1976; the Vienna Convention of Treaties, 1978; the World Charter of Nature, 1982; Non-proliferation of Nuclear weapons; Vienna Convention for the Protection of Ozone, 1985; Montreal Protocol on Substances that Deplete the Ozone Layer, 1987 (and London and Copenhagen Protocols); UN Convention on the Rights of the Child, 1989; Convention for the Control of trans-boundary Movements of Hazardous Wastes (Basel Convention 1989); Environmental Assessment Review of trans-boundary Projects; 1991 ASEAN; Jakarta Declaration. the Caracas Declaration, 1992; Rio Declaration and Agenda 21, 1992, Convention on Biological Diversity, 1992; UN Framework Convention on Climate Change, 1992.

In particular, I have done a content analysis of the UNCED documents, and extracted over 200 principles enunciated in those documents. In October, 1993, at the University of Victoria, I also organized a panel discussion on "International Law and Obligations: Implications for the Clayoquot."

4. THAT I have had input into the drafting of several international documents: a proposed Earth Charter for UNCED; the NGO Earth Charter at the UNCED Global Forum; and the IUCN "Covenant" prepared by the IUCN Commission on Environmental Law.

5. THAT I have reviewed international documents such as the UNCED Forest Principles document, and indicated its inconsistency with other international documents; I have reviewed federal documents such as the proposed Charlottetown Accord, and the CIDA guidelines for international projects, and indicated the inconsistency of these documents with other international and federal documents. I have reviewed provincial documents such as CORE Charter, B.C. Environmental Bill of Rights, the B.C. Prevention Act, the Forest Practices Code; B.C. Standards for Pollution Prevention, and indicated the inconsistency of these documents with other Federal and international documents.

6 THAT I will submit evidence about the following:

6.1. THAT there is a strong indication from statements from international documents, and from experts that there is an urgency to address the global environmental situation, and that "inaction is negligence" (Digby McLaren, Past President of the Royal Society of Canada, Keynote address, Global Issues Conference, 1991).

EXHIBIT A: Evidence of statements about urgency by Science Council of Canada; by the Royal Society of Canada; by the Concerned Scientists, Warning to Humanity; and by the international community in international documents.

6.2. THAT there is a duty expressed in international documents to act to address this urgency, and through international customary law as expressed in the International Covenant on Civil and Political Rights, and in UN Resolution 37/82, a duty has been placed on states to adopt such legislative or ... measures as may be necessary to give effect ... to international documents, and BC has undertaken this duty as a result of this international customary law.

EXHIBIT B: Evidence of statements of duty expressed internationally, nationally and provincially.

6.3. THAT Canada as well as B.C. has failed in many cases to exercise this duty and comply with its obligations. In particular, Canada has failed to comply with the Convention on Biological Diversity which Canada signed (June, 1992) and ratified (December, 1992); and which has been in force since December 1993; and that Canada under Article 18 of the Convention of Treaties, must not "defeat the purpose of the Treaty in the interim between the signing of the treaty and the coming into force of the treaty."

EXHIBIT C: Evidence that Canada has defeated the purpose of the Treaty since June 1992 by failing to conserve biodiversity, by failing to identify biodiversity, by failing to invoke the precautionary principle to justify the banning of ecologically unsound practices, and by failing to carry out an environmental assessment review of anything that could contribute to the loss or reduction of biodiversity.

6.4. THAT Canada has invoked internal law to justify not complying with these obligations (through claiming that B.C. is not bound by these documents and thus not required to comply. Under Article 27 of the Vienna Convention of Treaties, Canada is bound not to invoke internal law to justify non-compliance to international treaties.

EXHIBIT D1: Evidence that Canada under the Convention of Treaties has undertaken not to invoke internal law to justify not fulfilling international treaty obligations.

EXHIBIT D2: Evidence that indicates that B.C. as well as Canada is bound by these international obligations whether through legally binding documents such as the Biodiversity Convention and the Climate Change Convention, or through international customary law including the Common Law Doctrine of Legitimate Expectation, and evidence that the 1937 International labour Supreme Court Decision can be distinguished in the case of the Convention on Biological Diversity.

6.5. THAT Canada has invoked internal law to justify not complying with these obligations through granting injunctions that prevent the fulfilling of these obligations. Under Article 27 of the Vienna Convention of Treaties, Canada is bound not to invoke internal law to justify non-compliance to international treaties.

EXHIBIT E: Evidence that B.C. has not only used internal law — the granting of injunctions to justify non-compliance to International obligations but has failed to invoke its own internal law to prevent violations of international obligations.

6.6. THAT many of the Clayoquot Protectors were informed through circulated material and proclamations that there were international obligations undertaken by Canada and B.C., and that these obligations were being violated in Clayoquot.

EXHIBIT F: Evidence of examples of documents about B.C. 's non-compliance to international obligations circulated to Clayoquot protectors.

6.7. THAT there has been international condemnation of British Columbia through a resolution from IUCN, an international organization with representation from 125 countries, including representation from governments and non-governmental organizations. I am a member of the Commission on Education and Communication of the IUCN (the World Conservation Union) —an organization that has both non-governmental and governmental representation, and academic and professional representation from 125 countries. I was instrumental in January 1994 in assisting in the drafting of the "North American Temperate Rainforest" Resolution which passed with only one state abstaining, Canada. The IUCN undertakes to circulate any resolution passed at the Annual General Meeting to all states in the United Nations, and it is the responsibility of the proposer of a resolution to monitor the fulfillment of IUCN resolutions, and to submit documentation about the

fulfillment of the resolutions for distribution at the next IUCN Annual General Meeting.

EXHIBIT G: Evidence of International condemnation of forest practices in British Columbia, and of international call for the protection of a large network of original temperate rainforests as recommended by the Western Canada Wilderness Committee whose proposal for a network includes Clayoquot Sound.

6.8. THAT it may not be equitable to prosecute citizens through the use of an equitable remedy— an injunction- when the granting of the equitable remedy is still under question in the courts, and when the equitable remedy is being used against those who call for the adherence to international obligations. I also propose that the issuance of equitable remedy such as an injunction which has usually been issued to prevent irreparable harm, has in this case of Clayoquot sound been issued against those who strive to prevent irreparable harm and call for the adherence to international obligations. [Note: that there have been several attempts to set aside the injunction, the last one being heard in January with no decision yet being handed down in June, and citizens are still being tried as criminals for contempt of court for their not complying with the injunction]

EXHIBIT H: Evidence that the injunction is an equitable remedy that has been misapplied in the Clayoquot case.

In the BC Litigation publication, Justice J.A. Norris described the nature of the injunctive remedy in British Columbia Law in the following way:

The remedy [of injunction] of course, is an equitable one. ' The exercise of the equitable jurisdiction is not to be restricted by the straitjacket of rigid rules but is to be based on broad principles of justice and convenience, equity regarding the substance and not merely the facade or the shadow. It moves with time and circumstances. (Justice J.A. Norris)

6.9. THAT there is a positive duty upon citizens to ensure that a state adheres to its international obligations.

EXHIBIT I: Evidence to support the proposal that it is the responsibility and duty of individuals to act to ensure compliance with international obligations

6.10. THAT in cases of potential irreversibility there may not be time for citizens to wait to exhaust all domestic measures before bringing their concerns to the international forum; and THAT the exercising of this positive duty as was done in Clayoquot Sound by peacefully assembly to protest the non-compliance with international obligations should not be considered to be a demonstration of criminal contempt of court. When established members of the community, such as representatives of government at international conferences, senior scientists from national institutions indicate the gravity and urgency of the global

situation, including deforestation, it is inequitable for the courts to impose injunctions that were traditionally an equitable remedy to prevent irreparable harm on those who try to prevent irreparable harm. It is equally inequitable to charge those who call upon governments to live up to their commitments as criminals while those who do not adhere to international commitments, federal laws and provincial statutes are fined occasionally for their "transgressions."

Since Canada has made these commitments outlined in the above exhibits, and because these commitments are inconsistent with the continuing to log in significant stands of unfragmented watersheds the injunction should have been rescinded because the injunction is contributing the non-fulfillment of international, national and provincial obligations.

In my opinion the court has violated principles of equitable law, such as the principle that "he who comes to equity must come with clean hands," by granting an equitable remedy to a party, MacMillan Bloedel, that itself has been in violation of international, federal and provincial law. When the ignoring of this equitable principle was brought to the attention of Judge Drake, he ruled that, in equity, "equity follows the law." If that were the case, and if international laws, such as the UN Resolution 37/7 (1982), federal laws, such as the Fisheries Act, and provincial laws, such as the Forest Act had been applied years ago, tree Farm licensees would have been suspended and canceled, and forest practices changed. In the absence of the court's willingness to enforce international law and federal and provincial statutory law, "equity has not followed the law."

In the Clayoquot, the court failed to invoke the law, and instead has demonstrated contempt for its own laws, by misconstruing the purpose of the equitable remedy of an injunction, which is to prevent irreparable harm. In circumstances where the state has failed to exercise its duty to act, and the court has failed to enforce the law, it is the state and the court that has demonstrated contempt for the law. This contempt has been shown at all three levels: international, federal and provincial.

In addition, in the Clayoquot trials, the court has condoned not only violations of guarantees in the Canadian Charter of Rights and Freedoms, but also violations of guarantees in the International Covenant on Civil and Political Rights, such as the following:

In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him {Article 14 3 (e)}.

[NOTE THAT IN THE CLAYOQUOT TRIALS IN VICTORIA FEW WITNESSES HAVE BEEN PERMITTED TO APPEAR FOR THE DEFENCE]

It is institutions not individuals that have demonstrated contempt for law and justice.

There appears to be little recourse for the Clayoquot Protectors than to eventually seek redress through the Optional Protocol International Convention of Civil and Political Rights which provides the following remedy:

“Subject to the provisions of article 1 individuals who claim that any of their rights enumerated in the Covenant have been violated and who have exhausted all available domestic remedies may submit a written communication to the committee for consideration.” (Article 2)

() **THAT** the judge accepted me as an international expert in the Clayoquot trial, and accepted my affidavit. However, after I had spoken for one minute he cut me off by claiming that the Judge Blake had determined that International law not being expressed in Canadian law was irrelevant; I started to respond and he cut me off with a hand gesture which I presume would not be recorded by the Court Clerk. I should have continued talking so that it would be on the record that he had cut me off. The judgment, however, allowed the protesters to carry out public service.

EXHIBIT

June 10 1994

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INTERNATIONAL OBLIGATIONS IN THE CLAYOQUOT TRIALS

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SWORN BEFORE ME at the
City of Victoria, in the Province of
British Columbia, this 10th of June, 1994

A Commissioner for taking Affidavits
for British Columbia.

Joan Russow

() **THAT** in July 1994 I filed another complaint with Freedom of Information,
and there was no response

EXHIBIT

DISREGARDED REQUEST

July 1994

Susan Butler

Manager of the Information and privacy office

Environment Lands and Parks

3rd floor. 1106 Cook Street V8V 1X4 FAX 356-9230

I have requested the following information from the Ministry of Parks, and was told that I would have to go through the Freedom of Information Act. I need the information by August 15, and hope that you will be able to assist me in obtaining this information.

1. Has B.C. or Canada ever identified old growth temperate rainforests in B.C. as being of outstanding universal value and thus candidates for inclusion in the World Heritage List?
2. Was B.C. and Canada not aware that in 1981 the Australian Government had nominated a network of temperate rainforests as a World Heritage Site?
3. Has there been any correspondence related to this matter since the coming into force or since the signing by Canada of the UN Convention for the Protection of Cultural and Natural Heritage?
4. Who is responsible for determining the means to fulfill Canada's (and B.C.'s) obligations under the Treaty ? In particular the obligation to identify natural heritage of outstanding worth, and to prepare an inventory of sites of potential outstanding worth? . What criteria has been used for the identification of sites?
5. From the criteria listed in the Convention on Natural and Cultural heritage sites of outstanding universal worth, it would appear that a network of coastal temperate rainforests with accompanying archaeological sites should have been nominated at some time. Is there any reason that this has not been done?
5. Whose responsibility has it been to nominate sites?
6. I would like to obtain a copy of the inventory that was prepared by the Government as required by the Convention.

7. Could you indicate what impact the IUCN resolution to save the "Tat" had on the Government's decision to save it? Could you send me copies of the correspondence between the Canadian observer at the World Heritage meeting in Paris in June 1994 re: the nomination of the Tat.
8. Could you indicate what impact the recent IUCN resolution (January 1994) calling upon the government to preserve a network of temperate coastal rainforests, taking into consideration proposals by groups such as the Western Canada Wilderness Committee (whose proposal contained Clayoquot Sound) and to nominate this network as a world heritage site.

Thank you

Joan Russow

cc Peter Heap Special Adviser International Relations Fax 387-1920

() **THAT** in October 14, 1994, I made a presentation at the University on a panel at a conference on international law at the faculty of Law, University of Victoria

EXHIBIT

**REDEFINING DEVELOPMENT IN EQUITABLE AND
ECOLOGICAL TERMS**
by Joan Russow

The perception of what constitutes a "developed country" has perhaps influenced the way urban communities have developed. Currently what constitutes a "developed" country is primarily linked not to ecology or to justice and equity but to economics

If the concept of "developed" could be changed to correspond to ecology and justice, there would probably be a complete re-assessment of which countries are developed and which are developing.

First, I will draw criteria from international Covenant on Economic, Social and Cultural Rights and then I will suggest a number of criteria that could be used to redefine development in ecological, just and equitable terms and then ask for inclusion of additional criteria.

**International Covenant on Economic, Social and Cultural
Rights**

"...the improvement of all aspects of environmental and industrial hygiene" (ICESCR Article 12, 2 a)

Universal health care

“The creation of conditions which would assure to all medical service and medical attention in the event of sickness Adequate standard of living” (ICESCR Article 12, 2 d)

“The States Parties to the present Covenant recognize the right to everyone to an adequate standard of living ...including adequate food, clothing and housing and to the continuous improvement of living conditions.” (Article 11)

Free from hunger

The States Parties to the present Covenant recognizing the fundamental right of everyone to be free from hunger, shall take individually and through international co-operation, the measures including specific programmes which are needed: (ICESCR article 2)

(a) “...to improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources” (ICESCR, Article 11, section 2b)

equitable distribution of world food supplies

“Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need” (ICESCR Article 11, 2 b)

duties to community to promote observance of rights in Charter

“Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant”
(International Covenant on Economic, Social and Cultural Rights)

In no case may a people be deprived of its own means of subsistence (ICESCR, Art. 2)

Safe and healthy working conditions (Article 7 (ii))

“Equal opportunity for everyone to be promoted in his [her] employment to an appropriate higher level, subject to no considerations other than those of seniority and competence.”
(Article 7 c)

The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance

Protection to mothers during childbirth

special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits

children and young persons protected from exploitation

“Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.” (Article 10.3)

International Covenant on Civil and Political Rights

right of self-determination

“All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development” (ICCPR)

Right of peaceful assembly (Article 20)

Right of freedom of association (Article 22)

War Propaganda prohibition

“...any propaganda for war shall be prohibited by law” (ICCPR, Article 20)

UNCED

“Governments should establish measures that will directly or indirectly set up an effective primary health care and maternal health care system accessible to all ” (3.7.e Combating Poverty)

" Undertake activities aimed at the promotion of food security and, where appropriate, food self-sufficiency within the context of sustainable agriculture” (3.7.i Combating Poverty)

" Consider making available lines of credit and other facilities for the informal sector and improved access to land for the landless poor so that they can acquire the means of production and reliable access to natural resources. (3.7.o Combating Poverty)

" Provide the poor with access to fresh water and sanitation” (3.7. p Combating Poverty)

"Provide the poor with access to primary education. (3.7.q Combating Poverty)

"... the provision of a safe water supply and sanitation and the promotion of a safe food supply and proper nutrition. Particular

attention should be directed towards food safety, with priority placed on the elimination of food contamination; comprehensive and sustainable water policies to ensure safe drinking water and sanitation to preclude both microbial and chemical contamination; and promotion of health education...education and appropriate services regarding responsible planning of family size... values... ." (6.3. Protecting and promoting health)

" Access to safe and healthy shelter is essential to a person's physical, psychological, social and economic well-being and should be a fundamental part of national and international action. The right to adequate housing as a basic human right is enshrined in the Universal Declaration of Human rights and the International Covenant on Economic, Social and Cultural rights." (7.6, Settlement)

"The improvement of human health is one of the most important objectives of development. The deterioration of environmental quality, notably air, water and soil pollution owing to toxic chemicals, hazardous wastes, radiation and other sources, is a matter of growing concern. Malnutrition, poverty, poor human settlements, lack of good-quality potable water and inadequate sanitation facilities add to the problems of communicable and non-communicable diseases. As a consequence, the health and well-being of people are exposed to increasing pressures." (16.12 Biotechnology)

"Water is a finite resource, essential for the sustenance of life on earth" (18.2 Freshwater)

"Water is needed in all aspects of life" (18.6 fresh water)

"Freshwater resources are an essential component of the earth's hydrosphere and an indispensable part of all terrestrial ecosystems." (18.7 Fresh water)

"Priority must be given to the sustenance of land/water ecosystems, with particular attentions to wetlands and biodiversity, and the satisfaction of basic human needs for drinking-water, health protection and food security." (18.8. Fresh water)

"One in three people in the developing world still lacks these two (safe drinking-water and sanitation) more basic requirements for health and dignity." (18.58 Freshwater)

The inability or unwillingness to translate international obligations into practices that would bring about the discharging of these obligations' "justice" could be defined as the fulfillment of obligations to citizens.

Since 1948, the equality of men and women was enshrined in the Universal Declaration of Human Rights since 1966, positive rights were enshrined in Covenant of Economic, Social and Cultural Rights

The global system is reaching an ecological state of irreversibility. Even though there has been recognition through countless international conferences with recommendations addressing the urgency of the global situation, there are local, national and international systemic constraints that are preventing significant and substantial change. In this paper we will examine some of these systemic constraints and we will extend the proposal that we made at the Global Environmental conference sponsored by the Royal Society of Canada (June 7-9m 1991) for a United Nations Charter of Mutual Interdependence: Declaration for the Prevention of the State of Ecological Irreversibility (Universal Declaration of Human Responsibility and Ecological Rights). When discussing our proposal, we will also be examining and comparing principles in the submission for the "UNCED Charter" and in the draft of the 92 Global Forum "Earth Charter."

Some of the principal suggestions that we will make for the extension of the "Declaration of.....Ecological Rights" document are a) the delineation of what should constitute ecological rights, b) the recognition of the primacy of long term ecological rights over short term economic privileges b) the description of what international mechanisms might be in place in order to draft a document that draws upon the highest tenable ecological principles from those advocated by or exhibited in the documents of member states of the United Nations Assembly.

Although there were systemic constraints which prevented UNCED from addressing the urgency of the global situation, there were many significant acknowledgements and principles which emerged from UNCED.

Systemic Constraints preventing change

The following "systemic constraints," appear to have prevented the global community from addressing the urgency:

- The continued willingness to enshrine the sovereign right to exploit natural resources.
- The unwillingness to move beyond sovereign barriers to international environmental governance
- The failure to recognize that the situation is so urgent that international environmental governance and standards have to be necessary
- The refusal of states to accept the rule of international law
- The reluctance to establish stringent international environmental standards and technological regulations
- The unwillingness of states to allow for a stringent monitoring program
- the reluctance to recognize that the urgency of the current global situation requires the summoning up of the international political will to move from "should" to "shall"

- The obsession with consensus which may lead to the lowest common denominator rather than striving through collaboration for the highest tenable principles
- The decision-making process being conceived as an arena of competing interests
- The designation of failure made by those states, institutions and individuals who do not even live up to the moderate principles established by consensus
- The reluctance to redefine what constitutes development in an ecologically sound way
- The revelation of a problem and the presentation of a solution which could have more disastrous or equally disastrous consequences as the problem (nuclear)
- The continued justification and rationalization about the use of ecologically unsound practices in the guise of technological fixes
- The condoning of technological fixes suggested as solutions:
 - The continued condoning of research and development into rectifying the harm done through ecologically unsound practices rather than discontinuing ecologically unsound practices (the Green Revolution syndrome)
 - The presence and use of international short-term economic regulations which justify the abandoning by sovereign states of high ecological standards. (present in GATT regulations, and evident in Chapter 2 of Agenda 21 "Social and Economic Dimensions.")
- The reluctance of GATT to consider the applicability of any chapters other than Chapter 2 of Agenda 21. UNCED
- The persistence of the situation whereby the power to prevent environmental harm or to preserve environmental heritage resides in those whose interest it is to benefit economically from the environment. and that in whose interest it is to benefit economically from the environment tend to ignore ecologically sound practices
- The persistence of the co-option, often through government funding, of groups, whose role should be to act as the conscience of the official decision makers
- The persistence of the situation where those who should be speaking out are constrained because of professional commitments, and where those who are willing to speak out are not heard because the press fails to report their statements
- The sanctioned use of "words of delusion" that either delude the public into thinking that what is unsafe, is safe, or delude the public into thinking that there is the political will to eliminate unsafe practices.
- The sanctioned use of loophole vague terms like "as appropriate" or of loophole provisions like *without prejudice to international trade principles*. For example, in the following section on consumption They should therefore review the purchasing policies of their agencies and departments so that they may improve, where possible, the environmental content of government procurement policies, *without prejudice to international trade principles*. (4.23, Consumption)
- The sanctioned use of the "notwithstanding clause" device. This device allows for the indulging in strong statements about deep

concern and the need for significant change and then including a notwithstanding clause that negates the strong statement.

" Implement, as a matter of urgency, *in accordance with country-specific conditions and legal systems*, measures to ensure that women and men have the same right to decide freely and responsibly on the number and spacing of their children and have access to the information, education and means, as appropriate, to enable them to exercise this right *in keeping with their freedom, dignity and personally held values, taking into account ethical and cultural considerations*. (3.8 j Combating Poverty)

- The sanctioned use of oxymorons like "the environmentally sound management of hazardous wastes" (20.22 Hazardous wastes) or "the promoting the safe and environmentally sound management of radioactive wastes" (Chapter 22 Radioactive wastes)

- The sanctioned use of terms like "harmonizing" which usually leads not the highest tenable principles but to the lowest common denominator

- The unwillingness to redefine development in terms of ecologically sound practices; such as

- (i) the degree to which a state has been able to integrate with the ecosystem through ecological sound practices causing its human activity to have little deleterious impact on the environment

- the extent to which a state has undertaken international obligations, and to which a state has discharged its international obligations

- ii) The degree to which there is an equitable distribution of resources

- iii) the extent to which a state refrains from contributing to global ecological or military harm

- The extent to which a state demonstrated non-engagement in unwanted or unwarranted intervention in the affairs of other states

- The inability of the state to ensure humanitarian development — fulfillment of basic needs, food, shelter, safe drinking water, education, safety, life-expectancy—

- the ability of the state to minimize the human impact on the environment through the establishment of humanitarian conditions that will encourage

- iv) The degree of condemnation, and avoidance of over-consumption

- v) The ability to minimize the human impact on the environment through stabilization of population

- vi) The degree of compliance with the enshrining of positive rights (right to ecologically sound work, to food, to health, to shelter) as well as with negative rights (right to be free from discrimination)

The extent to which principle is driving industry
rather than industry driving principle
(vii) The ability to live within the carrying capacity of the
ecosystem

Environmental Clean-up
safe water and sanitation
material health and education
Research arm's length
community health access
immunization for all children
Adoption of BEST (Benign Ecologically Sound Technology/techniques)
The high percentage of people above the locally established
poverty line
the low percentage in the state of new species declared 'threatened'
the low percentage in the state of military spending to GDP

- The stereotyping of countries into categories of "developed, underdeveloped, and developing" rather than designating behaviours and attitudes as being "developed, underdeveloped and developing";
- The simplistic distinction between North (environment) and South (development)
- The presumption that technological transfer should always pass from "North" to "South"
- The reluctance to deal with essential issues such as the link between "Nuclear civil reactors and Nuclear Arms Industry" or The Link between Poverty and lack of universal "secondary" as well as "primary" health care system (3.6. e Combating Poverty)
- The reluctance to address the environmental degradation caused by military operations
("Systemic Constraints preventing change," Russow J. & White, D. in progress)

() **THAT** in 1994, I met with the activists working on the Alternative budget, and proposed a section on the environment

EXHIBIT
INPUT INTO ALTERNATIVE BUDGET

DEC 27 1994 REVISED JAN 12 1997
SUBMISSION FROM ENVIRONMENT GROUP: NOTE THERE WAS NOT
TIME TO DISCUSS ALL THE SECTIONS

IT WAS SUGGESTED THAT THIS STATEMENT BE INCLUDED IN THE
PREAMBLE TO THE BUDGET

In the Platform of Action from the UN Conference on Women: Equality, Development and Peace (1995) and in the Habitat II Agenda from the Habitat II Conference (1996) member states have undertaken "to ensure that corporations, including transnational corporations, comply with national laws

and codes, social security regulations, applicable international agreements and conventions, including those related to the environment, and other relevant laws. (Article 167). In Habitat II this undertaking was reaffirmed and then extended to include the undertaking by states to ensure that the “private sector” also comply (Article 148).

SUGGESTIONS RELATED TO THE ENVIRONMENT SECTION.
NEED FOR AN OVERARCHING STATEMENT SUCH AS THE FOLLOWING

Conserving natural capital, ecosystem integrity and life support systems—air, water, and soil— takes primacy in all economic decision making. A series of international treaty obligations already exist to guide decision making in these areas in Canada and the Provinces. A responsible long-term economic program must have as its central pillar, the protection of the environment and the prevention of environmental degradation. This pillar shall be based on the adherence to fundamental principles that have been agreed to internationally such as the precautionary principle, the pollution prevention principle, the environmental assessment review principle and the “reducing of the ecological footprint” principle.

DELETE THE PARAGRAPH STARTING WITH THE ONLY
JUSTIFICATION AND REPLACE WITH

Socially equitable and environmental sound principles will be achieved through the following processes:

1. Developing alternative indicators based not on economic growth but on equitable and environmentally sound principles
2. Fostering locally-based economies within an overarching framework of socially equitable and environmentally sound principles.
3. Strengthening environmental regulatory regimes, including setting performance-based standards, reporting and monitoring, and ensuring compliance and enforcement with significant penalties.
4. NOT DISCUSSED
5. Providing international leadership on environmental policy issues. [it was noted that Canada has not been demonstrating leadership in this area: often Canada signs and ratifies agreements but fails to enact the necessary legislation to ensure compliance]
6. Developing achievable strategies for meeting Canada’s international obligations incurred through conventions such as the Framework Convention on Climate Change, the biodiversity Convention, the Montreal protocol (eliminating the production and consumption of ozone depleting substances) , the Basel Convention and the Convention on Environmental Impact Assessment in a trans-boundary Context, Convention on the Prevention of Disasters, and other relevant convention. In addition, Canada shall fulfill expectations created through General Assembly Resolutions, Declarations and Conference Action plans.

[NOTE THE ABOVE STATEMENT THAT GOVERNMENTS HAVE UNDERTAKEN TO ENSURE THAT CORPORATIONS, INCLUDING TRANSNATIONAL CORPORATIONS, COMPLY WITH NATIONAL LAWS AND CODES, SOCIAL SECURITY REGULATIONS, APPLICABLE INTERNATIONAL AGREEMENTS AND CONVENTIONS, INCLUDING THOSE RELATED TO THE ENVIRONMENT, AND OTHER RELEVANT LAWS. (PLATFORM OF ACTION, ARTICLE 167).

7. AS IS

8. Removing the tax and direct subsidies for resource depletion, for environmentally unsound transportation (fossil fuels and other non-renewable sources), for environmentally unsound energy (fossil fuel and other non-renewable sources and nuclear] and for other environmentally unsound technologies. Promoting and funding BEST (Best Environmentally Sound Traditions) practices.

9. Endorsing the polluter pay principle (Agenda 21, UNCED) NOT FULLY DISCUSSED FELT THIS NEEDED WORK

10. Promoting research on means to prevent climate change, ozone depletion, and reduction and loss of biodiversity and other ecological effects of production process
(Reestablish funding for the Freshwater Institute...)

11. Reducing waste and energy use at all stages of the production process, treating waste as a resource, and reducing the transport of goods via shorter-loop systems. In addition, preventing relocation and transfer to other states of any activities and substances that cause severe environmental degradation or are found to be harmful to human health or that cause environmental degradation (Principle, Rio Declaration UNCED)

DID NOT HAVE A CHANCE TO DISCUSS THE REST OF THE DOCUMENT

WE ALL THOUGHT THAT MORE WORK NEEDS TO BE DONE ON THE ENVIRONMENT SECTION AND THAT WE WOULD BE WILLING TO PARTICIPATE ON AN ENVIRONMENT COMMITTEE FOR THE 1998 BUDGET

() THAT in December 1994, for our course at the University in Environmental Studies in Global issues we decided to compile documents in a book for the students because often the students would have difficulty getting hold of the documents.

DRAFT WORKING DOCUMENT

Global Issues: Environmental and Social Dynamics of Global Change (A Collection of Writings and documents)

NOTES FOR COURSE:

Dr. Fred Knelman and Joan Russow
December, 1994

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An Overview of Global Change in its sociopolitical context

E.S. 420, S01 Global Issues: Environmental and Social Dynamics of Global Change

Dr. Fred Knelman and Joan Russow

1.0. Broad description of Course.

The central theme of this course is the anatomy of global change and its multiple relationships to the environment. A key event was the 1992 UN Conference on Environment and Development (UNCED); unfortunately, the global problem was fragmented into component parts that were considered as separate Conventions, or as distinct chapters in Agenda 21— the action plan for global change adopted at the Earth Summit. For there to be solutions to the global

problem, it must be perceived in an interdependent and integrated way. Students will be encouraged to view the various issues from an ecological perspective i.e., in terms of inter-connectedness.

In this course on Global Issues, we will integrate respect for human rights, fulfillment of social justice and equity, achievement of environmental protection, preservation and conservation and attainment of peace. These issues will be perceived to be interdependent facets of a potentially viable solution. It is no longer possible to consider in isolation: threats and impacts of war; the use of ecologically unsafe and unsound energy; the loss of ecological integrity; the disposal of toxic and hazardous wastes, including nuclear waste, the disregard for inter-generational and gender, equity; the ignoring of health issues related to population and environmental degradation; the perpetuation of the current model of development; the inequitable distribution of resources; the North-South gap etc.

As part of the course, students must make two class presentations in which they will be asked to integrate their presentation with the preceding class discussions.

The last two classes will be specifically based on solutions. In these sessions, students will be asked to demonstrate how their discoveries can be used to address the problems that have surfaced and contribute specifically to the theme that they have researched.

Global change may be physical or social and in either case may be positive or negative. Often Global change has been narrowly treated as negative global environmental change and their related negative social consequences. We will broaden our treatment of this concept as it relates to necessary global change as a prerequisite for global solutions calling for drastic changes in current human behaviour and attitudes.

GLOBAL CHANGE

1.1. OVERVIEW OF GLOBAL CHANGE IN ITS SOCIOPOLITICAL CONTEXT: INTRODUCTION

by Fred Knelman, from an unpublished manuscript "The Future is not what it used to be"

Nothing, but nothing, escapes the law that affirms the permanence of impermanence, not life, not society, not the earth or planetary systems, not the stars or the galaxies, and even not the universe itself. The three parameters of change, i.e., rate, magnitude and direction, are themselves changing; the first two in intensity and the third in unpredictable paths. Technology, in particular, a powerful lever of change and socially permitted a laissez-faire growth, has experienced incredible rate and magnitude increases, from the local to the global in space, and from muscle power to fusion power in energy production. As for direction, we have already witnessed a double reverse in Lithuania, where the democratic market reformers who threw out the communists have now been themselves defeated in a free election, a re-devolution occurring in other former republics.

There is yet another description of our times that this author has used to describe the nature of unprecedented global change, and that is that we live in an age of discontinuity. Not only is this evident in the sociopolitical realm but it is equally significant in the biosphere. The long-term continuity that characterized the maintenance of the integrity of global climate and the ozone layer through natural cycles has now become discontinuous through anthropogenic activities. This adds a radical new dimension to security. Both security in the national sense, as the preservation of national sovereignty and respect for borders, or even security in the more fundamental human and individual sense, of freedom from fear and the other allied freedoms, must now be augmented by the concept of global environmental security. And while institutional mechanisms have evolved to attend to traditional national security, none yet exists to cope with the new global threat of ecological stress and collapse. On the other hand, the use of the term "global change" by some scientists is also deficient by exclusive concentration on ecological change.

We realize the challenge and the hazard of writing a book about global change while situated in the stream of that change. Predictions become particularly dangerous at a time when the unpredictable has become the norm. The best we can do is identify the current direction of change, still recognizing that in the flux of that change, even direction is not secure. Even those who ignore history may not be condemned to relive it. The problem is that the present, like the past, is also history. And while the past attempts to cling to the present, the present quickly becomes history and the future is not what it used to be. Time may be neatly divided into past present and future but social change is not so neatly divisible. It is rather a dynamic struggle between structural inertia and the momentum of necessary restructuring adaptation. Social change is the result of the complex system of forces — economic, political, technological, cultural and behavioral, that impact on society and its institutions.

These forces operate in a multi-dimensional matrix of obstacles and opportunities which determine the rate, magnitude and direction of change. And above all, this period of human history is one of accelerated social change in unexpected directions. The unprecedented may now be expected.

The physical experience of acceleration tends to blur our sensory perceptions and powers of observation. Society as a whole is suffering from this condition. Thus, what we rely upon to be the present, resting firmly on the past, passes too quickly into the future for accurate extrapolation. What appears as trend and was treated as destiny quickly becomes the unexpected future. We have reached the end of extrapolated futures. We must now turn to invented futures. And yet the policy/program complex that represent the act of governing is largely guided by what Marshall McLuhan identified as "steering through the rear-view mirror" or driving in the fog of instant history. When coupled to the disorder of exponential myopia (Nature abhors an exponential), we have been led to the brink of ecological disaster even as we appear to have escaped nuclear apocalypse. We humans have merely invented new means to our own end, the compulsion to invent being greater than the obligation to survive. Those in power have become captive to that power and in their attempts to preserve that power they have compounded error and foreclosed the future. The penultimate corruption of power is self-destruction. The absolute corruption of power is mutual assured destruction (MAD)

Within the compressed period beginning in the late 1980s, the world experienced a frenzy of instant history comprising unprecedented global changes which transformed the present and shaped a new future. The climax of these social changes was the dissolution and fragmentation of the Soviet Union, an unthinkable event in Herman Kahn's wildest dreams. And at the same time what had been called the Second World, the communist regimes of Eastern Europe collapsed in rapid order, a most compelling visual being the tearing down of the Berlin Wall in 1989, a symbol of the bipolar world. But as Barry Commoner has pointed out, the walls of the cabinet and corporate board rooms of power will be even more difficult to break down. Three worlds had suddenly become two and this bipolar world has become unipolar. For over 40 years, the global agenda was dominated by the Cold War in which two superpowers, each exclusively capable of murdering the planet, confronted each other in mutual threat and distrust. Separated by a thin partition of mutual deterrence, a nuclear holocaust threatened all of life on this planet, a threat capable of instant eruption by acts of madness, malice or accident. And even more dangerous than this kind of eruption, the US had abandoned deterrence and developed strategies, policies and programs to fight and win a nuclear war, itself the ultimate madness. The impact of this environment of terror affected and infected our economics and politics, distorted the direction of technological development and perverted our culture and gripped our collective psyche in profound and disturbing ways, a trauma which may have exacted a huge cost of its own. And the baggage of the Cold War continues to weigh down and impede the necessary social changes of adjustment and of attendance to all the foregone social problems eliminated by the ultimate priority of military-industrial societies. We have been left a huge debris of political, economic and environmental problems all a direct consequence of that momentous misdirection the Cold War imposed, a huge complex of systemic and structural constraints, so deeply imprinted on the

global system that the power of their inertia continues to cling to the past and resist the future. A sinister addition to the consequence of the demise of the Cold War is the emergence of the unipolar world of Pax Americana, as expressed by George Bush's "new world order."

Above all, what is recognized as a pervasive and powerful symptom of our times is a universal sense of malaise, independent of geography and ideology. There exists a general sense of lost or inappropriate values, a loss of faith in the existing order reinforced by a world economic recession. The decline of the East is matched by the decline of the West. The profound sense of uncertainty and discontinuity is manifesting itself in increasing acts of extreme behaviour, personally and socially. Two world cultures seem to be dying together. And nothing has been discovered to fill a vacuum of hope. What is grudgingly recognized, is that the convergence of multiple crises is structural and systemic in origin. We are witness to a global crisis in values.

It is of interest that in a book this author wrote in 1970, the year of the first Earth Day (Knelman, 1971), he spoke about the crisis in values of that time. Rereading the following excerpt, we wonder how that concern could be voiced at a time when compared to its present depth, the crisis was relatively shallow. Yet he identified the nuclear threat and environmental degradation as the most significant problem facing the world.

This period is one of transition: traditional values, unable to serve survival or fulfillment, are being shattered by the acceleration of social change, and a new code, while generally viewed as necessary, is not yet clearly defined or operational. Moreover, the source of this value crisis seems to be contemporary technology with its necessary dichotomies of power and love, growth and control, quantity and quality, profit and welfare.

the symptoms of the value crisis are everywhere. Stress, alienation, and disorientation take their toll of man's psycho-social balance. New disquietude threatens us every day. The war is not confined to South East Asia or the Middle East. It is in our streets, in our homes, and in ourselves. Affluence and poverty confront each other between citizens and nations. The generation gap transcends all boundaries, cultures and ideologies, and a world youth revolution challenges authority at every level from home to government.

All the problems of uncontrolled growth that we discussed previously as the quadrilemma are ultimately questions of human values. They all involve a crisis of choice. This is the decade of ultimate choice. Unless we can discover the solutions, we will perish. The solutions involve a change in our values and a revolutionary restructuring of our national and international economic and political systems. Fortunately, the explosion in science and technology is now being matched by an explosion of human consciousness and conscience, a revolution of hope. More and more individuals and groups are speaking out. The material hang-up with its growth syndrome and power complex, is being questioned in fundamental.

1.2. GLOBAL COMPLIANCE PROJECT CONTENT ANALYSIS OF INTERNATIONAL AGREEMENTS RELATED TO ENVIRONMENT, PEACE, HUMAN RIGHTS, SOCIAL JUSTICE AND EQUITY

INTERNATIONAL DOCUMENTS CONSIDERED OR BEING CONSIDERED

- (i) legally binding International Conventions, Treaties, Covenants and Declarations
- (ii) Globally adopted UN documents and resolutions
- (iii) Globally adopted NGO documents and resolutions

HUMAN RIGHTS INSTRUMENTS:

International Declaration of Human Rights (1948), International Covenant of Economic, Social and Cultural Rights (date), International Covenant on Civil and Political Rights (1976), Convention on the Political Rights of Women (1953), Slavery Convention signed at Geneva, 1926 and amended by the Protocol (1953), Convention on the Nationality of Married Women (1957), International Convention on the Elimination of All forms of Racial Discrimination (1966); Convention on the Elimination of all Forms of Discrimination against Women (1975)*, UN Convention on the Rights of the Child (1989), Youth Treaty (1992)

ENVIRONMENTAL RIGHTS INSTRUMENTS:

Stockholm Conference on the Human Environment (1972), UN Convention for the Protection of Cultural and Natural Heritage (1972), UN Convention on International Trade in Endangered Species of Wild Fauna and Flora (1973), UN General Assembly Resolution 35/8 “Historical Responsibility of States for the Preservation of Nature for Present and Future Generations (1980), World Charter of Nature (1982), Vienna Convention for the Protection of the Ozone (1985), ASEAN Agreement on the Conservation of Nature and Natural Resources (Kuala Lumpur, 1985), Montreal Protocol on Substances that Deplete the Ozone Layer (1987) (including London and Copenhagen Protocols), Convention for the Control of trans-boundary Movements of Hazardous Wastes (Basel Convention, 1989), International Chamber of Commerce: Business Charter for Sustainable Development (1992), Rio Declaration and Agenda 21** (1992), Convention on Biological Diversity, (1992), UN Framework Convention on Climate Change (1992),

PEACE INSTRUMENTS:

Non-proliferation Treaty of nuclear weapons (1968); The Atmospheric Test Ban Treaty: Prohibiting the testing of Nuclear weapons in the Atmosphere (1963); Strategic Arms Limitation Talks (SALT 1 & II); Strategic Arms Reduction Treaty (START I (1989) & II (1992): Comprehensive Test Ban Treaty (in

progress) meeting, August 1995). Treaty of Tlatco (declaring South America as a nuclear Free weapons zone.)

The Vienna Convention on the Law of Treaties (1969)

INTERNATIONAL NGO RESOLUTIONS AND DOCUMENTS:

The Imperative of Equity: the Missing Dimension of UNCED:
Statement of the South Asia NGO Summit, New Delhi, February 17-19, (1992), Earth Charter, (Global Forum, 1992), NGO Treaty on Militarism, Environment and Development (Global Forum, 1992), NGO Treaty on Population, Environment and Development (Global Forum, (1992); NGO Treaty on "Over-consumption" (1992)

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Knelman, F. (1978) Anti-Nation: Transition to Sustainability

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Bibliography

CHAPTER 2

Systemic constraints preventing significant sociopolitical global change/ global extended common security advancing significant socio-political change; Globalization / global obligations. NAFTA, GATT, Global Trade Agreement

ANTI-ECOLOGY SCROLL: SYSTEMIC CONSTRAINTS, DIVERGENT PRINCIPLES, DEVICES AND STRATEGIES

Russow and Knelman 1992

2.1. SYSTEMIC CONSTRAINTS, SEDUCTIVE DEVICES, DOCTRINES AND DIVERGENT PRINCIPLES ... PREVENTING SIGNIFICANT SOCIOPOLITICAL GLOBAL CHANGE

2.1.1. Systemic constraints preventing significant sociopolitical global change at UNCED and beyond

(Excerpts from "Systemic Constraints preventing change," Russow J. & White, D. in progress with input from Dr. Fred Knelman and Tim Boston; to be incorporated in Boston, T and F. Knelman, J. Russow, and D. White—in preparation: Anatomy of Anti-Ecological Thought. ERA Ecological Rights Press).

Although there were many significant acknowledgments and principles which emerged from UNCED, there were systemic constraints which prevented UNCED from addressing the urgency of the global situation,

The following "systemic constraints," appear to have prevented the global community from addressing this urgency:

- the continued willingness to enshrine the sovereign right to exploit natural resources.
- the unwillingness to move beyond sovereign barriers to international environmental governance
- the failure to recognize that the situation is so urgent that international environmental governance and standards have to be necessary
- the refusal of states to accept the rule of international law
- the unwillingness to enact the necessary national legislation to ensure compliance with international obligations
- the failure to establish an International Environment Court before which citizens could present evidence of state non-compliance
- the reluctance to establish stringent and mandatory international environmental standards and technological regulations
- the unwillingness of states to allow for a stringent, and mandatory enforcement monitoring program
- the obsession with consensus which may lead to the lowest common denominator rather than striving through collaboration for the highest tenable principles
- the conceiving of the decision-making process as an arena of competing interests

- the revelation of a problem and the presentation of a solution which could have more disastrous or equally disastrous consequences as the problem (nuclear as solution to climate change)
- the continued justification and rationalization about the use of ecologically unsound practices in the guise of technological fixes
- the condoning of technological fixes suggested as solutions:
 - the continued condoning of research and development into rectifying the harm done through ecologically unsound practices rather than discontinuing ecologically unsound practices (the Green Revolution syndrome)
 - the failure to shift support from ecological unsound technology to “prevention technology” — doing it right the first time
 - the presence and use of international short-term economic regulations which justify the abandoning by sovereign states of high ecological standards. (present in GATT regulations, and evident in Chapter 2 of Agenda 21 "Social and Economic Dimensions"). The reluctance of GATT to consider the applicability of any chapters in Agenda 21 other than Chapter 2
 - the persistence of the situation whereby the power to prevent environmental harm or to preserve environmental heritage resides in those whose interest it is to benefit economically from the environment. and that in whose interest it is to benefit economically from the environment tend to ignore ecologically sound practices
 - the persistence of the co-option, often through government funding, of groups, whose role should be to act as the conscience of the official decision makers
 - the persistence of the situation where those who should be speaking out are constrained because of professional commitments, and where those who are willing to speak out are not heard because the press fails to report their statements
 - the sanctioned use of "words of delusion" that either delude the public into thinking that what is unsafe, is safe, or delude the public into thinking that there is the political will to eliminate unsafe practices.
 - the sanctioned use of loophole vague terms like "as appropriate, " “where possible” or of loophole provisions like without prejudice to international trade principles. For example, in the following section on consumption They should therefore review the purchasing policies of their agencies and departments so that they may improve, where possible, the environmental content of government procurement

policies, without prejudice to international trade principles. (4.23, Consumption)

- the sanctioned use of the "notwithstanding clause" device. This device allows for the indulging in strong statements about deep concern and the need for significant change and then including a notwithstanding clause that negates the strong statement.
" Implement, as a matter of urgency, in accordance with country-specific conditions and legal systems, measures to ensure that women and men have the same right to decide freely and responsibly on the number and spacing of their children and have access to the information, education and means, as appropriate, to enable them to exercise this right in keeping with their freedom, dignity and personally held values, taking into account ethical and cultural considerations. (3.8 j Combating Poverty)
- the sanctioned use of oxymorons like "sustainable development", "Ecosystem management", "the environmentally sound management of hazardous wastes" (20.22 Hazardous wastes) or "the promoting the safe and environmentally sound management of radioactive wastes" (Chapter 22 Radioactive wastes)
- the sanctioned use of term like "harmonizing" which usually leads not the highest tenable principles but to the lowest common denominator
- the reluctance to redefine what constitutes development in ecological and equitable terms such as the following:

- (i) The degree to which a state has been able to integrate with the ecosystem through ecological sound practices causing its human activity to have little deleterious impact on the environment
 - (ii) The degree to which there is an equitable distribution of resources
 - (iii) The extent to which a state respects the rights of indigenous peoples
 - iv) The degree of condemnation, and avoidance of over- consumption
 - (v) the ability to minimize the human impact on the environment through fulfilling fundamental rights and thus reducing population
 - vi) The degree of compliance with the enshrining of positive rights (right to ecologically sound work, to food, to potable water, and health care to shelter) as well as with "negative" rights (right to security, freedom of speech etc.)
 - (vii) The ability to live within the carrying capacity of the ecosystem and to refrain from contributing to global ecological harm
 - (viii) The degree to which no or little funds are spent on the military and on arms production
 - ix) The degree to which laws are enacted and enforced to protect environment, human rights, equity, justice and peace
 - (x) The degree to which cooperation supersedes competition
 - (xi) The degree to which support is given to alternative non-military preventive conflict reduction measures
 - (xii) Degree to which citizens are listened to, and citizens make decisions within a framework of ecological principles
 - (xiii)...
- (from Russow, Redefinition of Development in Equitable and Ecological terms, presentation at Environmental Law Conference, University of Victoria, 1994)

- the sanctimonious respect for developing states or disenfranchised communities to have the democratic right to accept activities or substances that may be harmful to the environment or to human health

- the stereotyping of countries into categories of "developed, underdeveloped, and developing" rather than designating behaviours and attitudes as being "developed, underdeveloped and developing";

- the simplistic distinction between North (environment) and South (development)

- the presumption that technological transfer should always pass from "North" to "South"

- the sanctimonious respect for developing states or disenfranchised communities to have the democratic right to accept activities or substances that may be harmful to the environment or to human health
- the reluctance to deal with essential issues such as the link between "Nuclear civil reactors and Nuclear Arms Industry" or the Link between Poverty and lack of universal "secondary" as well as "primary" health care system (3.6. e Combating Poverty)
- the reluctance to address the environmental degradation caused by military operations

2.1.2. Seductive devices, doctrines, dogmas, strategies and fallacies

By Fred Knelman and Joan Russow

Dr. Fred Knelman is the Vice President of the Whistler Foundation for a Sustainable Environment, and Joan Russow, was the delegate for the Whistler Foundation at the New York Preparatory Committee for UNCED and at the Earth Summit at Rio. The Whistler Foundation and the Nuclear Age Peace Foundation had circulated a Declaration that was signed by 37 Nobel Laureates; this declaration called for the phasing out of Nuclear energy. They requested permission to read this declaration at one of the plenary sessions at Rio Centro; permission was denied.

The International Atomic Energy Agency (IAEA) was initially set up in the 1960's to regulate Nuclear energy; they have, however, become one of the strongest proponents of nuclear energy. A fundamental regulatory principle of the "separation of function" is that "the agency entrusted for regulating a technology cannot be the same agency that promotes the use of that technology"(Knelman, 1975). IAEA, through its UNCED document entitled "Nuclear Techniques and Sustainable Development." acted as a major proponent, not only of the current use, but of the increased use of nuclear energy.

Agenda 21-- the 700-page far-reaching action-plan document from UNCED, was adopted unanimously by the global community represented at the Earth Summit in Rio. In Agenda 21 the following concern about radiation was expressed:

The deterioration of environmental quality, notably air, water and soil pollution owing to toxic chemicals, hazardous wastes, radiation and other sources, is a matter of growing concern. (Chapter 16. subsection 12),

The extent of the consequences of the nuclear industry were also identified in Agenda 21:

Annually about 200,000 m³ of low-level and intermediate- level waste and 10,000 m³ of high-level waste (as well as spent nuclear fuel destined for final disposal) is generated worldwide from nuclear power production. These volumes are increasing as more nuclear power units are taken into operation, nuclear facilities are decommissioned and the use of radionuclides increases. (Chapter 22, subsection 1)

Yet at one of the plenary sessions, Mr. Hans Blix, Director-General of the IAEA, was given permission to present a document advocating nuclear energy as being a safe alternative energy for the future. The International Non-Governmental Organizations, (NGOs), however, recognized that the fundamental regulatory principle had been violated, and gave IAEA, the dubious honour of being presented with the International NGO Community's

"Most Preposterous Proposal Award" "for presenting nuclear power as the environmental solution in energy and successfully keeping its problems out of the documents."

We would like to highlight some of the SEDUCTIVE DEVICES, STRATEGIES, DOCTRINES, DOGMAS and FALLACIES that have made the IAEA worthy of this honour. The examples will be drawn from IAEA document which was prepared for UNCED. Also references will be made to other UNCED Documents such as Agenda 21 and the Rio Declaration-- the Earth Charter-- 1992, and the Canada's National Report for UNCED, 1992

"The seductive devices, strategies and fallacies used by the IAEA all draw upon the fundamental language of 'nukespeak'." Knelman (1986, 1992) has expanded on the euphemistic nature of seductive." (Term first used in Hilgartner S, R. Bell, and R. O'Connor 1982)

"The rule is to sanitize by euphemism: political euphemism is of course older than nuclear power. How many of us recognize the "elimination of unreliable elements"? There are forbidden words in the language of civil nuclear power. For example, the words "accident," "pollution" or "disease" are never used. Accidents are either "transients," "events," "significant events," "anomalies," "occurrences," or "abnormal occurrences." In the extreme, they become "normal abnormalities", i.e., truth becomes lies. Explosions are "events of rapid disengagement," or "prompt criticality, Waste dumps are "residue areas." Thermal pollution becomes "thermal effects," and pollution becomes "impacts." Disease becomes "health effects: This is a euphemism for cancer and genetic malformations. And missing plutonium, which is the link to clandestine acquisition of nuclear explosives is "material unaccounted for" or simply MUF! (Knelman, 1986.) Other names relating to nuclear accidents are criticality, nuclear excursions, abnormal evolution, normal aberration, plant transients, unnecessary ignition sources. "Nukespeak" is perpetuated through "nuclear acceptance campaigns" by the PR departments of the nuclear establishment, designed to find "palatable synonyms" for "scare words" through the use of "truth squads" in order to remove "undue public concern", create "pro-energy climate" where "technically qualified persons" would agree that nuclear power poses "no significant threat" and could be entrusted" for the timely detection of potential abnormalities, or there is "no evidence" of such threat (as though lack of evidence is proof of assertion) and the promises that turned into lies i.e. that nuclear power would be "too cheap to meter" providing society with "boundless energy" and save us from "freezing in the dark"; this is the language of Orwell's 1984, where peace is war and truth is a lie." (Knelman, 1992).

SEDUCTIVE DEVICES, DOCTRINES, DOGMAS, STRATEGIES AND FALLACIES

• The "blatant misrepresentation or expedient omission" device

This device involves the convenient exclusion of any part that could be detrimental to one's position.

The IAEA through expedient omission (possibly for advantageous "clarification") has left out a significant section in Agenda 21 which does not include nuclear energy in the list of "safe" technologies for the future. To "clarify" Agenda 21, the IAEA in its UNCED document stated the following:

The UNCED Agenda 21 notes the need for a transition to environmentally sound energy systems, which will entail major changes in the patterns of energy production and consumption (IAEA Document, p.5, 1992)

In the Atmosphere chapter of Agenda 21, the following [safe] and sound technologies are advocated:

"...cooperate to increase the availability of capacity, capabilities and relevant technologies ...for utilizing and producing environmentally [safe and] sound renewable energy resources, such as solar, wind, geothermal, hydropower and biomass, ... Each resource should be utilized in a manner that ... minimizes environmental stress and health impacts, ..." (Section 9. Subsection 9 g Agenda 21, 1992)

Thus, we see that in the Energy section of Agenda 21, Nuclear energy is not mentioned as being one of the [safe] or sound technology.

• The "co-opted terms" strategy

This strategy involves the stipulating of a new definition for a term that would jeopardize one's own argument.

In the Rio Declaration the following precautionary principle was advocated:

Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation." (Rio Declaration, 1992).

In the following statement, the IAEA redefines the important precautionary principle that was agreed to in the Rio Declaration, 1992.

The basic principles for radiation protection and safety in all applications and activities in nuclear science and technology are precautionary (IAEA Document, p. 2, authors emphasis)

The Rio principle, however, if enacted and truly adhered to, would bring about a moratorium on new nuclear power plants while phasing out currently existing ones.

- **The "comparison of convenience" device**

This device involves the narrowing down of alternatives so that whatever aspect is compared will appear favourable to the proposed alternative.

In the following statement from the IAEA document, the IAEA narrows the alternatives used for comparison to those which would appear to be favourable within the terms of reference of their comparison. Thus, for example, they compare the relatively low volume of nuclear wastes to the much larger volume of wastes from fossil fuels. However, it is the volume of wastes multiplied by their toxicity that is significant. Merely comparing volumes is a "comparison of convenience, the same false comparison is used to compare fuel requirements for the same energy output.

A nuclear plant would require 27 tonnes of slightly enriched uranium each year, which corresponds to a few truckloads. The corresponding quantity of natural uranium is 160 tonnes.
a coal fired plant would need 2.6 million tonnes of coal each year... which corresponds to the load carried by 5 trains, each transporting 1400 tones every day
an oil-fired plant would require 2 million tonnes of fuel oil per year, which is about 10 supertanker loads. (IAEA document, 1992, p.12)

The nuclear establishment never fails to compare coal and nuclear as competing energy sources, always claiming the inherent superiority of nuclear. Usually this is accomplished by failing to include the entire fuel cycle over its full life of impacts, social and environmental. They conveniently exclude "safety" factors," "production of wastes," "disposability of wastes," "degree of potential for bioaccumulation," lifetimes of wastes, toxicity and proliferation problems associated with nuclear.

"Yet no bombs are built of coal, no terrorist is interested in hijacking coal or in the clandestine acquisition of coal weapons, coal plants do not have to be decommissioned and mothballed after some 30 to 50 years of operation, their hazardous wastes do not have to be guarded for 100,000 years, coal dust is easier to contain than radon and coal plants do not require liability subsidies by acts of parliament" (Knelman, 1992)

- **The "lull and lure of the technological fix" syndrome**

(the "misleading assurance" device or the fallacy of "technological omnipotence")

This syndrome, device or fallacy involves the revealing of the seriousness of the problem and the offering of a "solution" which is usually worse than the problem

The proponents of a potentially dangerous act indicate that they recognize the danger and focus on one area for which they can offer a technological fix

In the following statement from the Radioactive Wastes section of Agenda 21, into which it appears that the IAEA had input, the following situation is recognized:

“Annually about 200,000 m³ of low-level and intermediate-level waste and 10,000 m³ of high-level waste (as well as spent nuclear fuel destined for final disposal) is generated worldwide from nuclear power production. These volumes are increasing as more nuclear power units are taken into operation, nuclear facilities are decommissioned and the use of radionuclides increases. The high-level waste contains about 99 percent of the radionuclides and thus represents the largest radiological risk.” (Agenda 21, Radio Active wastes, 21.1.).

In the IAEA document the authors affirm the certainty of the technological fix.

“There is nevertheless a consensus among experts that safe geological disposal of high-level wastes, including spent nuclear fuel, is technically feasible. (IAEA Document, p.17)

The view of experts in the field is that safe technological solutions exist for managing the waste.” (IAEA Document, 1992, p. 15)

Knelman (1992) pointed out that

“The assumption behind the notion of permanent disposal of high-level wastes deep in a stable geological formation is false because this assumption relies on the mistaken belief that anything we do technologically can be permanent. This assumption of permanence is particularly false when we are dealing with the lithosphere over some 100,000 years and when we must first disturb the geological structure by digging a very deep hole. AECL (Atomic Energy of Canada Limited) has dug a deep hole near Lac du Bonnet in Manitoba which is totally inappropriate for such so-called "permanent" disposal. For one thing you must, in all events, avoid water. Yet, The AECL hole must be soaked. Walt Patterson, a nuclear critic described this AECL research as follows: A drunk has lost his keys and is discovered by a police officer crawling around a street light. When questioned, the drunk admitted that he had lost his keys in front of a dark building, a block away. When asked why the

drunk was then searching around the street light, the drunk said " you see, officer, the light is better here" and as Dr. Martin Resnik off, an expert on geological waste disposal has put it " the earth does not stand still. In other words, experts in the relevant fields do not agree." (Knelman, 1992, in progress)

- **The "rhetoric of notwithstanding clause" doctrine.**

This doctrine allows for the indulging in strong statements about deep concern and the need for significant change and then including a notwithstanding clause that negates the strong statement.

In the Rio declaration (1992) there is a strong statement about third world dumping:

States should effectively cooperate to discourage or prevent the relocation and transfer to other States of any activities and substances that cause severe environmental degradation or are found to be harmful to human health. (Principle 14 Rio Declaration, 1992)

(

There are, however, disturbing "notwithstanding clauses" that appear such as in the following statements:

"Develop regulatory and non-regulatory measures and procedures aimed at preventing the export of chemicals that are banned, severely restricted, withdrawn or not approved for health or environmental reasons, *except when such export has received prior written consent from the importing country or is otherwise in accordance with the PIC procedure;*" (Section 19. subsection 53 f, Agenda 21, 1992)

In the following statement in the IAEA document, the IAEA energetically adopts the spirit of the " rhetoric of notwithstanding clauses"

The IAEA in 1990 promulgated a Code of Practice on the International trans-boundary Movement of Radioactive Waste as a basis for harmonization of national legislation and policies. The code lays down the conditions and principles for international waste transfers, such as that movement must be made in a manner consistent with the international safety standards, that there must be prior notification and consent of the sending, receiving and transit States, and that each State involved should have a regulatory authority...(IAEA Document, 1992, p. 20

- **The "flamboyant absurdity" doctrine or dogma**

This doctrine or dogma carries the concerns of one's opponents to the point where the regulations governing the opponent's concerns should become the standard by which other potentially lesser concerns will be addressed.

The IAEA appears to advocate that, what is considered to be the most dangerous industry, just because it is dangerous, has developed stringent standards, and that they who contribute to possibly the greatest uncontrollable hazard are the ones who should assist the community in dealing with other hazards.

The basic principles for radiation protection and safety in all applications and activities in nuclear science and technology are precautionary and are so well founded in science and so widely accepted that they are now also being regarded as a source of guidance in controlling pollutants and impacts arising from other human activities. Their wider application would undoubtedly contribute towards sustainable development. (p.2)

- **The "justification through dire consequences of alternatives" device**

This device involves the revealing of the dire consequences of the current practices and offering one own practice as the salvation for the problem

In the following statement the IAEA cites the dire consequences of the other alternatives to justify their proposed alternative:

The problem of acid rain, which is linked to emissions from the burning of fossil fuels, has been recognized for decades..... the primary concern about the continued and increasing use of fossil fuels is the problem of CO₂ emission and the potential impact on world climate..... World conference on the Changing Atmosphere... need to reduce CO₂ emission (IAEA document, p. 5)
climate change in connection with fossil fuels (p. 9)

- **The "benevolent outcome exploitation" strategy**

This strategy involves the selection of the outcome which the opposition to the proposed alternative would advocate and the subsequent attempt to demonstrate that the proposed alternative, which the opposition would condemn, would be the best way of achieving that outcome.

In the following statements from the IAEA document, the IAEA focuses on the desired outcomes of reducing acid rain and limiting greenhouse gas to justify the selection of their proposed alternative:

“Several governments have already made commitments to reduce carbon emission, while recognizing that this will be hard

to achieve except through drastic policy decisions in the energy sector. (IAEA Document, 1992, p.6)

Nuclear power plants in normal operations cause very little environmental detriment and are beneficial when they replace plants which would emit CO₂, SO₂, and NO₂ (p. 12). In this respect they would help to reduce acid rain and limit greenhouse gas emissions" (IAEA Document 1992, p. 12)

To accomplish the above, IAEA and other nuclear proponents are recommending the construction of some 4000 to 5000 new commercial nuclear power plants. The combination of the multi- trillion cost and the time required for construction renders this proposal no less than bewildering. By the 6 to 10-year period required for construction, other sources of climate-altering gases would wipe out all gains. Secondly at 1/7th to 1/10th the above cost, a much greater reduction in CO₂ and other climate-altering gases can be achieved through simple available conservation and efficiency measures.

- **The "shelter of fragmentation" syndrome**

This syndrome involves the dissociating of the problem from a more generic problem by placing the problem in its own isolated category.

In the agenda 21 document, Nuclear wastes are not included in the section of hazardous wastes because atomic wastes have its own section. Nuclear wastes thus seem to appear apart from hazardous wastes and from the strong recommendation associated with hazardous wastes such as:

Governments should intensify research and development activities on cost-effective alternatives for processes and substances that currently result in the generation of hazardous wastes that pose particular problems for environmentally sound disposal or treatment, the possibility of ultimate phase-out of those substances that present an unreasonable or otherwise unmanageable risk and are toxic, persistent and bio-accumulative to be considered as soon as practicable. Section 20 subsection 13c, Agenda 21, 1992)

- **The "flaunting and condoning of the vicious circle principle" strategy**

This strategy is best explained by the economic principle that "bad money drives out good": That is the opportunity costs of nuclear power are unacceptable and prohibitive Thus the money spent to subsidize nuclear power is at the expense of the funds required to solve the energy problem with safe alternatives, and consequently, because the research into alternatives will not be effectively carried out, the safe alternatives will not be able to adequately replace the non-renewable forms of energy.

In the 1992 report to UNCED, following was stated:
Nuclear energy has safety risks associated with the entire uranium cycle, from mining through processing to the ultimate

disposal of high-level radioactive wastes. In addition, there are safety risks associated with the reactors used to generate electricity from uranium. And the use of fossil fuel to drive conventional thermal generation produces carbon dioxide and waste heat. (Canada's National report UNCED p. 46- 47)
From a domestic consumption point of view, the least environmentally damaging energy option is energy efficiency. (Canada's National report UNCED p. 47)

Despite the above statement, the document concludes:

New, cleaner technologies such as solar energy may help, but the hard fact is that to a large extent we will have to rely on either thermal, hydro, or nuclear energy in the future. In addition, energy projects for both export and domestic supply provide jobs and economic wealth to the country, and are especially important in some regions of Canada" (p. 47. Canada's National report UNCED June, 1992, authors' emphasis)

The Canadian government has invoked the "vicious circle principle" by cutting subsidies to conservation efficiency and renewals. Canada is thus playing an important role in facilitating this not too hidden agenda by using many strategies, devices, doctrines, etc.

CONCLUSION:

The "nukes peak" and the seductive devices, strategies, syndromes used by the Nuclear Industry involve the language of delusion and distortion. Hopefully, through the continued revealing and categorizing of these words of delusion we could, in some small way, counteract the impact of the not too-hidden-agenda of the IAEA, and the rest of the nuclear establishment and their government supporters.

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2.1. 3. Misinformation through rhetoric: and divergent principles

Russow, J. October 1992, Presentation at ECOED: Miseducation through Rhetoric: Implications for Global Education

This paper is a follow-up to the paper, "Delusion of certainty in science and technology: implications for global environmental issues," presented at the 1992 NARST Conference (National Association of Research into Science Teaching). The delusion of certainty also arises from the rhetoric embodied in international legal instruments that are purported to prevent the destruction of the environment, the escalation of war, the violation of human rights, the denial of social justice, and the achievement of equity.

SELECTIONS FROM MISINFORMATION THROUGH DIVERGENT PRINCIPLES

(from presentation at ECOED, Miseducation through Rhetoric: Implications for Global Education, October, 1992, by Joan Russow, Sessional Lecturer, Global Issues Environmental Studies, Program University of Victoria)

Divergent principles —often generally condoned, are those principles that will divert global socio-political change from action to inaction. They may appear initially or on the surface to be laudable.

• Divergent principle of shelved commitments

This principle involves rhetoric but little action:

UN PROCLAMATION FOR TRANSLATING RHETORIC INTO ACTION:

IN 1972, WE SAID, recognizing our ignorance in the Declaration of the United Nations Conference on the Human Environment (1972)

- A point has been reached in history when we must shape our actions throughout the world with a more prudent care for their environmental consequences. Through ignorance or indifference, we can do massive and irreversible harm to the earthly environment...
- Man [human] has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations (Principle 1)
- Man [human] and his environment must be spared the effects of nuclear weapons and all other means of mass destruction. States must strive to reach prompt agreement, in the relevant international organs, on the elimination and complete destruction of such weapons (Principle 26)

IN 1982, WE WERE STILL SAYING,

World Charter of Nature (1982)

- Activities which are likely to pose a significant risk to nature shall be preceded by an exhaustive examination; their proponents shall demonstrate

that expected benefits outweigh potential damage to nature, and where potential adverse effects are not fully understood, the activities should not proceed (11 b)

- Activities which are likely to cause irreversible damage to nature shall be avoided (11. a)
- All areas of the earth, both land and sea, shall be subject to these principles of conservation; special protection shall be given to unique areas, to representative samples of all the different type of ecosystems and to the habitats of rare or endangered species (3)
- Every form of life is unique, warranting respect regardless of its worth to man, and to accord other organisms such recognition, man must be guided by a moral code of action (a)
- Knowledge of nature shall be broadly disseminated by all possible means, particularly by ecological education as an integral part of general education. (16)
- Military activities damaging to nature shall be avoided (Principle 20)

NOW IN 1992, WE ARE SAYING AGAIN, with knowledge

Humanity stands at a defining moment in history. We are confronted with a perpetuation of disparities between and within nations, a worsening of poverty, hunger, ill health and illiteracy, and the continuing deterioration of the ecosystems on which we depend for our well- being (Agenda 21, Preamble, 1.1)

• Divergent principle of excluded alternative

This principle involves the claiming to consider an alternative but then irreversibly eliminating the alternative during the period of deliberation

Ethical implications of the violation of the "principle of fair alternative" which ensures that no action should irreversibly destroy an alternative while this alternative is purported to be seriously considered.

In the decision-making process alternatives that are purported to be under consideration are being eliminated while the decision-making process continues.

"Talk and log syndrome"

• Divergent Principle of fair unequal access

This principle involves the asserting of equal access while affirming that some have more equal access than others

Everyone has access; " everyone has the right to sleep under the bridges of Paris but it is only the poor who avail themselves of that right"

(Anatole France)

• Divergent principle exclusionary tactics or extreme exclusion

or the "manufacturing of consensus"

This principle involves the lauding of the consensus process and then ensuring that the extreme views are exclude before the process begins

For example, prior to engaging in the Consensus process for CORE, the so-called different sectors are to meet select delegates; the delegates that reflect the extremes in each group will thus be eliminated as delegates, before the delegates enter into the consensus process

- **Divergent principle of predetermined failure of consensus to justify unilateral decision**

This principle involves decision making body initiating a process of consensus, which by its composition will not achieve consensus, and then indicating that if the process does not work, the decision-making body will make the decision. For example, in the description of the consensus process for CORE, the premier states:

"The Commission will complete its regional planning process on Vancouver Island within 18 months. If consensus is not possible, after duly considering the Commission's public report, decisions on protected areas and the working forest will be taken by government." (Premier Harcourt, Press Release, January 18, 1992)

- **Divergent Principle of Pontification**

This principle involves undertaking to "solve" a problem that exists externally while ignoring the same problem when it exists internally [thus giving the illusion that the problem does not exist internally} magnanimity

Rather than address the problem locally, the state offers to address the same problem in another state thus giving the illusion that the problem does not exist in the home state

Mulroney at UNCED promised 115 M for "managing forests in developing countries"

- **Divergent Principle of commitment entailing presumption of minimum standard**

This principle involves proposing a solution to a problem whose existence depends on a much deeper problem that is not even being addressed. For example, Brazil states it will include 'environmental education,' in the school system, conveying the impression that it has in fact a school system (Lopes, personal communication)

- **Divergent principle of flaunting the good to disguise the bad**

This principle involves the focusing on the only non-destructive part of production while ignoring the serious impacts of the predominantly destructive part of the production.

For example, Alcan flaunting Alcan Recycling while displacing cultures and destroying the environment through the production of aluminum

- **Divergent principle of industry-driving principle**

This principle involves the proponent of harm determining what should constitute harm

- **Divergent principle of misplaced onus of proof**

This principle requires opponents of activities that could have potentially significant adverse environmental effects having to demonstrate harm rather than proponents of the activities having to demonstrate, safety

- **Divergent principle of delusion of solution**

This principle involves promoting as a solution a practice, substance or activity which is either equally as bad or worse than the problem it was intended to solve

For example, the promoting of nuclear energy as a solution to climate change.

- **Divergent Principle of usurpation of opponents desired consequences**

This principle involves the commiserating with the opponent's concern and then showing how the opponent's position would deny the concern

For example, The Fraser Institute of British Columbia is against rent controls. To support their opposition, they indicate how rent controls would contribute to discrimination (something that their opponents would be concerned about).

- **Divergent Principle of largess**

This principle involves the appearance of tolerance, inclusion and balance as a means of preventing change

For example, educational material developed by industry calling for the "both sides" balanced approach

- **Divergent Principle of vested interest altruism or blatant visual misrepresentation**

This principle involves the portrayal or depiction of an idyllic state disguising vested interest or ecologically unsound practices, visually or verbally

For example, in the visual displays accompanying the development plans presented by the Forest industry depict a fawn, a single logger in the Forests and a clear-cut the size of a classroom,

- **Divergent Principle of redefining legally binding terms**

This principle involves the adopting of "environmentally correct" terms, and then redefining the terms to accommodate current practices that would violate the essence of these terms.

For example, The British Columbia Forest Resources Commission has adopted the term "ecologically sound practices" and then proceeds to claim: that "clear cut logging" in most cases was the most ecologically sound forest practice. (Forest Resources Commission Report, 1991). This statement was reiterated by Hamish Kimmons at the Federal Government "Hearings on Clear-cut Logging." (1994)

In a similar way Industry has adopted the term "old growth," and proceeded to redefine it:

Industry is also redefining "old growth" forests. (Press Release; January 18, 1992)

"A major problem in *settling the question* of "old growth preservation" is defining "old growth" - everyone has his or her own definition. the term "old growth" more likely describes a *biological condition* or forest environment, rather than trees of a specific age classification.

Once it is defined, the biggest problem then is that society must decide on the goal and the strategy. Preservation of land areas should be both *biologically reasonable* and *socially affordable*. Society needs to weigh the costs and benefits of all the options. One solution could be to leave some of the new forests we are growing long enough to develop the characteristics of old growth stands. (Janna Kumi, Silviculture Research Coordinator [currently Deputy Minister, Ministry of Forests])

• **Divergent Principle of self-serving misplaced categories"**

Designation of "North/South dichotomy as being between the North concerned about environment and the South concerned about development

Yet in the submissions to UNCED, from the "South" concern for the environment was clearly expressed:

iv call for the establishment of a global program for alleviating poverty in the South and for protecting or rehabilitating the environment

b. the reduction of emission, over an agreed period of time, in line with a country's quota;

(d) The creation of a global system for the transfer, on preferential and non-commercial terms, of environment-friendly technologies that would enable the South to reduce its emission of gases while pursuing a path of economic growth.

p. 1 UNCED subject matter is nothing less than the safety of the planet and the well-being and future of humankind. Its declared aim is to adopt recommendations which, if implemented, may ensure that the world and its resources will satisfy the needs and aspirations of all human beings in an equitable, environmentally sound and sustainable manner.

• **Divergent Principle of non-effective resolve**

This principle involves the criticizing of harm after having caused the harm when one was in a position to prevent it

For example: retired general becomes concerned about what he or "she" no longer has control over preventing

• **Divergent principle of readjustment for error (the Green Revolution syndrome, or the perpetuation of the technological fix delusion)**

This principle involves the setting up of departments and institutions to determine the means of rectifying the harm after having permitted and continuing to permit harmful practices to occur

Because of this principle, there is the continued condoning of research and development into rectifying the harm done through initially ecologically

unsound practices rather than discontinuing ecologically unsound practices. These practices are further supported by the growth in the "Environment" industry.

- **Divergent Principle of couched hypocrisy**

This principle involves talking about the care, or new found wisdom and commitment to prevent harm while continuing to carry out practices that cause harm

- **Divergent principle of Holier than thou**

This Principle involves the criticizing as a fault the very thing that the critic may be responsible for

"Unfortunately, the present role of the media and of our educational institutions seems to be one that entrenches the status quo. This is partially due to the infrastructures of these institutions and their inability to keep pace with a rapidly changing world. But it is also due in part to the comfort we all feel with the familiar all of us could like the world to operate in a way that is rational, predictable, and understandable. How do we change this attitude: how do we help people make some sense out of the changes occurring all around them: how do we equip people to not only become comfortable with change but to be agents for positive change."? (comment by group with representation from resource extraction -industry)

- **Divergent Principle of unfulfilled co-option**

This principle involves the displaying of the language of change while continuing to practice as usual

This principle involves the setting up of principles that the opposition would advocate and then stating that realistically these principles must be compromised

For example, in the "B.C. Round Table: Education Strategy", prepared by private consultants for British Columbia Round Table on Economy and Environment), they enunciate strong principles and then indicate that realistically there will have to be trade-offs.

Sustainability report

- A sustainable British Columbia will have as its objectives: the preservation of biodiversity; the protection of pure water, clean air and uncontaminated terrestrial, wetland, coastal and sea-bottom systems; the stabilization of global climactic conditions; the protection of natural beauty that we value aesthetically and spiritually; and a commitment to a new economic ethic based on making better use of what we have.

A new style of 'doing business' will have to include:

- A new order of urban design that reduces the need for energy-intensive transportation, integrates green space, and enhances our sense of community.

- Forestry and agricultural practices that protect soil, water and nutrient cycles
 - Land-use planning that preserves prime agricultural and forest lands and protects wilderness areas and wildlife habitat, while providing, working capacity for development.
 - A vibrant and dynamic economy, in which ingenuity is focused on qualitative--rather than quantitative --growth, and in which the full value of environmental assets and the impacts of human activities are considered
 - *A new harmony with First Nations people in which aboriginal rights and self-determination have been resolved
 - * Full and satisfying participation in decision-making, with local and individual empowerment
 - A social support structure that eliminates the fears of hunger, sickness, alienation and lack of opportunities for education and personal fulfillment
 - Health that is measured in degrees of wellness rather than sickness; a standard of living that is measured by quality of life rather than by level of consumption
- In summary, we will have realized our absolute dependence on planet earth and will have adopted the ethic of sustainability for our collective survival.
- Limit our impact on the living world to stay within its carrying capacity (its ability to renew itself from natural and human impacts)
 - Preserve and protect the environment (conserve life support systems, biological diversity, and renewable resources
 - 8 Hold to a minimum the depletion of non-renewable resources
 - Promote long-term economic development that increases the benefits from a given stock of resources without drawing down on our stocks of environmental assets (through diversifying and making resources use more efficient)
 - Meet basic needs and aim for a fair distribution of the benefits and the costs of resources use and environmental protection
 - Promote values that support sustainability (through information and education)

Applying the Principles

“Principles are meant to act as guidelines to shape provincial policy and to test the wisdom of our decisions and actions. However, applying the principles in daily decision-making often involves making difficult choices and compromises. In order to balance environmental, social and economic values fairly, trade-offs between human activities and the principles will be inevitable.” (Draft of Education Strategy, (September, 1992),

• **Divergent Principle of usurped right to criticize**

This principle involves the criticizing of proposals for not going far enough by critics who do not even live up to the proposals that they criticize

For example, the Ministry of the Environment of British Columbia returned from the Earth Summit and complained about UNCED being a failure because it did not go far enough (Cashore, 1992, Address given at Post- UNCED Conference). Canada does not even live up to the principles enunciated at UNCED, such as the "precautionary principle," "Anti- dumping principle," or the "life-cycle approach principle"

Divergent Principle of transferred integrity

For example, Steven Owen who was the former Ombudsman of British Columbia, is placed in the controversial position of being the Commissioner of the " Commission on Resources and Environment"

"I'm confident Stephen Owen can lead that process [CORE] in a fair, open and balanced way. The integrity he brings to this position will provide an excellent foundation for the new commission." (Harcourt, Premier of British Columbia (January 18, 1992, in Press Release)

"I am extremely pleased that Stephen Owen, with his proven track record for fairness, openness and integrity will lead this initiative." (Harcourt, Premier of British Columbia (January 18, 1992, in Press Release)

• Divergent Principle of self-regulation or self-monitoring" or "fox in chicken coop syndrome"

This principle affirms the importance of regulating or monitoring and then allows the proponents of the activity that is to be regulated or monitored, the privilege of regulating or monitoring themselves

For example, the (International Atomic Energy Agency (IAEA) has been given the responsibility to monitor the commercial use of nuclear energy, while at the same time they have become promoters of the use of nuclear energy {for further discussion, see Knelman and Russow, "the not-too- hidden agenda of International Atomic Agency (IAEA) at UNCED: Nukespeak, and seductive devices, dogmas, strategies and fallacies}

Divergent Principle of integration of disparate functions

This principle involves the integrating of the functions of promoter and regulator

For example, International Atomic Energy Agency (IAEA) both promotes the use of nuclear energy and is the regulator of the use of nuclear energy

The International Atomic Energy Agency (IAEA) was initially set up in the 1960's to regulate Nuclear energy; they have, however, become one of the strongest proponents of nuclear energy. A fundamental regulatory principle of the "separation of function" is that "the agency entrusted for regulating a technology cannot be the same agency that promotes the use of that technology"(Knelman, 1975). IAEA, through its UNCED document entitled "Nuclear Techniques and Sustainable Development." acted as a major

proponent, not only of the current use, but of the increased use of nuclear energy. {for further discussion, see Knelman and Russow, "the not-too-hidden agenda of International Atomic Agency (IAEA) at UNCED: Nukespeak, and seductive devices, dogmas, strategies and fallacies}

Divergent Principle The "shelter of fragmentation" syndrome

This syndrome involves the dissociating of the problem from a more generic problem by placing the problem in its own isolated category.

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2.4. GLOBALIZATION

2.4.1. Trade agreements

2.4.1.1. GATT

2.4.1.1.1. GATT and the Environment

2.4.1.2. FREE TRADE

2.4.1.3. NAFTA

READINGS: IN HOUSE LIBRARY

2.4.1.3.1. "NAFTA: THE DISCREPANCIES BETWEEN THE ENVIRONMENTAL PROVISIONS IN NAFTA AND THE CANADIAN GOVERNMENT'S PUBLISHED INTERPRETATION OF THESE PROVISIONS

"NAFTA: THE DISCREPANCIES BETWEEN THE ENVIRONMENTAL PROVISIONS IN NAFTA AND THE CANADIAN GOVERNMENT'S PUBLISHED INTERPRETATION OF THESE PROVISIONS

Prepared for presentation at a panel discussion on

NAFTA

JOAN RUSSOW

May, 22, 1993

NOTE: presented prior to the release of the NAFTA Environmental side agreement

In all three countries, Canada, Mexico and the U.S., citizens and organizations are concerned about

**the misplacing of government priorities,
the delusion of public process,
the exploitation of the labour force,
the inequitable distribution of resources,
the disenfranchisement of the many,
the violation of human rights and
the denigration of social justice**

In all three countries, citizens and organizations are also concerned about

**the unquestioned imperative to grow,
the over-consumptive pattern of behavior,
the relentless destruction of the environment, and
the irreversible loss of ecological heritage**

These concerned citizens look with justified trepidation at NAFTA

In this talk I will be examining the potential discrepancy between the stated environmental provisions in NAFTA and the Canadian Governments published interpretation of these provisions in the Canadian Environmental Review.

Background

Within Canada, United States and Mexico there are laws, policies, and regulations in place which appear to conserve, preserve and protect the environment;
yet industry is continually in non-compliance with these environmental provisions, and government is continually remiss in not requiring compliance.

The three countries negotiating the NAFTA all enunciate in their national legislation environmental provisions

In Mexico, the government claims that:

" Social liberalism therefore proposes a State that promotes and encourages private initiative, **but has the capability to firmly regulate economic activity and thus prevent the few from taking advantage of the many; a State that channels attention and resources towards meeting Mexicans' basic needs, is respectful of labor rights and union autonomy, and protects the environment."** (Carlos Salinas de Gortare, Social Liberalism: Our Path, Mexico: On the Record. Vol. 1. No. 4 (March 1992)

In March 1988, Mexico enacted its General Law for Ecological Equilibrium and Environmental Protection. it is a comprehensive statute designed to ensure that there is an

adequate legal basis for protecting the environment. Indeed, the law is based in large part on US. law and experience.

A central element of the 1988 law is the requirement for environmental impact assessments to be completed on all new investment projects, in both the public and private sectors. To ensure they comply with these requirements, many privately owned companies have already created special environmental offices to analyze the environmental impacts of proposed business activities (US. government publication] Free trade Negotiations with Mexico Environmental matters, p. 3) ARMS LENGTH RESEARCH

In Canada, the government claims that:

Canada's Green Plan is second to none in its comprehensive approach to a full range of environmental challenges, funding, accountability and provision for public involvement," he [Mr. de Cotret] added.

Canada's Green Plan offers new policies, programs and standards to clean up, protect and enhance our land, water and air, our renewable resources, the Arctic, parks and wildlife, and to reduce waste generation and energy use. it also includes measures to maintain global environmental security, foster environmentally responsible decision -making and improve our emergency preparedness....

. (Government of Canada's release " Federal Government releases environmental green plan" December, 1990.)

Goal

to ensure that citizens today and tomorrow have clean air, water and land essential to sustaining human health and the environment.... p. 1

INITIATIVES

• **Over the next five years, strengthen federal inspection, information exchange and investigation programs to better enforce environmental regulations**

In 1991, develop and adopt a comprehensive Code of Environmental Stewardship covering all areas of federal operations and activities. The Code will be complemented by a list of targets on issues ranging from waste generation to contaminated sites clean-up and emission standards, establishment of an office of Environmental Stewardship and measures to ensure that federal purchasing policies and practices integrate environmental considerations.

Implementation of the code will ensure that the activities and operations of the federal government meet or exceed the standards and practices it is recommending for others. (p. 21) Government of Canada's release " Federal Government releases environmental green plan" December, 1990.)

In the United States, the government claims that:

“We will ensure that our right to safeguard the environment is preserved in the NAFTA

- we will maintain the right to exclude any products that do not meet our health or safety requirements and we will continue to enforce those requirements

- we will maintain our right to impose stringent pesticide, energy conservation, toxic waste, and health and safety standards

- we will maintain our right, consistent with other international obligations, to limit trade in products controlled by international treaties (such as treaties on endangered species or protection of the ozone layer). [TWO OF THE VERY FEW INTERNATIONAL AGREEMENTS SIGNED AND RATIFIED BY THE US]

• Enhancement and Enforcement of Standards: we will seek a commitment to work together with Mexico to enhance environmental health and safety standards regarding produces and to promote their enforcement

- we will provide for full public and scientific scrutiny of any change to standards before they are implemented.

-we will provide for consultations on enhancing enforcement capability, inspection training, monitoring and verification (Response of the Administration to issues raised in connection with the negotiation of a north American Free trade agreement. May 1, 1991) p.p. 4, 5)

Response of the Administration to issues raised in connection with the negotiation of a north American Free trade agreement. May 1, 1991)

- we will consult on national environmental standards and regulations, and will provide an opportunity for the public to submit data on alleged non-compliance.” (Response of the Administration to issues raised in connection with the negotiation of a north American Free trade agreement. May 1, 1991, p. 5)

YET the moment that either one of the three states attempts to "enhance" environmental protection the others call forth the spectra of the trade agreement GATT:

Each one of the three states involved has attempted to object to the other state's enhancing environmental standards and in each case, GATT has supported the state seeking to object to high standards:

In Canada,

"The Canadian pulp and paper industry has urged Canada to challenge US. laws requiring the use of recycled fibre in newsprint.” (Shribman, 1991, p. 13) The Canadian government has argued that a US. environmental Protection

Agency rule banning the use of all forms of asbestos violates the US. Canada FTA and GATT (Eric Christensen, "Pesticide Regulations and International Trade", Environment, Vol. 32. No. 9, November, 1990, p 45)

In the US.

The US. recently proposed in GATT negotiations that nations be prevented from adopting domestic pesticide standards more stringent than international standards. (Eric Christensen, "Pesticide Regulation and International Trade", Mark Ritchie, "GATT, Agriculture and the Environment: The US Double Zero Plan, " The Ecologist, Vol. 20, No. 6, November, 1990, p. 214.)

“The US. based Non-Ferrous Metals Producers Committee is using the US. - Canada FTA to support its challenge to Canadian federal and provincial pollution control programs intended to reduce emissions from the Canadian smelting industry.” (Shribman "Selling the Environment Short: an environmental assessment of the first two years of free trade between Canada and the United States", Canadian Environmental Law Association, January, 1991, p. 13) (cited in Rolfe, Chris Environmental considerations regarding a possible Mexico-Canada Free trade Agreement for the West Coast environmental law association, February, 1991).

And in Mexico ...

When in 1990 the US. placed an embargo upon tuna products from Mexico, "Mexico complained that the tuna embargo was inconsistent with obligations owed to Mexico under GATT. The September 1991 report of a three-member panel of experts established pursuant to the third-party dispute settlement procedures of GATT determined that the American embargo on Mexican tuna, even though designed to conserve dolphins [s] was inconsistent with the GATT (McDormand, T. 1991, p. 2)

It would appear that, in all three countries (including states and provinces) there is not the political will required to seriously address the urgency of the environmental crisis.

Will the NAFTA perpetuate the current North American environmental situation of strong but not-enforceable legislation and regulations, will the NAFTA worsen the current North American environmental situation or could an alternative to the NAFTA lead to stronger enforcement of environmental legislation

From the press release on Friday May 21, it would appear that the three day talks on the side environmental accords failed because the US. negotiator demanded the standards be enforceable through trade sanctions.

In the absence of any further information about the current discussion about the parallel accord related to the environment, I will only be able to refer to the actual NAFTA agreement itself. A representative from the Ministry of Environment, who was part of the parallel accord information loop, indicated that the purpose of the parallel accord was primarily to clarify some of the environmental provisions, and address some of the concerns expressed about some of these provisions.

"NAFTA: THE DISCREPANCIES BETWEEN THE ENVIRONMENTAL PROVISIONS IN NAFTA AND THE CANADIAN GOVERNMENT'S PUBLISHED INTERPRETATION OF THESE PROVISIONS

To make a comparison between the environmental provisions of NAFTA and the Canadian Government's published interpretation, I have extracted and compiled in this diagram, the provisions in the NAFTA related to the environment (see NAFTAGRAPH) and linked them to the statements published by the Canadian Government in their publication NAFTA: Canadian Environmental Review, Oct. 1992.

In this diagram I have attempted to document five categories of statements:

1. statements in the NAFTA related to the environment
2. Statements by the Canadian Government in the Canadian Environmental Review, October, 1992. Re: the environmental implications of the NAFTA
3. Focal points to pursue related to statements in the NAFTA
4. Focal points to pursue related to statements made by the Canadian Government
5. Systemic "whereases" and "notwithstanding" within the documents that would prevent the implementation of environmental measures.

The diagram was then divided into key areas that are interrelated "standards-related measures", "technical regulations," "relation to other documents that protect and preserve the environment," "Risk assessment and appropriate levels of protection," investment: performance requirements.

It would appear that the NAFTA does have in writing provisions to protect the environment

The NAFTA appears to involve a series of discrepancies

I will attempt to examine the discrepancies within the NAFTA and the interpretation of these discrepancies by the Canadian government in its "Canadian Environmental Review" of NAFTA along with the interpretation, by the Canadian government in the Canada US. Free Trade Agreement

1. RELATION BETWEEN ENVIRONMENTAL PROVISIONS AND OBJECTIVES

The discrepancy between Environmental provisions which limit economic pursuits in the preamble and economic pursuits in the objectives which ignore the environment

Compare preamble to Objectives

PREAMBLE

The Government of Canada, the Government of the United Mexican States and the Government of the United States of America, **resolved to:**

STRENGTHEN the special bonds of friendship and cooperation among their nations;

CONTRIBUTE to the harmonious development and expansion of world trade and provide a catalyst to broader international cooperation;

CREATE an expanded and secure market for the goods and services produced in their territories;

REDUCE distortions to trade;

ESTABLISH clear and mutually advantageous rules governing their trade;

ENSURE a predictable commercial framework for business planning and investment;

BUILD on their respective rights and obligations under the *General Agreement on Tariffs and Trade* and other multilateral and bilateral instruments of cooperation;

ENHANCE the competitiveness of their firms in global markets;

FOSTER creativity and innovation, and promote trade in goods and services that are the subject of intellectual property rights;

CREATE new employment opportunities and improve working conditions and living standards in their respective territories;

UNDERTAKE each of the preceding in a manner consistent with environmental protection and conservation;

PRESERVE their flexibility to safeguard the public welfare;

PROMOTE sustainable development;

STRENGTHEN the development and enforcement of environmental laws and regulations; and

PROTECT, enhance and enforce basic workers' rights;

HAVE AGREED as follows:

Article 102: Objectives

1. The objectives of this Agreement, as elaborated more specifically through its principles and rules, including national treatment, most-favored-nation treatment and transparency, are to:

(a) eliminate barriers to trade in, and facilitate the cross-border movement of, goods and services between the territories of the Parties;

(b) promote conditions of fair competition in the free trade area;

(c) increase substantially investment opportunities in the territories of the Parties;

(d) provide adequate and effective protection and enforcement of intellectual property rights in each Party's territory;

(e) create effective procedures for the implementation and application of this Agreement, for its joint administration and for the resolution of disputes; and

(f) establish a framework for further trilateral, regional and multilateral cooperation to expand and enhance the benefits of this Agreement.

2. The Parties shall interpret and apply the provisions of this Agreement in the light of its objectives set out in paragraph 1 and in accordance with applicable rules of international law.

Canadian interpretation of the preamble and objectives

In the introduction to the Canadian Environmental Review

the following statement is made, which suggests that the environmental provisions are part of the objective section of the:

Environmental objectives addressed during the negotiations included the identification of sustainable development and environmental protection and conservation **as fundamental objectives of the**

In the Canadian Government document, the Canada/ US Free Trade Agreement Synopsis, the Canadian government indicates the important role of the preamble

The preamble states the political commitment ...in entering into the Agreement. It records the shared aspirations of the two countries in concluding the Agreement and summarizes their aims and objectives. In other words, it is an agreed statement of intent which will guide the countries in implementing the provisions of the Agreement and in resolving disputes. ...the object and purpose of the Agreement (13)

ACTION: to require that to fully express the intent of the document the government should call for the inclusion of environmental provisions in the Objectives section

2.INTERNATIONAL COMMITMENTS AND STANDARDS

There is a discrepancy between the "retention of rights in other documents" (even though NAFTA, in the case of inconsistency unless otherwise indicated, prevails) and the Canadian Government unqualified assertion that Canada has "preserved these rights in agreements"

In Article 103 of NAFTA states that NAFTA shall prevail in the event of an inconsistency between NAFTA and other international agreements (unless otherwise provided)

Article 103

1. the Parties affirm their existing rights and obligations with respect to each other under the GATT and other agreement to which such Parties are party.

[note exceptions related to the environment in GATT Article XX(b) include environmental measures necessary to protect human, animal or plant life or health, and GATT Article XX g applies to measures relating to the conservation of living and non-living exhaustible natural resources]

2. in the event of any inconsistency between this agreement and such other agreements, this Agreement shall prevail to the extent of the inconsistency, except as otherwise provided in this agreement

However, in Article 903, it would appear that "rights in other documents" are retained:

Article 903 Affirmation of Agreement on Technical Barriers to Trade and Other agreements

Further to Article 103, the Parties affirm with respect to each other their existing rights and obligations relating to standards-related measures under GATT and all other international

agreements including environmental and conservation agreements to which those Parties are party.

The Canadian government in its *Canadian Environmental Review* has indicated the following

During the NAFTA negotiations, all three countries expressed the wish to retain their existing rights and obligations under those multilateral environmental and conservation agreements to which they have chosen to belong. The retention of these right was also assigned a high priority by the Canadian environmental organization in both their written and oral submissions to the government. Canada has preserved these rights in the NAFTA

ACTION: IT IS IMPORTANT TO DEMAND TO KNOW IF THE RETENTION OF RIGHTS IS NOT INCOMPATIBLE WITH THE NAFTA PREVAILING OVER THE INTERNATIONAL AGREEMENTS NOT SPECIFICALLY MENTIONED.

[NOTE: it is important to recognize the distinction between "standard" and "technical regulation"

Standard means a document approved by a recognized body that provides for common and repeated use, rules guidelines or characteristics for goods or related processes or production methods or for services or related operating methods, with which compliance is not mandatory

whereas, a "technical regulation" means a document which lays down goods or related processes or production methods or for services or related operating methods, including the applicable administrative provisions, with which compliance is mandatory]

3. EXTENT TO WHICH INTERNATIONAL AGREEMENTS WILL PREVAIL

There is a discrepancy between the extent to which international agreements prevail as mentioned in the NAFTA and the extent to which the Canadian government indicates these agreements will prevail

In the NAFTA, the following is stated:

Article 104.1 obligations will prevail in the
Convention on International Trade in Endangered Species of
Wild Fauna and Flora (1973)
The Montreal Protocol (1990)
Basel Convention on the Control of trans-boundary Movement of
Hazardous Wastes and their Disposal (1989)
Annex 104-1 Bilateral and Other Environmental and
Conservation Agreements

1. The agreement between the Government of Canada and the Government of the US. concerning the trans-boundary Movement of Hazardous Waste, signed at Ottawa, October 18, 1986
2. The agreement between the US and Mexico on Cooperation for the Protection and Improvement of the Environment in the Border Area, 1983.

Article 104.1. (f) Any subsequent international environmental or conservation agreement on which the Parties have agreed shall be included, the international agreement will prevail.

The Canadian government, through its Canadian Environmental Review, indicated

the prevalence, in the event of inconsistency, of trade obligations set out in international environmental and conservation agreements over the NAFTA trade disciplines (Intro, CER)

In other words, these international environmental or conservation agreements will take precedence over the NAFTA (CER)

ACTION: THAT CANADA INSIST IN HAVING ALL INTERNATIONAL AGREEMENTS TAKE PRECEDENCE OVER THE NAFTA [UNLESS THE ENVIRONMENTAL PROVISIONS IN THE NAFTA ARE STRONGER] AS STATED IN THE CANADIAN GOVERNMENT'S INTERPRETATION OF NAFTA.

4. STANDARDS-RELATED MEASURES

Discrepancy between "shall work jointly to enhance" and "shall to the greatest extent practicable make compatible" in the NAFTA, and "forbids downward harmonization," "mandate upward harmonization" in the Canadian government's interpretation of NAFTA

Article 906 Compatibility and Equivalence

1. Recognizing the crucial role of standards-related measures in achieving legitimate objectives, the Parties shall, in accordance with this Chapter, work jointly to enhance the level of safety and of protection of human, animal and plant life and health, the environment and consumers.

Note "legitimate objectives" have been defined in article 9.5 as

- a) safety
- b) protection of human, animal or plant life or health, the environment or consumers
- c) sustainable development

ARTICLE 906 Compatibility and Equivalence

2. Without reducing the level of safety or of protection of human, animal or plant life or health, the environment or consumers, without prejudice to the rights of any Party under this Chapter, and taking into account international standardization activities, the Parties shall to the greatest extent practical, make compatible their respective standards-related measures

In the Canadian Government publication "Canadian Environmental Review" it is stated:

Standards enhancement

NAFTA would do more than forbid downward harmonization it obligates Parties to work towards upward harmonization (CER, 19)

Environmental objectives addressed during the negotiations included...co-operation, on a continental basis, on the enhancement of environmental standards and their enforcement (Intro, CER)

Significant as it would in effect establish the highest current standards of the three parties (CER, 19)

ACTION: to call upon the Canadian government to have incorporated in the NAFTA the "forbidding of downward harmonization" and the "obligating to work towards upward harmonization"

5. ALLOCATION OF BURDEN IN RELATION TO STANDARDS

Discrepancy between burden of establishing inconsistency within a chapter as indicated in NAFTA and the placement of the burden of proof in the whole document on the nation challenging an environmental standard of another country as indicated in the Canadian interpretation of the document:

Article 914 Technical consultations

4. The Parties confirm that a Party asserting that a standards-related measure of another Party is inconsistent with this Chapter shall have the burden of establishing the inconsistency

The Canadian Government in its Canadian Environmental Review stated:

Environmental objectives addressed during the negotiations included...placement of the burden of proof in a dispute on any nation challenging an environmental standard of another country. (Intro, CER)

and reaffirmed in the body of the text

"Furthermore, should Canada adopt an environmental standard under these international agreements, the burden of proof would be with any country challenging the provision (CER, 14)

It is only on page 22 that the actual text is presented

ACTION: TO ENSURE THAT IN ANY DOCUMENT RELATED TO THE ENVIRONMENT, THE BURDEN OF PROOF SHOULD LIE NOT ONLY ON THE COUNTRY THAT OBJECTS TO THE HIGHER STANDARD, BUT ALSO TO THE INDUSTRY THAT SEEKS TO INTRUDE INTO THE ECOLOGICAL COMMONS

6. RELATION BETWEEN RELAXATION OF ENVIRONMENTAL MEASURES AND INVESTMENT

The discrepancy between "recognizing inappropriateness" should **not waive** "**may request consultations**" as indicated in the NAFTA and "a commitment to refrain" in the Canadian government's analysis of the document

In the NAFTA Article 1114 (2) discourages the relaxing of environmental measures

In Article 1114 (2), Environmental Measures, the NAFTA states: The Parties recognize that it is **inappropriate to encourage** investment by relaxing domestic health, safety or environmental measures. Accordingly, a **Party should not waive** or otherwise derogate from, or offer to waive or otherwise derogate from, such measures as an encouragement for the establishment, acquisition, expansion or retention in its territory of an investment of an investor. If a Party considers that another Party has offered such an encouragement, it **may request consultations** with the other Party and the two Parties shall consult with a view to avoiding any such encouragement

In the Intro of the Canadian Governments, "Canadian Environment Review", the environmental objectives are presented as being "a commitment to refrain"

Environmental objectives addressed during the negotiations included acceptance of a commitment that government refrain from offering derogations from generally applicable environmental measures for the purpose of encouraging an investment

ACTION: CALL UPON THE CANADIAN GOVERNMENT TO DEMONSTRATE TRUE COMMITMENT BY CHANGING "SHOULD" TO "SHALL"

Because of all these potential discrepancies between the NAFTA and the Canadian Governments interpretation of NAFTA, I would like to make the following recommendation

RECOMMENDATION:

GIVEN:

EITHER THE GOVERNMENT OF CANADA HAS MISINTERPRETED OR MISREPRESENTED ENVIRONMENTAL SECTIONS IN NAFTA, IN THE OCTOBER, 1992 ENVIRONMENTAL REVIEW, OR THE NAFTA HAS CHANGED AND, IN THAT CASE, IT WOULD BE NECESSARY TO HAVE ANOTHER ENVIRONMENTAL ASSESSMENT REVIEW OF THE ENVIRONMENTAL IMPLICATIONS OF NAFTA

READINGS: CHAPTER 2

Readings:

Chapter 2, Knelman F and J. Russow. Global Issues: Environmental and Social Dynamics of Global Change

Reserve Reading:

Shribman Steven. (1991) International Trade and the Environment: An Environmental Assessment of Present GATT Negotiations

In-house library:

GATT update, NAFTA file

CHAPTER 3

International obligations as instruments of positive global change
International legally binding obligations: The Biodiversity Convention, Climate Change Convention,

3.1. EXAMPLES OF LEGALLY BINDING PRE-UNCED 1. DOCUMENTS

3.1.1. Vienna Convention on the Law of Treaties 1969 The States Parties to the present Convention.

Noting that the principles of free consent and of good faith and the pacta sunt servanda rule are universally recognized;

Recalling the determination of the peoples of the United Nations to establish conditions under which justice and respect for the obligations arising from treaties can be maintained,

Affirming that the rules of customary international law will continue to govern questions not regulated by the provisions of the present Convention

have agreed as follows:

Use of terms

1. For the purposes of the present convention:

a) "Treaty" means an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation;

b) "ratification," "acceptance," "approval," and "accession," mean in each case the international act so named whereby a State establishes on the international plane its consent to be bound by a treaty;

e negotiating State" means a State which took part in the drawing up and adoption of the text of the treaty;

(f) Contracting state means a State which has consented to be bound by the treaty, whether or not the treaty has entered into force;

g) "party means a State which has consented to be bound by the treaty and for which the treaty is in force;

Article 11

Means of expressing consent to be bound by a treaty

The consent of a State to be bound by a treaty may be expressed by signature, exchange of instruments constituting a treaty, ratification, acceptance, approval or accession, or by any other means if so agreed.

Article 18

Obligation not to defeat the object and purpose of a treaty prior to its entry into force

A state is obliged to refrain from acts which would defeat the object and purpose of a treaty when:

- a) it has signed the treaty or has exchanged instruments constituting the treaty subject to ratification, acceptance or approval, until it shall have made its intention clear not to become a party to the treaty; or
- b) it has expressed its consent to be bound by the treaty, pending the entry into force of the treaty and provided that such entry into force is not unduly delayed.

Part III

OBSERVANCE, APPLICATION AND INTERPRETATION OF TREATIES

Section 1. Observance of Treaties

Article 27

Internal law and observance of treaties

A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty. This rule is without prejudice to article 46

Article 29

territorial scope of treaties

Unless a different intention appears for the treaty or is otherwise established, a treaty is binding upon each party in respect of its entire territory.

section 3. Interpretation of Treaties

Article 31

1. a treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.

Article 43

Obligations imposed by international law independently of a treaty

The invalidity, termination or denunciation of a treaty, the withdrawal of a party from it, or the suspension of its operation, as a result of the application of the present Convention or of the provisions of the treaty shall not in any way impair the duty of any state to fulfill any obligation embodied in the treaty to which it would be subject under international law independently of the treaty.

Article 53

Treaties conflicting with a peremptory norm of general international law (jus cogens)

A treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law. for the purposes of the present convention, a preemptory norm of general international law is a norm accepted and are recognized by the international community of States as a whole as a norm form which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.

Article 61

Supervening impossibility of performance

1. a party may invoke the impossibility of performing a treaty as a ground for terminating or withdrawing from it is the impossibility of performing results from the permanent disappearance or destruction of an object indispensable for the execution of the treaty.”
- 2.
2. Impossibility of performance may not be invoked by a party as a ground for terminating, withdrawing from or suspending the operation of a treaty if the impossibility is the result of a breach by that party either of an obligations under the treaty or of any other international obligation owed to any other party to the treaty

3.1.2. Convention for the Protection of the World Cultural and Natural Heritage (Paris, 23 November 1972) (CPCNH), and local applicability of the Convention

3.1.2.1. EXCERPTS FROM THE UN CONVENTION FOR THE PROTECTION OF THE WORLD CULTURAL AND NATURAL HERITAGE (1972)

Noting that the cultural heritage and the natural heritage are increasingly threatened with destruction not only by the traditional causes of decay, but also by changing social and economic conditions which aggravate the situation with even more formidable phenomena of damage or destruction, (CPCNH)

Considering that deterioration or disappearance of any item of the cultural or natural heritage constitutes a harmful impoverishment of the heritage of all the nations of the world, (CPCNH)

Considering that protection of this heritage at the national level often remains incomplete because of the scale of the resources which it requires and of the insufficient economic, scientific and technical resources of the country where the property to be protected is situated. (CPCNH)

Recalling that the Constitution of the Organization provides that it will maintain, increase and diffuse knowledge, by assuring the conservation and protection of the world's heritage and recommending to the nations concerned the necessary international conventions (CPCNH)

Considering that the existing international conventions recommendations and resolutions concerning cultural and natural property demonstrate the importance, for all the peoples of the world of safeguarding this unique and irreplaceable property, to whatever people it may belong, (CPCNH)

Considering that parts of the cultural or natural heritage are of outstanding interest and therefore need to be preserved as part of the world heritage for [mankind] as a whole, (CPCNH)

Considering that, in view of the magnitude and gravity of the new dangers threatening them, it is incumbent on the international community as a whole to participate in the protection of the cultural and natural heritage of outstanding universal value, by the granting of collective assistance which, although not taking the place of action by the State concerned, will serve as an effective complement thereto,(CPCNH)

Considering that it is essential for this purpose to adopt new provisions in the form of a convention establishing an effective system of collective protection of the cultural and natural heritage of outstanding universal value, organized on a permanent basis and in accordance with modern scientific methods, (CPCNH)

1. DEFINITIONS OF THE CULTURAL AND THE NATURAL HERITAGE

Article 1

For the purposes of this Convention, the following shall be considered as "cultural heritage" monument: architectural works, works of monumental

sculpture and paintings, elements or structures of an archaeological nature, inscriptions, cave dwellings and combinations of features, which are of outstanding universal value from the point of view of history, art or science: (CPCNH)

groups of buildings: groups of separate or connected buildings which, because of their architecture, their homogeneity or their place in the landscape, are of outstanding universal value from the point of view of history, art or science;

sites: works of man or the combined works of nature and of man, and areas including archaeological sites which are of outstanding universal value from the historical, aesthetic, ethnological or anthropological points of view. (CPCNH)

Article 2

For the purposes of this Convention, the following shall be considered as "natural heritage": natural features consisting of physical and biological formations or groups of such formations, which are of outstanding universal value from the aesthetic or scientific point of view; geological and physiographical formations and precisely delineated areas which constitute the habitat of threatened species of animals and plants of outstanding universal value from the point of view of science or conservation; natural sites or precisely delineated areas of outstanding universal value from the point of view of science, conservation or natural beauty (CPCNH)

Article 3

It is for each State Party to this Convention to identify and delineate the different properties situated on its territory mentioned in Articles 1 and 2 above (CPCNH)

II National Protection and International Protection of the Cultural and Natural Heritage

Article 4

Each state Party to this Convention recognizes that the duty of ensuring the identifications, protection, conservation, presentation and transmission to future generations of the cultural and natural heritage referred to in Article 1 and 2 and situated on its territory, belongs primarily to that State. It will do all it can to this end, to the utmost of its resources and where appropriate with any international assistance and co-operation, in particular, financial, artistic, scientific and technical, which it may be able to obtain. (CPCNH)

Article 5

To ensure that effective and active measures are taken for the protection, conservation and presentation of the cultural and natural heritage situated on its territory, each State Party to this Convention shall endeavour, in so far as possible, and as appropriate for each country:

- a) to adopt a general policy which aims to give the cultural and natural heritage a function in the life of the community and to integrate the protection of that heritage into comprehensive planning programmes; (CPCNH)
- b) to set up within its territories, where such services do not exist, one or more services for the protection, conservation and presentation of cultural and natural heritage with an appropriate staff and possessing the means to discharge their functions: (CPCNH)

- c) to develop scientific and technical studies and research and to work out such operating methods as will make the State capable of counteracting the dangers that threaten its cultural or natural heritage; and (CPCNH)
- d) to take the appropriate legal, scientific, technical, administrative and financial measures necessary for the identification, protection, conservation, presentation and rehabilitation of this heritage; and (CPCNH)
- e) to foster the establishment or development of national or regional centres for training in the protection, conservation and presentation of the cultural and natural heritage and to encourage scientific research in this field. (CPCNH)

Article 6

1. Whilst fully respecting the sovereignty of the States on whose territory the cultural and natural heritage mentioned in Articles 1 and 2 is situated, and without prejudice to property rights provided by national legislation, the States Parties to this Convention recognize that such heritage constitutes a world heritage for whose protection it is the duty of the international community as a whole to co-operate. (CPCNH)
2. The States parties undertake, in accordance with the provisions of this Convention, to give their help in the identification, protection, conservation and preservation of the cultural and natural heritage referred to in paragraphs 2 and 4 of Article 11 if the States on whose territory it is situated so request (CPCNH)
3. each State Party to this convention undertakes not to take any deliberate measures which might damage directly or indirectly the cultural and natural heritage referred to in Articles 1 and 2 situated on the territory of other States parties to this Convention (CPCNH)

Article 7

For the purpose of this Convention, international protection of the world cultural and natural heritage shall be understood to mean the establishment of a system of international co-operation and assistance designed to support States Parties to the Convention in their efforts to conserve and identify that heritage. (CPCNH)

III Intergovernmental Committee for the Protection of the World Cultural and Natural Heritage

1. An intergovernmental Committee for the Protection of the Cultural and Natural Heritage of Outstanding Universal Value, called "the World Heritage Committee", is hereby established within UNESCO. It shall be composed of 15 States Parties to the Convention, elected; by States Parties to the Convention meeting in general assembly during the ordinary session of the General Conference of the UNESCO. the number of States members of the Committee shall be increased to 21 s from the date of the ordinary session of the General Conference following the entry into force of this Convention for at least 40 states. (CPCNH)
2. Election of members of the Committee shall ensure an equitable representation of the different regions and cultures of the world. (CPCNH)

Article 11

1. Every State party to this Convention shall, in so far as possible, submit to the World Heritage Committee an inventory of property forming part of the cultural and natural heritage, situated in its territory and suitable for inclusion

in the list provided for in paragraph 2 of this Article. This inventory, which shall not be considered exhaustive, shall include documentation about the location of the property in question and its significance. (CPCNH)

3. The inclusion of a property in the World Heritage List requires the consent of the State concerned. The inclusion of a property situated in a territory sovereignty or jurisdiction over which is claimed by more than one State shall in no way prejudice the rights of the parties to the dispute. (CPCNH)

4. The Committee shall establish, keep up to date and publish, whenever circumstances shall so require, under the title of "List of World Heritage in Danger", a list of the property appearing in the World Heritage list for the conservation of which major operations are necessary and for which assistance has been requested under this Convention. This list shall contain an estimate of the cost of such operations. The list may include only such property forming part of the cultural and natural heritage is threatened by serious and specific dangers, such as the threat of disappearance caused by accelerated deterioration, large-scale public or private projects or rapid urban or tourist development projects; destruction caused by changes in the use or ownership of the land; major alternations due to unknown causes; abandonment for any reason whatsoever; the outbreak or the threat of an armed conflict; calamities and cataclysms; serious fires, earthquakes, landslides; volcanic eruptions; changes in water level, floods, and tidal waves. The Committee may at any time, in case of urgent need, make a new entry in the List of World Heritage in Danger and publicize such an entry immediately. (CPCNH)

3.1.2.1. RHETORIC TO ACTION SERIES: PROPOSAL FOR A COMPOSITE WORLD HERITAGE SITE (JUNE, 1993)

"Considering that in view of the magnitude and gravity of the new dangers threatening them, it is incumbent on the international community as a whole to participate in the protection of the cultural and natural heritage of outstanding universal value..." (Convention for the Protection of the World cultural and Natural Heritage, preamble, 1972)

The B.C. government fulfilled part of its duty to the international community by protecting the Tatshenshini...and by proposing that the Tatshenshini be recognized as an international heritage site.

The B.C. government has failed, however, to designate a network of old growth temperate rainforests and connection conservation corridors as being of enough "outstanding universal value" to be designated as a World Heritage Site. The B.C. government failed to protect a large network of old growth temperate rainforests and connection corridors, and to nominate this network as a World heritage site under the Convention for the Protection of World Cultural and Natural Heritage. By the end of October 1993, States were required to submit a list of proposals to the World Heritage Committee for future possible sites of protection. The B.C. government has also failed to place even a proposal for this old growth temperate rainforest network in the future

This network of old growth temperate rainforests and connection conservation corridors. fulfills the natural heritage criteria (ii), (iii) and (iv) of the criteria for inclusion in the World Heritage list.

- (ii) be outstanding examples representing significant ongoing geological processes... biological evolution and man [human] interaction with his [its] natural environment; as distinct from the periods of the Earth's development, this focuses upon ongoing processes in the development of communities of plants and animals, landforms and marine areas and fresh water bodies;
- (iii) contain superlative natural phenomena formations or features for ... outstanding examples of the most important ecosystems, areas of exceptional natural beauty or exceptional combinations of natural and cultural elements;
- (iv) containing the most important and significant natural habitats where threatened species of animals or plants of outstanding universal value form the point of view of science or conservation still survive

WE REQUEST

THAT THE WORLD HERITAGE COMMITTEE COMPLY WITH THE URGENT NEED TO MAKE A NEW ENTRY IN THE LIST OF WORLD HERITAGE IN DANGER (ARTICLE 11, 4):

THE PRESERVATION ON VANCOUVER ISLAND, BRITISH COLUMBIA OF

A WORLD COMPOSITE NATURAL AND CULTURAL HERITAGE SITE

CONTAINING THE FOLLOWING COMPONENT SITES:

1. CLAYOQUOT SOUND,
2. INTACT WATERSHEDS CONTAINING SIGNIFICANT STANDS OF UNFRAGMENTED OLD GROWTH (SUCH AS THE WALBRAN, THE UPPER CARMANAH,
3. ASSOCIATED CULTURAL HERITAGE OF INDIGENOUS PEOPLES

AND THE FOLLOWING PATHWAYS

1. NATURAL CONSERVATION CORRIDORS
2. CULTURAL PATHWAYS OF INDIGENOUS PEOPLES

REASONS FOR PROPOSED INCLUSION

1. FULFILLMENT OF WORLD HERITAGE CRITERIA

GIVEN THAT this composite natural and cultural site fulfills criteria for both natural and cultural heritage

and criteria (i), (ii) (v) and (vi) for the inclusion in cultural property

(i) represent a unique artistic achievement, a masterpiece of the creative genius;

(ii) have exerted great influence, over a span of time or within a cultural area of the world, on developments in architecture, monumental arts or town planning and landscaping;

(V) an outstanding example of a traditional human settlement which is representative of a culture and which has become vulnerable under the impact of irreversible change;

(vi) be directly or tangibly associated with events or with ideas or beliefs of outstanding universal significance

2. FULFILLMENT OF CRITERIA OF URGENCY TO BE INCLUDED AS A NEW WORLD HERITAGE ENTRY

Given in Article 11.4 of the United Nations Convention for Protection of the World Cultural and Natural Heritage, there is a specific intervention which enables the committee to carry out the following action:

The committee may at any time, in case of urgent need, make a new entry in the list of World Heritage in Danger and publicize such entry immediately (United Nations Convention for the Preservation of Cultural and Natural Heritage, article 11, 4)

3 FULFILLMENT OF GOAL OF CONVENTION TO BRING TOGETHER NATURAL AND CULTURAL HERITAGE

Given, the in its publication Nature and Resources UNESCO has recognized the significance of linking natural and cultural heritage in the recent formation of the World Heritage Centre

Establishment of World Heritage Centre in 1992, to bring together what had been separate secretariats for natural and cultural heritage to provide new impetus to heritage conservation at the interface of culture and nature.

4. FULFILLMENT OF NATURAL AND CULTURAL COMMITMENTS IN UNCED

Given that the global community has made commitment to preserving natural and cultural heritage through various documents from UNCED

4.1. AGENDA 21: BIODIVERSITY CHAPTER (CHAPTER 15)

the responsibility to conserve their biodiversity and use their biological resources sustainably, and to ensure that activities within their jurisdiction or control do not cause damage to the biological diversity of other states or of areas beyond the limits of national jurisdiction. " (15.3 Biodiversity)

" Despite mounting efforts over the past 20 years, the loss of the world' biological diversity, mainly from habitat destruction, over-harvesting, pollution and the inappropriate introduction of foreign plants and animals has continued. (15.3 Biodiversity)

use of biological resources. (15.8 e. biodiversity)

Strengthen support for international and regional instruments, programmes and action plans concerned with the conservation of biological diversity and the sustainable use of biological resources. (15.8 f Biodiversity)

" take effective economic, social and other appropriate incentive measures to encourage the conservation of biological diversity and the sustainable use of biological resources, including the promotion of sustainable production systems such as traditional methods of agriculture, agroforestry, forestry, range and wildlife

management, which use, maintain or increase biodiversity 15.5
Biodiversity

" Long-term research into the importance of biodiversity for the functioning of ecosystems and the role of ecosystems in producing good, environmental services and other values supporting sustainable development with particular reference to the biology and reproductive capacities of key terrestrial and aquatic species, including native, cultivated and cultured species; ? observation and inventory techniques; ecological conditions necessary for biodiversity conservation and continued evolution; and social behaviour and nutrition habits dependent on natural ecosystems, where women play key roles. The work should be undertaken with the widest possible participation, especially of indigenous people and their communities, including women. (15.5 f, Biological diversity)

" Take action where necessary for the conservation of biological diversity through the in-situ conservation of ecosystems and natural habitats, as well as primitive cultivars and their wild relatives, and the maintenance and recover of viable populations of species in their natural surroundings. (15.6 g. Biodiversity)

Governments... consistent with the requirements of international law should, as appropriate collect, assess and make available relevant and reliable information in a timely manner and in a form suitable for decision-making at all levels, with the full support and participation of local and indigenous people and their communities." (15.6 f Biodiversity)

" Introduce appropriate environmental impact assessment procedures for proposed projects likely to have significant impacts upon biological diversity... and encourage the assessment of the impacts of relevant policies and programmes on biological diversity (Agenda 21, 15.5 k)

4.2. CHAPTER 27, AGENDA 21 COMMITMENTS TO INDIGENOUS PEOPLE

"Indigenous people and their communities have an historical relationship with their lands and are generally descendants of the original inhabitants of such lands. In the context of this chapter the term "lands" is understood to include the environment of the areas which the people concerned traditionally occupy. Indigenous people and their communities represent a significant percentage of the global population. They have developed over many generations a holistic traditional scientific knowledge of their lands, natural resources and environment. Indigenous people and their communities shall enjoy the full measure of human rights and fundamental freedoms without hindrance or discrimination. Their ability to

participate fully in sustainable development practices on their lands has tended to be limited as a result of factors of an economic, social and historical nature. In view of the interrelationship between the natural environment and its sustainable development and the cultural, social, economic and physical well-being of indigenous people, national and international efforts to implement environmentally sound and sustainable development should recognize, accommodate, promote and strengthen the role of indigenous people and their communities. (Agenda 21, 16.1)

In full partnership with indigenous people and their communities, Governments and, where appropriate, intergovernmental organizations should aim at fulfilling the following objectives": (Agenda 21, 16.3)

- (a) Establishment of a process to empower indigenous people and their communities through measures that include:
- (ii) Recognition that the lands of indigenous people and their communities should be protected from activities that are environmentally unsound or that the indigenous people concerned consider to be socially and culturally inappropriate;"

5. FULFILLMENT OF SIGNIFICANT INTERFACE CULTURE AND NATURE THROUGH ETHNOBOTANY

Aboriginal people of the region are closely tied to the ecosystems of the coast and the forest, of and their knowledge of ecosystems is very detailed and profound. Without the preservation of the life forms their knowledge will be lost (Dr. N. Turner, Ethnobotanist)

3.1.3. Convention on the Rights of the Child (CRC)

The States Parties to the present Convention

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world
(CRC)

Photo: Cesta, Human rights Manifesto

Bearing in mind that the peoples of the United Nations have, in the Charter, reaffirmed their faith in fundamental human rights and in the dignity and worth of the human person, and have determined to promote social progress and better standards of life in larger freedom, (CRC)

Recognizing that the United Nations has, in the Universal Declaration of Human Rights 3 and in the International Covenants on Human Rights 4/ proclaimed and agreed that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, (CRC)

Recalling that, in the Universal Declaration of Human Rights, the United Nations has proclaimed that childhood is entitled to special care and assistance (CRC)

Convinced that the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community, (CRC)

X Bearing in mind that, as indicated in the Declaration of the Rights of the Child adopted by the General Assembly on 20 November 1959, "the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection before as well as after birth. (CRC)

Article 3

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration. (CRC)

Article 24

1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services. (CRC)

(c) To combat disease and malnutrition, including with the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water taking into consideration the dangers and risks of environmental pollution (CRC)

(e) to ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breast-feeding, hygiene and environmental sanitation and the prevention of accidents (CRC)

(f) to develop preventive health care, guidance for parents and family planning education and services (CRC)

3. States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children (CRC)

Article 29

1. States Parties agree that the education of the child shall be directed to:

(e) the development of respect for the natural environment. (CRC)

...

3.2. LEGALLY BINDING UNCED CONVENTIONS, ASSOCIATED SECTIONS IN GLOBALLY ADOPTED AGENDA 21, COMPARISONS, TEST OF APPLICABILITY AND UPDATES

3.2.1. Convention on Biological Diversity (signed June, 1992, ratified December, 1992, in force, December 1993), and associated globally adopted documents, and applicability comments

3.2.1.1. CONVENTION ON BIOLOGICAL DIVERSITY

Preamble

The Contracting Parties,

Conscious of the intrinsic value of biological diversity and of the ecological, genetic, social, economic, scientific, educational, cultural, recreational and aesthetic values of biological diversity and its components,

Conscious also of the importance of biological diversity for evolution and for maintaining life sustaining systems of the biosphere,

Affirming that the conservation of biological diversity is a common concern of humankind,

Reaffirming that States have sovereign rights over their own biological resources,

Reaffirming also that States are responsible for conserving their biological diversity and for using their biological resources in a sustainable manner,

Concerned that biological diversity is being significantly reduced by certain human activities,

Aware of the general lack of information and knowledge regarding biological diversity and of the urgent need to develop scientific, technical and institutional capacities to provide the basic understanding upon which to plan and implement appropriate measures,

Noting that it is vital to anticipate, prevent and attack the causes of significant reduction or loss of biological diversity at source,

Noting also that where there is a threat of significant reduction or loss of biological diversity, lack of full scientific certainty should not be used as a reason for postponing measures to avoid or minimize such a threat,

Noting further that the fundamental requirement for the conservation of biological diversity is the *in-situ* conservation of ecosystems and natural

habitats and the maintenance and recovery of viable populations of species in their natural surroundings,

Noting further that *ex-situ* measures, preferably in the country of origin, also have an important role to play,

Recognizing the close and traditional dependence of many indigenous and local communities embodying traditional lifestyles on biological resources, and the desirability of sharing equitably benefits arising from the use of traditional knowledge, innovations and practices relevant to the conservation of biological diversity and the sustainable use of its components,

Recognizing also the vital role that women play in the conservation and sustainable use of biological diversity and affirming the need for the full participation of women at all levels of policy-making and implementation for biological diversity conservation,

Stressing the importance of, and the need to promote, international, regional and global cooperation among States and intergovernmental organizations and the non-governmental sector for the conservation of biological diversity and the sustainable use of its components,

Acknowledging that the provision of new and additional financial resources and appropriate access to relevant technologies can be expected to make a substantial difference in the world's ability to address the loss of biological diversity,

Acknowledging further that special provision is required to meet the needs of developing countries, including the provision of new and additional financial resources and appropriate access to relevant technologies,

Noting in this regard the special conditions of the least developed countries and small island States,

Acknowledging that substantial investments are required to conserve biological diversity and that there is the expectation of a broad range of environmental, economic and social benefits from those investments,

Recognizing that economic and social development and poverty eradication are the first and overriding priorities of developing countries,

Aware that conservation and sustainable use of biological diversity is of critical importance for meeting the food, health and other needs of the growing world population, for which purpose access to and sharing of both genetic resources and technologies are essential,

Noting that, ultimately, the conservation and sustainable use of biological diversity will strengthen friendly relations among States and contribute to peace for humankind,

Desiring to enhance and complement existing international arrangements for the conservation of biological diversity and sustainable use of its components, and

Determined to conserve and sustainably use biological diversity for the benefit of present and future generations,

Have agreed as follows:

Article 1. Objectives

The objectives of this Convention, to be pursued in accordance with its relevant provisions, are the conservation of biological diversity, the sustainable use of its components and the fair and equitable sharing of the benefits arising out of the utilization of genetic resources, including by appropriate access to genetic resources and by appropriate transfer of relevant technologies, taking into account all rights over those resources and to technologies, and by appropriate funding.

Article 2. Use of Terms

For the purposes of this Convention:

"*Biological diversity*" means the variability among living organisms from all sources including, *inter alia*, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part; this includes diversity within species, between species and of ecosystems.

"*Biological resources*" includes genetic resources, organisms or parts thereof, populations, or any other biotic component of ecosystems with actual or potential use or value for humanity.

"*Biotechnology*" means any technological application that uses biological systems, living organisms, or derivatives thereof, to make or modify products or processes for specific use.

"*Country of origin of genetic resources*" means the country which possesses those genetic resources in *in-situ* conditions.

"*Country providing genetic resources*" means the country supplying genetic resources collected from *in-situ* sources, including populations of both wild and domesticated species, or taken from *ex-situ* sources, which may or may not have originated in that country.

"*Domesticated or cultivated species*" means species in which the evolutionary process has been influenced by humans to meet their needs.

"*Ecosystem*" means a dynamic complex of plant, animal and micro-organism communities and their non-living environment interacting as a functional unit.

"*Ex-situ conservation*" means the conservation of components of biological diversity outside their natural habitats.

"*Genetic material*" means any material of plant, animal, microbial or other origin containing functional units of heredity.

"*Genetic resources*" means genetic material of actual or potential value.

"*Habitat*" means the place or type of site where an organism or population naturally occurs.

"*In-situ conditions*" means conditions where genetic resources exist within ecosystems and natural habitats, and, in the case of domesticated or cultivated species, in the surroundings where they have developed their distinctive properties.

"*In-situ conservation*" means the conservation of ecosystems and natural habitats and the maintenance and recovery of viable populations of species in their natural surroundings and, in the case of domesticated or cultivated species, in the surroundings where they have developed their distinctive properties.

"*Protected area*" means a geographically defined area which is designated or regulated and managed to achieve specific conservation objectives.

"*Regional economic integration organization*" means an organization constituted by sovereign States of a given region, to which its member States have transferred competence in respect of matters governed by this Convention and which has been duly authorized, in accordance with its internal procedures, to sign, ratify, accept, approve or accede to it.

"*Sustainable use*" means the use of components of biological diversity in a way and at a rate that does not lead to the long-term decline of biological diversity, thereby maintaining its potential to meet the needs and aspirations of present and future generations.

"*Technology*" includes biotechnology.

Article 3. Principle

States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.

Article 4. Jurisdictional Scope

Subject to the rights of other States, and except as otherwise expressly provided in this Convention, the provisions of this Convention apply, in relation to each Contracting Party:

(a) In the case of components of biological diversity, in areas within the limits of its national jurisdiction; and

(b) In the case of processes and activities, regardless of where their effects occur, carried out under its jurisdiction or control, within the area of its national jurisdiction or beyond the limits of national jurisdiction.

Article 5. Cooperation

Each Contracting Party shall, as far as possible and as appropriate, cooperate with other Contracting Parties, directly or, where appropriate, through competent international organizations, in respect of areas beyond national jurisdiction and on other matters of mutual interest, for the conservation and sustainable use of biological diversity.

Article 6. General Measures for Conservation and Sustainable Use

Each Contracting Party shall, in accordance with its particular conditions and capabilities:

(a) **Develop national strategies, plans or programmes for the conservation and sustainable use of biological diversity or adapt for this purpose existing strategies, plans or programmes which shall reflect, *inter alia*, the measures set out in this Convention relevant to the Contracting Party concerned; and**

(b) Integrate, as far as possible and as appropriate, the conservation and sustainable use of biological diversity into relevant sectoral or cross-sectoral plans, programmes and policies.

Article 7. Identification and Monitoring

Each Contracting Party shall, as far as possible and as appropriate, in particular for the purposes of Articles 8 to 10:

(a) **Identify components of biological diversity important for its conservation and sustainable use having regard to the indicative list of categories set down in Annex I;**

(b) Monitor, through sampling and other techniques, the components of biological diversity identified pursuant to sub-paragraph (a) above, paying particular attention to those requiring urgent conservation measures and those which offer the greatest potential for sustainable use;

(c) Identify processes and categories of activities which have or are likely to have significant adverse impacts on the conservation and sustainable use of biological diversity, and monitor their effects through sampling and other techniques; and

(d) Maintain and organize, by any mechanism data, derived from identification and monitoring activities pursuant to subparagraphs (a), (b) and (c) above.

Article 8. In-situ Conservation

Each Contracting Party shall, as far as possible and as appropriate:

(a) Establish a system of protected areas or areas where special measures need to be taken to conserve biological diversity;

(b) Develop, where necessary, guidelines for the selection, establishment and management of protected areas or areas where special measures need to be taken to conserve biological diversity;

(c) Regulate or manage biological resources important for the conservation of biological diversity whether within or outside protected areas, with a view to ensuring their conservation and sustainable use;

(d) Promote the protection of ecosystems, natural habitats and the maintenance of viable populations of species in natural surroundings;

(e) Promote environmentally sound and sustainable development in areas adjacent to protected areas with a view to furthering protection of these areas;

(f) Rehabilitate and restore degraded ecosystems and promote the recovery of threatened species, *inter alia*, through the development and implementation of plans or other management strategies;

(g) Establish or maintain means to regulate, manage or control the risks associated with the use and release of living modified organisms resulting from biotechnology which are likely to have adverse environmental impacts that could affect the conservation and sustainable use of biological diversity, taking also into account the risks to human health;

(h) Prevent the introduction of, control or eradicate those alien species which threaten ecosystems, habitats or species;

(i) Endeavour to provide the conditions needed for compatibility between present uses and the conservation of biological diversity and the sustainable use of its components;

(j) Subject to its national legislation, respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices;

(k) Develop or maintain necessary legislation and/or other regulatory provisions for the protection of threatened species and populations;

(l) Where a significant adverse effect on biological diversity has been determined pursuant to Article 7, regulate or manage the relevant processes and categories of activities; and

(m) Cooperate in providing financial and other support for *in-situ* conservation outlined in subparagraphs (a) to (l) above, particularly to developing countries.

Article 9. Ex-situ Conservation

Each Contracting Party shall, as far as possible and as appropriate, and predominantly for the purpose of complementing *in-situ* measures:

(a) Adopt measures for the *ex-situ* conservation of components of biological diversity, preferably in the country of origin of such components;

(b) Establish and maintain facilities for *ex-situ* conservation of and research on plants, animals and micro-organisms, preferably in the country of origin of genetic resources;

(c) Adopt measures for the recovery and rehabilitation of threatened species and for their reintroduction into their natural habitats under appropriate conditions;

(d) Regulate and manage collection of biological resources from natural habitats for *ex-situ* conservation purposes so as not to threaten ecosystems and *in-situ* populations of species, except where special temporary *ex-situ* measures are required under sub-paragraph (c) above; and

(e) Cooperate in providing financial and other support for *ex-situ* conservation outlined in subparagraphs (a) to (d) above and in the establishment and maintenance of *ex-situ* conservation facilities in developing countries.

Article 10. Sustainable Use of Components of Biological Diversity

Each Contracting Party shall, as far as possible and as appropriate:

(a) Integrate consideration of the conservation and sustainable use of biological resources into national decision-making;

(b) Adopt measures relating to the use of biological resources to avoid or minimize adverse impacts on biological diversity;

(c) Protect and encourage customary use of biological resources in accordance with traditional cultural practices that are compatible with conservation or sustainable use requirements;

(d) Support local populations to develop and implement remedial action in degraded areas where biological diversity has been reduced; and

(e) Encourage cooperation between its governmental authorities and its private sector in developing methods for sustainable use of biological resources.

Article 11. Incentive Measures

Each Contracting Party shall, as far as possible and as appropriate, adopt economically and socially sound measures that act as incentives for the conservation and sustainable use of components of biological diversity.

Article 12. Research and Training

The Contracting Parties, taking into account the special needs of developing countries, shall:

(a) Establish and maintain programmes for scientific and technical education and training in measures for the identification, conservation and sustainable use of biological diversity and its components and provide support for such education and training for the specific needs of developing countries;

(b) Promote and encourage research which contributes to the conservation and sustainable use of biological diversity, particularly in developing countries, *inter alia*, in accordance with decisions of the Conference of the Parties taken in consequence of recommendations of the Subsidiary Body on Scientific, Technical and Technological Advice; and

(c) In keeping with the provisions of Articles 16, 18 and 20, promote and cooperate in the use of scientific advances in biological diversity research in developing methods for conservation and sustainable use of biological resources.

Article 13. Public Education and Awareness

The Contracting Parties shall:

(a) Promote and encourage understanding of the importance of, and the measures required for, the conservation of biological diversity, as well as its propagation through media, and the inclusion of these topics in educational programmes; and

(b) Cooperate, as appropriate, with other States and international organizations in developing educational and public awareness programmes, with respect to conservation and sustainable use of biological diversity.

Article 14. Impact Assessment and Minimizing Adverse Impacts

1. Each Contracting Party, as far as possible and as appropriate, shall:

(a) Introduce appropriate procedures requiring environmental impact assessment of its proposed projects that are likely to have significant adverse effects on biological diversity with a view to avoiding or minimizing such effects and, where appropriate, allow for public participation in such procedures;

(b) Introduce appropriate arrangements to ensure that the environmental consequences of its programmes and policies that are likely to have significant adverse impacts on biological diversity are duly taken into account;

(c) Promote, on the basis of reciprocity, notification, exchange of information and consultation on activities under their jurisdiction or control which are likely to significantly affect adversely the biological diversity of other States or areas beyond the limits of national jurisdiction, by encouraging the conclusion of bilateral, regional or multilateral arrangements, as appropriate;

(d) In the case of imminent or grave danger or damage, originating under its jurisdiction or control, to biological diversity within the area under jurisdiction of other States or in areas beyond the limits of national jurisdiction, notify immediately the potentially affected States of such danger or damage, as well as initiate action to prevent or minimize such danger or damage; and

(e) Promote national arrangements for emergency responses to activities or events, whether caused naturally or otherwise, which present a grave and imminent danger to biological diversity and encourage international cooperation to supplement such national efforts and, where appropriate and agreed by the States or regional economic integration organizations concerned, to establish joint contingency plans.

2. The Conference of the Parties shall examine, on the basis of studies to be carried out, the issue of liability and redress, including restoration and

compensation, for damage to biological diversity, except where such liability is a purely internal matter.

Article 15. Access to Genetic Resources

1. Recognizing the sovereign rights of States over their natural resources, the authority to determine access to genetic resources rests with the national governments and is subject to national legislation.
2. Each Contracting Party shall endeavour to create conditions to facilitate access to genetic resources for environmentally sound uses by other Contracting Parties and not to impose restrictions that run counter to the objectives of this Convention.
3. For the purpose of this Convention, the genetic resources being provided by a Contracting Party, as referred to in this Article and Articles 16 and 19, are only those that are provided by Contracting Parties that are countries of origin of such resources or by the Parties that have acquired the genetic resources in accordance with this Convention.
4. Access, where granted, shall be on mutually agreed terms and subject to the provisions of this Article.
5. Access to genetic resources shall be subject to prior informed consent of the Contracting Party providing such resources, unless otherwise determined by that Party.
6. Each Contracting Party shall endeavour to develop and carry out scientific research based on genetic resources provided by other Contracting Parties with the full participation of, and where possible in, such Contracting Parties.
7. Each Contracting Party shall take legislative, administrative or policy measures, as appropriate, and in accordance with Articles 16 and 19 and, where necessary, through the financial mechanism established by Articles 20 and 21 with the aim of sharing in a fair and equitable way the results of research and development and the benefits arising from the commercial and other utilization of genetic resources with the Contracting Party providing such resources. Such sharing shall be upon mutually agreed terms.

Article 16. Access to and Transfer of Technology

1. Each Contracting Party, recognizing that technology includes biotechnology, and that both access to and transfer of technology among Contracting Parties are essential elements for the attainment of the objectives of this Convention, undertakes subject to the provisions of this Article to provide and/or facilitate access for and transfer to other Contracting Parties of technologies that are relevant to the conservation and sustainable use of biological diversity or make use of genetic resources and do not cause significant damage to the environment.

2. Access to and transfer of technology referred to in paragraph 1 above to developing countries shall be provided and/or facilitated under fair and most favourable terms, including on concessional and preferential terms where mutually agreed, and, where necessary, in accordance with the financial mechanism established by Articles 20 and 21. In the case of technology subject to patents and other intellectual property rights, such

access and transfer shall be provided on terms which recognize and are consistent with the adequate and effective protection of intellectual property rights. The application of this paragraph shall be consistent with paragraphs 3, 4 and 5 below.

3. Each Contracting Party shall take legislative, administrative or policy measures, as appropriate, with the aim that Contracting Parties, in particular those that are developing countries, which provide genetic resources are provided access to and transfer of technology which makes use of those resources, on mutually agreed terms, including technology protected by patents and other intellectual property rights, where necessary, through the provisions of Articles 20 and 21 and in accordance with international law and consistent with paragraphs 4 and 5 below.

4. Each Contracting Party shall take legislative, administrative or policy measures, as appropriate, with the aim that the private sector facilitates access to, joint development and transfer of technology referred to in paragraph 1 above for the benefit of both governmental institutions and the private sector of developing countries and in this regard shall abide by the obligations included in paragraphs 1, 2 and 3 above.

5. The Contracting Parties, recognizing that patents and other intellectual property rights may have an influence on the implementation of this Convention, shall cooperate in this regard subject to national legislation and international law in order to ensure that such rights are supportive of and do not run counter to its objectives.

Article 17. Exchange of Information

1. The Contracting Parties shall facilitate the exchange of information, from all publicly available sources, relevant to the conservation and sustainable use of biological diversity, taking into account the special needs of developing countries.

2. Such exchange of information shall include exchange of results of technical, scientific and socio-economic research, as well as information on training and surveying programmes, specialized knowledge, indigenous and traditional knowledge as such and in combination with the technologies referred to in Article 16, paragraph 1. It shall also, where feasible, include repatriation of information.

Article 18. Technical and Scientific Cooperation

1. The Contracting Parties shall promote international technical and scientific cooperation in the field of conservation and sustainable use of biological diversity, where necessary, through the appropriate international and national institutions.
2. Each Contracting Party shall promote technical and scientific cooperation with other Contracting Parties, in particular developing countries, in implementing this Convention, *inter alia*, through the development and implementation of national policies. In promoting such cooperation, special attention should be given to the development and strengthening of national capabilities, by means of human resources development and institution building.
3. The Conference of the Parties, at its first meeting, shall determine how to establish a clearing-house mechanism to promote and facilitate technical and scientific cooperation.
4. The Contracting Parties shall, in accordance with national legislation and policies, encourage and develop methods of cooperation for the development and use of technologies, including indigenous and traditional technologies, in pursuance of the objectives of this Convention. For this purpose, the Contracting Parties shall also promote cooperation in the training of personnel and exchange of experts.
5. The Contracting Parties shall, subject to mutual agreement, promote the establishment of joint research programmes and joint ventures for the development of technologies relevant to the objectives of this Convention.

Article 19. Handling of Biotechnology and Distribution of its Benefits

1. Each Contracting Party shall take legislative, administrative or policy measures, as appropriate, to provide for the effective participation in biotechnological research activities by those Contracting Parties, especially developing countries, which provide the genetic resources for such research, and where feasible in such Contracting Parties.
2. Each Contracting Party shall take all practicable measures to promote and advance priority access on a fair and equitable basis by Contracting Parties, especially developing countries, to the results and benefits arising from biotechnologies based upon genetic resources provided by those Contracting Parties. Such access shall be on mutually agreed terms.
3. The Parties shall consider the need for and modalities of a protocol setting out appropriate procedures, including, in particular, advance informed agreement, in the field of the safe transfer, handling and use of any living modified organism resulting from biotechnology that may have adverse effect on the conservation and sustainable use of biological diversity.

4. Each Contracting Party shall, directly or by requiring any natural or legal person under its jurisdiction providing the organisms referred to in paragraph 3 above, provide any available information about the use and safety regulations required by that Contracting Party in handling such organisms, as well as any available information on the potential adverse impact of the specific organisms concerned to the Contracting Party into which those organisms are to be introduced.

3.2.1.2. CHAPTER ON BIOLOGICAL DIVERSITY (AGENDA 21) BIODIVERSITY SECTION OF AGENDA 21

This Chapter on Biological Diversity was globally adopted at the Earth Summit in June of 1992. (See Chapter 4. section 4.2.1.). Agenda 21 was adopted as an action plan to assist states in fulfilling obligations.

Basis for action

15.3. Despite mounting efforts over the past 20 years, the loss of the world's biological diversity, mainly from habitat destruction, over-harvesting, pollution and the inappropriate introduction of foreign plants and animals, has continued. Biological resources constitute a capital asset with great potential for yielding sustainable benefits. Urgent and decisive action is needed to conserve and maintain genes, species and ecosystems(c)

Undertake country studies or use other methods to identify components of biological diversity important for its conservation and for the sustainable use of biological resources, ascribe values to biological and genetic resources, identify processes and activities with significant impacts upon biological diversity, evaluate the potential economic implications of the conservation of biological diversity and the sustainable use of biological and genetic resources, and suggest priority action;

15.5. At the same time, it is particularly important in this context to stress that States have the sovereign right to exploit their own biological resources pursuant to their environmental policies, as well as the responsibility to conserve their biodiversity and use their biological resources sustainably, and to ensure that activities within their jurisdiction or control do not cause damage to the biological diversity of other States or of areas beyond the l

15.5. (g) Take action where necessary for the conservation of biological diversity through the in-situ conservation of ecosystems and natural habitats, as well as primitive cultivars and their wild relatives, and the maintenance and recovery of viable populations of species in their natural surroundings, and implement ex situ measures, preferably in the source country. In situ measures should include the reinforcement of terrestrial, marine and aquatic protected area systems and embrace,

inter alia, vulnerable freshwater and other wetlands and coastal ecosystems, such as estuaries, coral reefs and mangroves; 5/

15.5.(i) Develop policies to encourage the conservation of biodiversity and the sustainable use of biological and genetic resources on private lands;

(j) Promote environmentally sound and sustainable development in areas adjacent to protected areas with a view to furthering protection of these areas;

(k) Introduce appropriate environmental impact assessment procedures for proposed projects likely to have significant impacts upon biological diversity, providing for suitable information to be made widely available and for public participation, where appropriate, and encourage the assessment of the impacts of relevant policies and programmes on biological diversity;

(l) Promote, where appropriate, the establishment and strengthening of national inventory, regulation or management and control systems related to biological resources, at the appropriate level;

(m) Take measures to encourage a greater understanding and appreciation of the value of biological diversity, as manifested both in its component parts and in the ecosystem services provided.

3.2.1.3. POSSIBLE APPLICABILITY OF CONVENTION ON BIOLOGICAL DIVERSITY TO BUILDING OF THE ISLAND HIGHWAY: REPORT CARD

PRELIMINARY B.C. Government Report Card:

Compliance with international obligations: prepared by the International Law and Obligations Institute (ILOI) for circulation. The ILOI is preparing a series of reports related to different international obligations;

The B.C. government has initiated a series of processes which have been purported to bring about compliance with international obligations. However, while deliberation proceeds under these processes, activities which are in violation of international obligations, also proceeds. International obligations are either not being fulfilled, or if fulfilled, only minimally. This is a report card which evaluates the B.C. government's compliance with its international obligations under the Convention on Biological Diversity which was signed (June 13, 1992) and ratified (December 4, 1992) by Canada, and which is now in force (December, 29, 1992).

Report card: on B.C. compliance to the Convention on Biological Diversity:

1. Demonstration of the importance of Biological Diversity through actions

D

the importance of biological diversity for evolution and for maintaining life sustaining systems of the biosphere, (Preamble of the Convention on Biological Diversity)

the conservation of biological diversity is a common concern of humankind,

The B.C. government in many of its publications suggests that it 'recognizes' the importance of biodiversity, and it "affirms that Biological diversity is a common concern of humankind." Yet, through the government's continued condoning of ecologically unsound practices, currently and in the proposed "Forest Practice Code," the government has not demonstrated its commitment to the importance of biodiversity.

2. Invoking of "the precautionary principle"

F

...where there is a threat of significant reduction or loss of biological diversity, lack of full scientific certainty should not be used as a reason for postponing measures to avoid or minimize such a threat (Convention on Biological Diversity, Preamble)

The B.C. government does not have to wait until there is "scientific certainty" that clear-cut logging and other ecologically unsound practices" contribute to the reduction and loss of biodiversity." In this province the government should have acted to "avoid and minimize such a threat" by banning clear-cut logging.

3. Application of the "environmental impact assessment" principle

Environmental Impact Assessment of projects that are likely to have significant adverse effects on Biological Diversity.
(Convention on Biological Diversity Article 14a)

The B.C. government has failed to carry out an environmental impact assessment of projects such as "timber extraction" licensing, which undoubtedly are likely to have significant adverse effect on biological diversity. In the Biodiversity Chapter of Agenda 21, the global community recognized "the loss of the world biological diversity, mainly from habitat destruction, over-harvesting, pollution."

4. Identification of processes and categories of significant adverse impacts

F

Identify processes and categories of activities which have or are likely to have significant adverse impacts on the conservation and sustainable use of biological diversity ... (7 c)

B.C. government has failed to carry out independent arm's length research to identify processes that could have significant adverse impacts on conservation. The provincial government has undertaken a massive highways project without concern for the project's impacts on biodiversity. If the processes had been identified, it is unlikely that clear-cut logging, the Alcan Completion Project, or the highways project would have been approved.

5. Sufficiently identification of components of biodiversity

F

Identify components of biological diversity important for its conservation and sustainable use 7 (a)

The B.C. government failed, prior to signing the Convention on Biological Diversity, to sufficiently identify components of biological diversity, and in the interim between the signing and coming into force has permitted projects such as timber extraction to occur in areas of potentially significant biological diversity

6. Convention expressible in B.C. legislation

F

The Convention on Biological Diversity is a legally binding document but B.C.'s Courts do not recognize the Convention as being legally binding. When the Convention was referred to in court, the judge ruled in relation to the Convention of Biological Diversity that "International law not expressed in Canadian law is irrelevant in this inquiry" (Judge Drake in decision handed down, September 17, 1993, in Russow and Kleiman vs. MacMillan Bloedel)

7. Provision of basic understanding of and information about Biodiversity

C

Aware of the general lack of information and knowledge regarding biological diversity and of the urgent need to develop scientific, technical and institutional capacities to provide the basic understanding upon which to plan and implement appropriate measures,

for setting up scientific panel on biodiversity (in Clayoquot) A
 for limiting scientific panel to single regionD
 for continuing to permit the loss of biodiversity before it has been identified and studied F

8. Adherence to the objective of the Convention: "the conservation of biological diversity" (Article 1) F

The B.C. government, by deciding to restrict preservation to 12%, has adopted an arbitrary figure not related to the protection of biodiversity. The Biodiversity Convention does not adopt the 12% solution that, if advocated at all by the Brundtland report, was proposed not as the maximum but as the minimum. By adopting this arbitrary percentage, the B.C. government allows industrial activities into areas of high biological diversity. The government by adopting this fixed percentage has given industry the opportunity when industry participates in the "multisectoral approach" to block consensus by veering conservation away from rich areas of both biodiversity and resource demand.

[The IUCN, (The World Conservation of Nature) which initially introduced the linking of percentages with conservation in 1982, in their 1994 Annual General meeting, made a recommendation to not link conservation with percentages because governments have been using this percentage as a minimum.]

9. Establishment of a system of protected areas D

Establish a system of protected areas or areas where special measures need to be taken to conserve biological diversity; (8a)

to protect ecosystems (8d) D
 to promote the protection of natural habitats (8d) D
 to promote the maintenance of viable populations (8d) D

Although the B.C. government has set up the Protected Areas Strategy, this "strategy" fails to include significant areas of old growth temperate rain forests on crown land, and does not include privately managed forest lands. The government has failed to preserve significant moderately intact ecosystems such as Clayoquot Sound. By not including privately managed forest land, particularly on the Islands, the B.C. government presumes that "protecting

ecosystems", "natural habitats" and "viable populations" is necessary only on Crown Lands, and that biodiversity recognizes proprietary boundaries.

10. Anticipation, prevention and attack of the causes of significant reduction or loss of biological diversity **D**

The B.C. government is currently proposing a Forest Practice Code, most of which deals with the monitoring and regulating of ecologically unsound practices (including clearcutting, modified broadcast burns, application of pesticides, and planting of tree farms). Continuation of these ecologically unsound practices will contribute to the loss of significant areas of high biodiversity. The B.C. government could have adopted alternative methods of logging, while moving away from old growth to second growth as was recommended by the Caracas Congress).

11. Action for the benefit of future generations **D**

Determined to conserve and sustainably use biological diversity for the benefit of present and future generations, (Preamble Convention on Biological Diversity)

The B.C. government has sought advice from the youth about intergenerational equity, and has included youth in its interest-based decision-making processes. However, the decision-making processes, which included the youth, are interest-based rather than principle-based, and thus the actions required for benefit of future generations is presented as an interest rather than as a fundamental principle. The principle of intergenerational equity can be demonstrated to have existed in a wide range of international documents since at least 1972; this principle because of its range and longevity could be described as a principle of international customary law.

12. Promotion of environmentally sound and sustainable development **D**

environmentally sound and sustainable development in areas adjacent to protected areas with a view to furthering protection of these areas; (8e)

In the Carmanah Valley, the B.C. government has protected the lower part of the valley as a park. The government has permitted logging of the upper part which jeopardizes the protection of the lower park. This decision was acclaimed by the former government as being a balanced solution. In this type of balance between two competing interests, the biodiversity particularly in the creek running through the valley could be lost or reduced.

13. Rehabilitation and restoration of degraded ecosystems and promotion of the recovery of threatened species **D**

to rehabilitate and restore degraded ecosystems and promote the recovery of threatened species, *inter alia*, through the

development and implementation of plans or other management strategies; 8f

The B.C. government by encouraging restoration of degraded ecosystems - particularly of salmon-bearing streams destroyed by logging - will assist in improving biodiversity. However, the government also endorses restoration through its "tree farm" system. The whole cycle of clearcutting, replanting, application of pesticides, and spacing does not really restore degraded ecosystems if an ecologically abundant system is replaced by a more sterile landscape.

through other means restoration work promising	C
through permitting ecologically unsound practices	F
through tree farm "restoration"	F

14. Development or maintenance of necessary legislation and/or other regulatory provisions for the protection of threatened species and populations 8k **F**

The B.C. government does not yet have an Act to protect threatened species

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. UN CONVENTION OF PROTECTION OF THE WORLD CULTURAL AND NATURAL HERITAGE

1. Degree of its duty to international community to protect world natural heritage **C**

"Considering that in view of the magnitude and gravity of the new dangers threatening them, it is incumbent on the international community as a whole to participate in the protection of the cultural and natural heritage of outstanding universal value... (Convention for the Protection of the World cultural and Natural Heritage, preamble, 1972)

The B.C. government fulfilled part of its duty to the international community by protecting the Tatshenshini (and the Khutsematine). and by proposing that the Tatshenshini be recognized as an international World Heritage Site.

The B.C. government has failed, however, to designate a network of old growth temperate rainforests and connecting conservation corridors as being of enough "outstanding universal value" to be designated as a World Heritage Site. The B.C. government failed to protect a large network of old growth temperate rainforests and connection corridors, and to nominate this network as a World heritage site under the Convention for the Protection of World Cultural and Natural Heritage. By

the end of October 1993, States were required to submit a list of proposals to the World Heritage Committee for future possible sites of protection. The B.C. government has also failed to place even a proposal for this old growth temperate rainforest network in the future

This network of old growth temperate rainforests and connection conservation corridors. fulfills the natural heritage criteria (ii), (iii) and (iv) of the criteria for inclusion in the World Heritage list.

(ii) be outstanding examples representing significant ongoing geological processes... biological evolution and man [human] interaction with his [its] natural environment; as distinct from the periods of the Earth's development, this focuses upon ongoing processes in the development of communities of plants and animals, landforms and marine areas and fresh water bodies;

(iii) contain superlative natural phenomena formations or features for ... outstanding examples of the most important ecosystems, areas of exceptional natural beauty or exceptional combinations of natural and cultural elements;

(iv) containing the most important and significant natural habitats where threatened species of animals or plants of outstanding universal value form the point of view of science or conservation still survive

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GIVEN THAT:

- Canada signed the Convention on Biological Diversity in June 1992, and ratified the Convention in December, 1992
- The usual protocol in Canada, as stated in External Affairs Communiqué (1982), is to ensure that prior to signing a Convention or Treaty, the necessary legislation has been enacted in the Provinces,
- Under the Convention the parties are required "to identify biodiversity"
- British Columbia had not sufficiently identified biodiversity at the time of signing the Convention, and given that British Columbia has continued to permit practices that contribute to the loss of biodiversity
- Canada under Article 18 of the Vienna Convention of Treaties, has undertaken to not, in the interim between the signing of the treaty and the coming into force of the treaty, do anything to jeopardize the fulfillment of obligations under the treaty once it is in force,
- The Convention on Biological Diversity is in force as of December 29, 1993

The (ILOI) will communicate to the UN that the Government of B.C. has failed to fulfill its obligations under the Convention on Biological Diversity because the government failed to identify biodiversity prior to the signing of the Convention, and it continues to permit timber extraction in areas of significant biodiversity.

1. BANNING OF CLEARCUT LOGGING

GIVEN THAT:

- Part of the mandate of the BCEN International Affairs Caucus is to monitor Canada's compliance to international obligations;
- Canada has undertaken international obligations related to biodiversity; and
- 'Biodiversity is defined in the Convention as

the variability among living organisms from all sources...and the ecological complexes of which they are part; this includes diversity within species, between species and of ecosystems."
- 'Ecosystem' is defined as

a dynamic complex of plant, animal and micro-organism communities and their non-living environment interacting as a functional unit.
- There is sufficient evidence that clear-cut logging destroys biodiversity as defined above,

- The practice of clear-cut logging destroys the prospect of forest regeneration and promotes erosion and permanent loss of forest and habitat
- It is now clear that Biological organisms will be severely stressed by high levels of Ultraviolet radiation. radiation reaching earth because of a severely depleted ozone layer. to remove the forest canopy is to condemn these organisms to death

2. MOVING AWAY FROM LOGGING OLD GROWTH

GIVEN THAT:

- Canada and specifically both the B.C. Minister of Environment Lands and Parks and the Ministry of Forests have endorsed the principles enunciated in the Caracas Declaration, and
- The Caracas Congress called for the moving away from the logging of old growth to second growth;

The ILOI calls upon the Governments of B.C. to fulfill international obligations:

- (1) By moving away from logging old growth temperate rainforests to second growth on Crown Lands and privately owned lands
- (2) By ensuring that timber resource extraction from wild or old growth forests be curtailed when cumulative fragmentation and plantations management has impacted on biodiversity (including those in privately-owned forest management lands)
- (3) By requiring that only Eco forestry management practices shall be used, and that the onus of proof shall be on the proponent of resource extraction to demonstrate that resource extraction will not have a negative impact on the Biodiversity of the ecosystem in these areas.

4. PRESERVATION AND DESIGNATION OF WORLD HERITAGE SITE

GIVEN THAT:

- Canada has undertaken, under the Caracas Declaration, to take urgent action to consolidate and enlarge national systems of well managed protected areas with buffer zones and corridors.
- Canada has undertaken under the Convention on Biological Diversity to preserve biodiversity through in situ protection.
- Given that Canada under the Convention for the Preservation of Cultural and Natural Heritage recognized in 1972:

that in the view of the magnitude and gravity of the new dangers threatening them, it is incumbent on the international community as a whole to participate in the protection of the cultural and natural heritage of outstanding universal value

5. REVISION OF FOREST PRACTICES CODE IN THE LIGHT OF CONVENTIONS

GIVEN THAT:

- Most of the proposed B.C. Forest Practices Code deals with various means of monitoring and regulating ecologically unsound timber extraction practices, and
- If B.C. were to more fully comply with international obligations by banning clear-cut logging, by moving away from timber extraction in old growth temperate rain forests, and by only logging in other old growth forests if it can be demonstrated that logging will not reduce biodiversity; through the adoption of eco-forestry principles in resource extraction on second growth forests on crown and private lands, then a completely different forest practice code would have to be in place.

The (ILO) calls upon the government of B.C. to revise the proposed Forest Practices Code in the light of government obligations to preserve and protect biodiversity

3.2.1.4. TEST OF APPLICABILITY OF THE CONVENTION ON BIOLOGICAL DIVERSITY

FOR IMMEDIATE RELEASE: DECEMBER 7, 1994. To Biodiversity Conference of the Parties, Bahamas.

PRINCIPLES IN BIODIVERSITY CONVENTION “NOT PERTINENT OR APPLICABLE” “WITHIN THE JUDICIAL CAPACITY AND FUNCTION OF THE COURTS OF THIS PROVINCE.” DECISION IN THE APPEAL COURT OF BRITISH COLUMBIA, CANADA

ASTOUNDING ADMISSION BY COURTS IN BRITISH COLUMBIA (CANADA) OF THE INAPPLICABILITY OF INTERNATIONAL LAW IN PROVINCIAL COURTS.

In September 1993, there was an application to set aside the Clayoquot Injunction in B.C. Canada, on the grounds that there was a failure to inform the trial judge that the granting of the injunction could contravene Canada's international obligations such as the Biodiversity Convention. Mr. Justice Drake held that “international law not expressed in Canadian law is irrelevant in this inquiry.” Leave to appeal this decision was sought on October 25 before Mr. Justice Carothers.

On December 7, 1994, Mr. Justice Carothers held the following:

“this applicant suggested that, in the application, before Mr. Justice Drake, for rescission of Mr. Justice Hall's order (the injunction) Mr. Justice Drake erred in his assessment of international law, particularly in relation to biodiversity and climate change issues as affected by current forest industry practices.

The lengthy submission reflects the large assemblage of material contained in the applicants' leave book, which cannot be summarized. I have taken the time to read and consider substantially all of it. I have not been shown and I have been quite unable to discern or identify any pertinent or applicable principle of international law, whether developed by custom and usage, treaty or convention, or legislative or judicial determination, which falls within the judicial capacity and function of the courts of this province.” (Court of Appeal for British Columbia, case VI 01984 December 6, 1994)

It should be noted that the principles referred to in the submission were drawn from the “Convention of Law of Treaties”, the UN Convention for the Protection of Cultural and Natural Heritage, The Biodiversity Convention, the Framework Convention on Climate Change, (all treaties signed and ratified by Canada), as well as Agenda 21—the globally adopted action plan from UNCED.

The implications of this decision are far reaching because Canada signs and ratifies international agreements in areas over which provinces claim jurisdiction. Canada, as a federal state, claims that Biodiversity comes under section 92 of the Constitution and thus under provincial jurisdiction. Yet, the

provincial judiciary holds that the principles contained in these agreements are not “within the Judicial capacity and function of the courts of this province.”

3.2.2. United Nations Framework Convention on Climate Change (signed June, 1992, ratified December, 1992, in force, March 1994

The burning of fossil fuels releases large quantities carbon dioxide— a greenhouse gas— into the atmosphere. Such gases are expected to cause major changes in global climate.

The Parties to this Convention,

Acknowledging that change in the Earth's climate and its adverse effects are a common concern of humankind,

Concerned that human activities have been substantially increasing the atmospheric concentrations of greenhouse gases, that these increases enhance the natural greenhouse effect, and that this will result on average in an additional warming of the Earth's surface and atmosphere and may adversely affect natural ecosystems and humankind,

Noting that the largest share of historical and current global emissions of greenhouse gases has originated in developed countries, that per capita emissions in developing countries are still relatively low and that the share of global emissions originating in developing countries will grow to meet their social and development needs,

Aware of the role and importance in terrestrial and marine ecosystems of sinks and reservoirs of greenhouse gases,

Noting that there are many uncertainties in predictions of climate change, particularly with regard to the timing, magnitude and regional patterns thereof,

Acknowledging that the global nature of climate change calls for the widest possible cooperation by all countries and their participation in an effective and appropriate international response, in accordance with their common but differentiated responsibilities and respective capabilities and their social and economic conditions,

Recalling the pertinent provisions of the Declaration of the United Nations Conference on the Human Environment, adopted at Stockholm on 16 June 1972,

Recalling also that States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental and developmental policies, and the responsibility to ensure that activities within

their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction,

Reaffirming the principle of sovereignty of States in international cooperation to address climate change,

Recognizing that States should enact effective environmental legislation, that environmental standards, management objectives and priorities should reflect the environmental and developmental context to which they apply, and that standards applied by some countries may be inappropriate and of unwarranted economic and social cost to other countries, in particular developing countries,

Recalling the provisions of General Assembly resolution 44/228 of 22 December 1989 on the United Nations Conference on Environment and Development, and resolutions 43/53 of 6 December 1988, 44/207 of 22 December 1989, 45/212 of 21 December 1990 and 46/169 of 19 December 1991 on protection of global climate for present and future generations of mankind,

Recalling also the provisions of General Assembly resolution 44/206 of 22 December 1989 on the possible adverse effects of sea level rise on islands and coastal areas, particularly low-lying coastal areas and the pertinent provisions of General Assembly resolution 44/172 of 19 December 1989 on the implementation of the Plan of Action to Combat Desertification,

Recalling further the Vienna Convention for the Protection of the Ozone Layer, 1985, and the Montreal Protocol on Substances that Deplete the Ozone Layer, 1987, as adjusted and amended on 29 June 1990,

Noting the Ministerial Declaration of the Second World Climate Conference adopted on 7 November 1990,

Conscious of the valuable analytical work being conducted by many States on climate change and of the important contributions of the World Meteorological Organization, the United Nations Environment Programme and other organs, organizations and bodies of the United Nations system, as well as other international and intergovernmental bodies, to the exchange of results of scientific research and the coordination of research,

Changes in global climate could bring increased drought to the southern prairie provinces. (Environment Canada)

Recognizing that steps required to understand and address climate change will be environmentally, socially and economically most effective if they are based on relevant scientific, technical and economic considerations and continually re-evaluated in the light of new findings in these areas,

Recognizing that various actions to address climate change can be justified economically in their own right and can also help in solving other environmental problems,

Recognizing also the need for developed countries to take immediate action in a flexible manner on the basis of clear priorities, as a first step towards comprehensive response strategies at the global, national and, where agreed, regional levels that take into account all greenhouse gases, with due consideration of their relative contributions to the enhancement of the greenhouse effect,

Recognizing further that low-lying and other small island countries, countries with low-lying coastal, arid and semi-arid areas or areas liable to floods, drought and desertification, and developing countries with fragile mountainous ecosystems are particularly vulnerable to the adverse effects of climate change,

Recognizing the special difficulties of those countries, especially developing countries, whose economies are particularly dependent on fossil fuel production, use and exportation, as a consequence of action taken on limiting greenhouse gas emissions,

Affirming that responses to climate change should be coordinated with social and economic development in an integrated manner with a view to avoiding adverse impacts on the latter, taking into full account the legitimate priority needs of developing countries for the achievement of sustained economic growth and the eradication of poverty,

Recognizing that all countries, especially developing countries, need access to resources required to achieve sustainable social and economic development and that, in order for developing countries to progress towards that goal, their energy consumption will need to grow taking into account the possibilities for achieving greater energy efficiency and for controlling greenhouse gas emissions in general, including through the application of new technologies on terms which make such an application economically and socially beneficial,

Determined to protect the climate system for present and future generations,
Have agreed as follows:

ARTICLE 1

DEFINITIONS

For the purposes of this Convention:

1. "Adverse effects of climate change" means changes in the physical environment or biota resulting from climate change which have significant deleterious effects on the composition, resilience or productivity of natural and managed ecosystems or on the operation of socio-economic systems or on human health and welfare.
2. "Climate change" means a change of climate which is attributed directly or indirectly to human activity that alters the composition of the global atmosphere and which is in addition to natural climate variability observed over comparable time periods.
3. "Climate system" means the totality of the atmosphere, hydrosphere, biosphere and geosphere and their interactions.
4. "Emissions" means the release of greenhouse gases and/or their precursors into the atmosphere over a specified area and period of time.
5. "Greenhouse gases" means those gaseous constituents of the atmosphere, both natural and anthropogenic, that absorb and re-emit infrared radiation.
6. "Regional economic integration organization" means an organization constituted by sovereign States of a given region which has competence in respect of matters governed by this Convention or its protocols and has been duly authorized, in accordance with its internal procedures, to sign, ratify, accept, approve or accede to the instruments concerned.

* Titles of articles are included solely to assist the reader.

7. "Reservoir" means a component or components of the climate system where a greenhouse gas or a precursor of a greenhouse gas is stored.
8. "Sink" means any process, activity or mechanism which removes a greenhouse gas, an aerosol or a precursor of a greenhouse gas from the atmosphere.
9. "Source" means any process or activity which releases a greenhouse gas, an aerosol or a precursor of a greenhouse gas into the atmosphere.

ARTICLE 2

OBJECTIVE

The ultimate objective of this Convention and any related legal instruments that the Conference of the Parties may adopt is to achieve, in accordance with the relevant provisions of the Convention, stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system. Such a level should be achieved within a time frame sufficient to allow ecosystems to adapt naturally to climate change, to ensure that food production is not

threatened and to enable economic development to proceed in a sustainable manner.

ARTICLE 3 PRINCIPLES

In their actions to achieve the objective of the Convention and to implement its provisions, the Parties shall be guided, inter alia, by the following:

1. The Parties should protect the climate system for the benefit of present and future generations of humankind, on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities. Accordingly, the developed country Parties should take the lead in combating climate change and the adverse effects thereof.
2. The specific needs and special circumstances of developing country Parties, especially those that are particularly vulnerable to the adverse effects of climate change, and of those Parties, especially developing country Parties, that would have to bear a disproportionate or abnormal burden under the Convention, should be given full consideration
3. The Parties should take precautionary measures to anticipate, prevent or minimize the causes of climate change and mitigate its adverse effects. Where there are threats of serious or irreversible damage, lack of full scientific certainty should not be used as a reason for postponing such measures, taking into account that policies and measures to deal with climate change should be cost-effective so as to ensure global benefits at the lowest possible cost. To achieve this, such policies and measures should take into account different socio-economic contexts, be comprehensive, cover all relevant sources, sinks and reservoirs of greenhouse gases and adaptation, and comprise all economic sectors. Efforts to address climate change may be carried out cooperatively by interested Parties.
4. The Parties have a right to, and should, promote sustainable development. Policies and measures to protect the climate system against human-induced change should be appropriate for the specific conditions of each Party and should be integrated with national development programmes, taking into account that economic development is essential for adopting measures to address climate change.
5. The Parties should cooperate to promote a supportive and open international economic system that would lead to sustainable economic growth and development in all Parties, particularly developing country Parties, thus enabling them better to address the problems of climate change. Measures taken to combat climate change, including unilateral ones, should not constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade.

ARTICLE 4 COMMITMENTS

1. All Parties, taking into account their common but differentiated responsibilities and their specific national and regional development priorities, objectives and circumstances, shall:

- (a) Develop, periodically update, publish and make available to the Conference of the Parties, in accordance with Article 12, national inventories of anthropogenic emissions by sources and removals by sinks of all greenhouse gases not controlled by the Montreal Protocol, using comparable methodologies to be agreed upon by the Conference of the Parties;
- (b) Formulate, implement, publish and regularly update national and, where appropriate, regional programmes containing measures to mitigate climate change by addressing anthropogenic emissions by sources and removals by sinks of all greenhouse gases not controlled by the Montreal Protocol, and measures to facilitate adequate adaptation to climate change;
- (c) Promote and cooperate in the development, application and diffusion, including transfer, of technologies, practices and processes that control, reduce or prevent anthropogenic emissions of greenhouse gases not controlled by the Montreal Protocol in all relevant sectors, including the energy, transport, industry, agriculture, forestry and waste management sectors;
- (d) Promote sustainable management, and promote and cooperate in the conservation and enhancement, as appropriate, of sinks and reservoirs of all greenhouse gases not controlled by the Montreal Protocol, including biomass, forests and oceans as well as other terrestrial, coastal and marine ecosystems;
- (e) Cooperate in preparing for adaptation to the impacts of climate change; develop and elaborate appropriate and integrate plans for coastal zone management, water resources and agriculture, and for the protection and rehabilitation of areas, particularly in Africa, affected by drought and desertification, as well as floods;
- (f) Take climate change considerations into account, to the extent feasible, in their relevant social, economic and environmental policies and actions, and employ appropriate methods, for example impact assessments, formulated and determined nationally, with a view to minimizing adverse effects on the economy, on public health and on the quality of the environment, of projects or measures undertaken by them to mitigate or adapt to climate change;
- (g) Promote and cooperate in scientific, technological, technical, socio-economic and other research, systematic observation and development of data archives related to the climate system and intended to further the understanding and to reduce or eliminate the remaining uncertainties regarding the causes, effects, magnitude and timing of climate change and the economic and social consequences of various response strategies;
- (h) Promote and cooperate in the full, open and prompt exchange of relevant scientific, technological, technical, socio-economic and legal information related to the climate system and climate change, and to the economic and social consequences of various response strategies;
- (i) Promote and cooperate in education, training and public awareness related to climate change and encourage the widest

- participation in this process, including that of non-governmental organizations; and
- (j) Communicate to the Conference of the Parties information related to implementation, in accordance with Article 12.
2. The developed country Parties and other Parties included in annex commit themselves specifically as provided for in the following:
- (a) Each of these Parties shall adopt national policies and take corresponding measures on the mitigation of climate change, by limiting its anthropogenic emissions of greenhouse gases and protecting and enhancing its greenhouse gas sinks and reservoirs. These policies and measures will demonstrate that developed countries are taking the lead in modifying longer-term trends in anthropogenic emissions consistent with the objective of the Convention, recognizing that the return by the end of the present decade to earlier levels of anthropogenic emissions of carbon dioxide and other greenhouse gases not controlled by the Montreal Protocol would contribute to such modification, and taking into account the differences in these Parties' starting points and approaches, economic structures and resource bases, the need to maintain strong and sustainable economic growth, available technologies and other individual circumstances, as well as the need for equitable and appropriate contributions by each of these Parties to the global effort regarding that objective. These Parties may implement such policies and measures jointly with other Parties and may assist other Parties in contributing to the achievement of the objective of the Convention and, in particular, that of this sub-paragraph;
 - (b) In order to promote progress to this end, each of these Parties shall communicate, within six months of the entry into force of the Convention for it and periodically thereafter, and in accordance with Article 12, detailed information on its policies and measures referred to in sub-paragraph (a) above, as well as on its resulting projected anthropogenic emissions by sources and removals by sinks of greenhouse gases not controlled by the Montreal Protocol for the period referred to in sub-paragraph (a), with the aim of returning individually or jointly to their 1990 levels these anthropogenic emissions of carbon dioxide and other greenhouse gases not controlled by the Montreal Protocol. This information will be reviewed by the Conference of the Parties, at its first session and periodically thereafter, in accordance with
- Article 7**
- (c) Calculations of emissions by sources and removals by sinks of greenhouse gases for the purposes of sub-paragraph (b) above should take into account the best available scientific knowledge, including of the effective capacity of sinks and the

respective contributions of such gases to climate change. The Conference of the Parties shall consider and agree on methodologies for these calculations at its first session and review them regularly thereafter;

- (d) The Conference of the Parties shall, at its first session, review the adequacy of subparagraphs (a) and (b) above. Such review shall be carried out in the light of the best available scientific information and assessment on climate change and its impacts, as well as relevant technical, social and economic information. Based on this review, the Conference of the Parties shall take appropriate action, which may include the adoption of amendments to the commitments in subparagraphs (a) and (b) above. The Conference of the Parties, at its first session, shall also take decisions regarding criteria for joint implementation as indicated in sub-paragraph (a) above. A second review of subparagraphs (a) and (b) shall take place not later than 31 December 1998, and thereafter at regular intervals determined by the Conference of the Parties, until the objective of the Convention is met;
- (e) Each of these Parties shall:
 - (i) coordinate as appropriate with other such Parties, relevant economic and administrative instruments developed to achieve the objective of the Convention; and
 - (ii) identify and periodically review its own policies and practices which encourage activities that lead to greater levels of anthropogenic emissions of greenhouse gases not controlled by the Montreal Protocol than would otherwise occur;
- (f) The Conference of the Parties shall review, not later than 31 December 1998, available information with a view to taking decisions regarding such amendments to the lists in annexes I and II as may be appropriate, with the approval of the Party concerned;
- (g) Any Party not included in annex I may, in its instrument of ratification, acceptance, approval or accession, or at any time thereafter, notify the Depository that it intends to be bound by subparagraphs (a) and (b) above. The Depository shall inform the other signatories and Parties of any such notification.

3. The developed country Parties and other developed Parties included in annex II shall provide new and additional financial resources to meet the agreed full costs incurred by developing country Parties in complying with their obligations under Article 12, paragraph 1. They shall also provide such financial resources, including for the transfer of technology, needed by the developing country Parties to meet the agreed full incremental costs of implementing measures that are covered by paragraph 1 of this Article and that are agreed between a developing country Party and the international entity or entities referred to in Article 11, in accordance with that Article. The implementation of these commitments shall take into account the need for

adequacy and predictability in the flow of funds and the importance of appropriate burden sharing among the developed country Parties.

4. The developed country Parties and other developed Parties included in annex II shall also assist the developing country Parties that are particularly vulnerable to the adverse effects of climate change in meeting costs of adaptation to those adverse effects.

5. The developed country Parties and other developed Parties included in annex II shall take all practicable steps to promote, facilitate and finance, as appropriate, the transfer of, or access to, environmentally sound technologies and know-how to other Parties, particularly developing country Parties, to enable them to implement the provisions of the Convention. In this process, the developed country Parties shall support the development and enhancement of endogenous capacities and technologies of developing country Parties. Other Parties and organizations in a position to do so may also assist in facilitating the transfer of such technologies.

6. In the implementation of their commitments under paragraph 2 above, a certain degree of flexibility shall be allowed by the Conference of the Parties to the Parties included in annex I undergoing the process of transition to a market economy, in order to enhance the ability of these Parties to address climate change, including with regard to the historical level of anthropogenic emissions of greenhouse gases not controlled by the Montreal Protocol chosen as a reference.

7. The extent to which developing country Parties will effectively implement their commitments under the Convention will depend on the effective implementation by developed country Parties of their commitments under the Convention related to financial resources and transfer of technology and will take fully into account that economic and social development and poverty eradication are the first and overriding priorities of the developing country Parties.

8. In the implementation of the commitments in this Article, the Parties shall give full consideration to what actions are necessary under the Convention, including actions related to funding, insurance and the transfer of technology, to meet the specific needs and concerns of developing country Parties arising from the adverse effects of climate change and/or the impact of the implementation of response measures, especially on:

- (a) Small island countries;
- (b) Countries with low-lying coastal areas;
- (c) Countries with arid and semi-arid areas, forested areas and areas liable to forest decay;
- (d) Countries with areas prone to natural disasters;
- (e) Countries with areas liable to drought and desertification;
- (f) Countries with areas of high urban atmospheric pollution;
- (g) Countries with areas with fragile ecosystems, including mountainous ecosystems;
- (h) Countries whose economies are highly dependent on income generated from the production, processing and export, and/or on consumption of fossil fuels and associated energy-intensive products; and
- (i) Land-locked and transit countries.

Further, the Conference of the Parties may take actions, as appropriate, with respect to this paragraph.

9. The Parties shall take full account of the specific needs and special situations of the least developed countries in their actions with regard to funding and transfer of technology.

10. The Parties shall, in accordance with Article 10, take into consideration in the implementation of the commitments of the Convention the situation of Parties, particularly developing country Parties, with economies that are vulnerable to the adverse effects of the implementation of measures to respond to climate change. This applies notably to Parties with economies that are highly dependent on income generated from the production, processing and export, and/or consumption of fossil fuels and associated energy-intensive products and/or the use of fossil fuels for which such Parties have serious difficulties in switching to alternatives.

ARTICLE 5

RESEARCH AND SYSTEMATIC OBSERVATION

In carrying out their commitments under Article 4, paragraph 1(g), the Parties shall:

- (a) Support and further develop, as appropriate, international and intergovernmental programmes and networks or organizations aimed at defining, conducting, assessing and financing research, data collection and systematic observation, taking into account the need to minimize duplication of effort;
- (b) Support international and intergovernmental efforts to strengthen systematic observation and national scientific and technical research capacities and capabilities, particularly in developing countries, and to promote access to, and the exchange of, data and analyses thereof obtained from areas beyond national jurisdiction; and
- (c) Take into account the particular concerns and needs of developing countries and cooperate in improving their endogenous capacities and capabilities to participate in the efforts referred to in subparagraphs (a) and (b) above.

ARTICLE 6

EDUCATION, TRAINING AND PUBLIC AWARENESS

In carrying out their commitments under Article 4, paragraph 1(i), the Parties shall:

- (a) Promote and facilitate at the national and, as appropriate, subregional and regional levels, and in accordance with national laws and regulations, and within their respective capacities:
 - (i) the development and implementation of educational and public awareness programmes on climate change and its effects;
 - (ii) public access to information on climate change and its effects;
 - (iii) public participation in addressing climate change and its effects and developing adequate responses; and

- (iv) training of scientific, technical and managerial personnel.
- (b) Cooperate in and promote, at the international level, and, where appropriate, using existing bodies:
 - (i) the development and exchange of educational and public awareness material on climate change and its effects; and
 - (ii) the development and implementation of education and training programmes, including the strengthening of national institutions and the exchange or secondment of personnel to train experts in this field, in particular for developing countries.

ARTICLE 7

CONFERENCE OF THE PARTIES

1. A Conference of the Parties is hereby established.
2. The Conference of the Parties, as the supreme body of this Convention, shall keep under regular review the implementation of the Convention and any related legal instruments that the Conference of the Parties may adopt, and shall make, within its mandate, the decisions necessary to promote the effective implementation of the Convention. To this end, it shall:
 - (a) Periodically examine the obligations of the Parties and the institutional arrangements under the Convention, in the light of the objective of the Convention, the experience gained in its implementation and the evolution of scientific and technological knowledge;
 - (b) Promote and facilitate the exchange of information on measures adopted by the Parties to address climate change and its effects, taking into account the differing circumstances, responsibilities and capabilities of the Parties and their respective commitments under the Convention;
 - (c) Facilitate, at the request of two or more Parties, the coordination of measures adopted by them to address climate change and its effects, taking into account the differing circumstances, responsibilities and capabilities of the Parties and their respective commitments under the Convention.
 - (d) Promote and guide, in accordance with the objective and provisions of the Convention, the development and periodic refinement of comparable methodologies, to be agreed on by the Conference of the Parties, inter alia, for preparing inventories of greenhouse gas emissions by sources and removals by sinks, and for evaluating the effectiveness of measures to limit the emissions and enhance the removals of these gases;
 - (e) Assess, on the basis of all information made available to it in accordance with the provisions of the Convention, the implementation of the Convention by the Parties, the overall effects of the measures taken pursuant to the Convention, in particular environmental, economic and social effects as well as their cumulative impacts and the extent to which progress towards the objective of the Convention is being achieved;

- (f) Consider and adopt regular reports on the implementation of the Convention and ensure their publication;
- (g) Make recommendations on any matters necessary for the implementation of the Convention;
- (h) Seek to mobilize financial resources in accordance with Article 4, paragraphs 3, 4 and 5, and Article 11;
- (i) Establish such subsidiary bodies as are deemed necessary for the implementation of the Convention;
- (j) Review reports submitted by its subsidiary bodies and provide guidance to them;
- (k) Agree upon and adopt, by consensus, rules of procedure and financial rules for itself and for any subsidiary bodies;
- (l) Seek and utilize, where appropriate, the services and cooperation of, and information provided by, competent international organizations and intergovernmental and non-governmental bodies; and
- (m) Exercise such other functions as are required for the achievement of the objective of the Convention as well as all other functions assigned to it under the Convention.

3. The Conference of the Parties shall, at its first session, adopt its own rules of procedure as well as those of the subsidiary bodies established by the Convention, which shall include decision-making procedures for matters not already covered by decision-making procedures stipulated in the Convention. Such procedures may include specified majorities required for the adoption of particular decisions.

4. The first session of the Conference of the Parties shall be convened by the interim secretariat referred to in Article 21 and shall take place not later than one year after the date of entry into force of the Convention. Thereafter, ordinary sessions of the Conference of the Parties shall be held every year unless otherwise decided by the Conference of the Parties.

5. Extraordinary sessions of the Conference of the Parties shall be held at such other times as may be deemed necessary by the Conference, or at the written request of any Party, provided that, within six months of the request being communicated to the Parties by the secretariat, it is supported by at least one-third of the Parties.

6. The United Nations, its specialized agencies and the International Atomic Energy Agency, as well as any State member thereof or observers thereto not Party to the Convention, may be represented at sessions of the Conference of the Parties as observers. Anybody or agency, whether national or international, governmental or non-governmental, which is qualified in matters covered by the Convention, and which has informed the secretariat of its wish to be represented at a session of the Conference of the Parties as an observer, may be so admitted unless at least one-third of the Parties present object. The admission and participation of observers shall be subject to the rules of procedure adopted by the Conference of the Parties.

ARTICLE 8 SECRETARIAT

1. A secretariat is hereby established.
2. The functions of the secretariat shall be:
 - (a) To make arrangements for sessions of the Conference of the Parties and its subsidiary bodies established under the Convention and to provide them with services as required;
 - (b) To compile and transmit reports submitted to it;
 - (c) To facilitate assistance to the Parties, particularly developing country Parties, on request, in the compilation and communication of information required in accordance with the provisions of the Convention;
 - (d) To prepare reports on its activities and present them to the Conference of the Parties;
 - (e) To ensure the necessary coordination with the secretariats of other relevant international bodies;
 - (f) To enter, under the overall guidance of the Conference of the Parties, into such administrative and contractual arrangements as may be required for the effective discharge of its functions; and
 - (g) To perform the other secretariat functions specified in the Convention and in any of its protocols and such other functions as may be determined by the Conference of the Parties.
3. The Conference of the Parties, at its first session, shall designate a permanent secretariat and make arrangements for its functioning.

ARTICLE 9 SUBSIDIARY BODY FOR SCIENTIFIC AND TECHNOLOGICAL ADVICE

1. A subsidiary body for scientific and technological advice is hereby established to provide the Conference of the Parties and, as appropriate, its other subsidiary bodies with timely information and advice on scientific and technological matters relating to the Convention. This body shall be open to participation by all Parties and shall be multidisciplinary. It shall comprise government representatives competent in the relevant field of expertise. It shall report regularly to the Conference of the Parties on all aspects of its work.
2. Under the guidance of the Conference of the Parties, and drawing upon existing competent international bodies, this body shall:
 - (a) Provide assessments of the state of scientific knowledge relating to climate change and its effects;
 - (b) Prepare scientific assessments on the effects of measures taken in the implementation of the Convention;
 - (c) Identify innovative, efficient and state-of-the-art technologies and know-how and advise on the ways and means of promoting development and/or transferring such technologies;
 - (d) Provide advice on scientific programmes, international cooperation in research and development related to climate change, as well as on ways and means of supporting endogenous capacity-building in developing countries; and

- (e) Respond to scientific, technological and methodological questions that the Conference of the Parties and its subsidiary bodies may put to the body.
3. The functions and terms of reference of this body may be further elaborated by the Conference of the Parties.

ARTICLE 10 SUBSIDIARY BODY FOR IMPLEMENTATION

1. A subsidiary body for implementation is hereby established to assist the Conference of the Parties in the assessment and review of the effective implementation of the Convention. This body shall be open to participation by all Parties and comprise government representatives who are experts on matters related to climate change. It shall report regularly to the Conference of the Parties on all aspects of its work.
2. Under the guidance of the Conference of the Parties, this body shall:
- (a) Consider the information communicated in accordance with Article 12, paragraph 1, to assess the overall aggregated effect of the steps taken by the Parties in the light of the latest scientific assessments concerning climate change;
 - (b) Consider the information communicated in accordance with Article 12, paragraph 2, in order to assist the Conference of the Parties in carrying out the reviews required by Article 4, paragraph 2(d); and
 - (c) Assist the Conference of the Parties, as appropriate, in the preparation and implementation of its decisions.

ARTICLE 11 FINANCIAL MECHANISM

1. A mechanism for the provision of financial resources on a grant or concessional basis, including for the transfer of technology, is hereby defined. It shall function under the guidance of and be accountable to the Conference of the Parties, which shall decide on its policies, programme priorities and eligibility criteria related to this Convention. Its operation shall be entrusted to one or more existing international entities.
2. The financial mechanism shall have an equitable and balanced representation of all Parties within a transparent system of governance.
3. The Conference of the Parties and the entity or entities entrusted with the operation of the financial mechanism shall agree upon arrangements to give effect to the above paragraphs, which shall include the following:
- (a) Modalities to ensure that the funded projects to address climate change are in conformity with the policies, programme priorities and eligibility criteria established by the Conference of the Parties;
 - (b) Modalities by which a particular funding decision may be reconsidered in light of these policies, programme priorities and eligibility criteria;
 - (c) Provision by the entity or entities of regular reports to the Conference of the Parties on its funding operations, which is consistent with the requirement for accountability set out in paragraph 1 above; and

- (d) Determination in a predictable and identifiable manner of the amount of funding necessary and available for the implementation of this Convention and the conditions under which that amount shall be periodically reviewed.
4. The Conference of the Parties shall make arrangements to implement the above-mentioned provisions at its first session, reviewing and taking into account the interim arrangements referred to in Article 21, paragraph 3, and shall decide whether these interim arrangements shall be maintained. Within four years thereafter, the Conference of the Parties shall review the financial mechanism and take appropriate measures.
5. The developed country Parties may also provide and developing country Parties avail themselves of, financial resources related to the implementation of the Convention through bilateral, regional and other multilateral channels

ARTICLE 12

COMMUNICATION OF INFORMATION RELATED TO IMPLEMENTATION

1. In accordance with Article 4, paragraph 1, each Party shall communicate to the Conference of the Parties, through the secretariat, the following elements of information:
- (a) A national inventory of anthropogenic emissions by sources and removals by sinks of all greenhouse gases not controlled by the Montreal Protocol, to the extent its capacities permit, using comparable methodologies to be promoted and agreed upon by the Conference of the Parties;
 - (b) A general description of steps taken or envisaged by the Party to implement the Convention; and
 - (c) Any other information that the Party considers relevant to the achievement of the objective of the Convention and suitable for inclusion in its communication, including, if feasible, material relevant for calculations of global emission trends.
2. Each developed country Party and each other Party included in annex I shall incorporate in its communication the following elements of information:
- (a) A detailed description of the policies and measures that it has adopted to implement its commitment under Article 4, paragraphs 2(a) and 2(b); and
 - (b) A specific estimate of the effects that the policies and measures referred to in sub-paragraph (a) immediately above will have on anthropogenic emissions by its sources and removals by its sinks of greenhouse gases during the period referred to in Article 4, paragraph 2(a).
3. In addition, each developed country Party and each other developed Party included in annex II shall incorporate details of measures taken in accordance with Article 4, paragraphs 3, 4 and 5.
4. Developing country Parties may, on a voluntary basis, propose projects for financing, including specific technologies, materials, equipment, techniques or practices that would be needed to implement such projects, along with, if possible, an estimate of all incremental costs, of the reductions of emissions and increments of removals of greenhouse gases, as well as an estimate of the consequent benefits.

5. Each developed country Party and each other Party included in annex I shall make its initial communication within six months of the entry into force of the Convention for that Party. Each Party not so listed shall make its initial communication within three years of the entry into force of the Convention for that Party, or of the availability of financial resources in accordance with Article 4, paragraph 3. Parties that are least developed countries may make their initial communication at their discretion. The frequency of subsequent communications by all Parties shall be determined by the Conference of the Parties, taking into account the differentiated timetable set by this paragraph.
6. Information communicated by Parties under this Article shall be transmitted by the secretariat as soon as possible to the Conference of the Parties and to any subsidiary bodies concerned. If necessary, the procedures for the communication of information may be further considered by the Conference of the Parties.
7. From its first session, the Conference of the Parties shall arrange for the provision to developing country Parties of technical and financial support, on request, in compiling and communicating information under this Article, as well as in identifying the technical and financial needs associated with proposed projects and response measures under Article 4. Such support may be provided by other Parties, by competent international organizations and by the secretariat, as appropriate.
8. Any group of Parties may, subject to guidelines adopted by the Conference of the Parties, and to prior notification to the Conference of the Parties, make a joint communication in fulfillment of their obligations under this Article, provided that such a communication includes information on the fulfillment by each of these Parties of its individual obligations under the Convention.
9. Information received by the secretariat that is designated by a Party as confidential, in accordance with criteria to be established by the Conference of the Parties, shall be aggregated by the secretariat to protect its confidentiality before being made available to any of the bodies involved in the communication and review of information.
10. Subject to paragraph 9 above, and without prejudice to the ability of any Party to make public its communication at any time, the secretariat shall make communications by Parties under this Article publicly available at the time they are submitted to the Conference of the Parties.

ARTICLE 13

RESOLUTION OF QUESTIONS REGARDING IMPLEMENTATION

The Conference of the Parties shall, at its first session, consider the establishment of a multilateral consultative process, available to Parties on their request, for the resolution of questions regarding the implementation of the Convention.

ARTICLE 14

SETTLEMENT OF DISPUTES

1. In the event of a dispute between any two or more Parties concerning the interpretation or application of the Convention, the Parties concerned shall seek a settlement of the dispute through negotiation or any other peaceful means of their own choice.

2. When ratifying, accepting, approving or acceding to the Convention, or at any time thereafter, a Party which is not a regional economic integration organization may declare in a written instrument submitted to the Depositary that, in respect of any dispute concerning the interpretation or application of the Convention, it recognizes as compulsory ipso facto and without special agreement, in relation to any Party accepting the same obligation:

- (a) Submission of the dispute to the International Court of Justice, and/or
- (b) Arbitration in accordance with procedures to be adopted by the Conference of the Parties as soon as practicable, in an annex on arbitration.

A Party which is a regional economic integration organization may make a declaration with like effect in relation to arbitration in accordance with the procedures referred to in sub-paragraph (b) above.

3. A declaration made under paragraph 2 above shall remain in force until it expires in accordance with its terms or until three months after written notice of its revocation has been deposited with the Depositary.

4. A new declaration, a notice of revocation or the expiry of a declaration shall not in any way affect proceedings pending before the International Court of Justice or the arbitral tribunal, unless the parties to the dispute otherwise agree.

5. Subject to the operation of paragraph 2 above, if after twelve months following notification by one Party to another that a dispute exists between them, the Parties concerned have not been able to settle their dispute through the means mentioned in paragraph 1 above, the dispute shall be submitted, at the request of any of the parties to the dispute, to conciliation.

6. A conciliation commission shall be created upon the request of one of the parties to the dispute. The commission shall be composed of an equal number of members appointed by each party concerned and a chairman chosen jointly by the members appointed by each party. The commission shall render a recommendatory award, which the parties shall consider in good faith.

7. Additional procedures relating to conciliation shall be adopted by the Conference of the Parties, as soon as practicable, in an annex on conciliation.

8. The provisions of this Article shall apply to any related legal instrument which the Conference of the Parties may adopt, unless the instrument provides otherwise.

**3.2.2.1. CLIMATE CHANGE CONVENTION
CONTENT ANALYSIS OF THE FOLLOWING DOCUMENTS, AND AN
EXAMINATION OF THE CORRESPONDENCE AND LACK OF
CORRESPONDENCE: BETWEEN RECOMMENDATIONS EMANATING
FROM THE ACADEMIC , GOVERNMENT DEPARTMENT, AND NGO
PARTICIPATION IN THE 1988, GLOBAL CHANGE CONVENTION IN
TORONTO; THE CLIMATE CHANGE CONVENTION; THE ATMOSPHERE
SECTION IN AGENDA 21, AND THE NGO ATMOSPHERE TREATY FROM
THE GLOBAL FORUM.**

Compiled by Joan Russow

Photo: retreat of the Athabasca Glacier, Alberta from 1965 to 1979 (insert.
Such melting back of glaciers may become a world-wide phenomenon if
future global warming occurs as anticipated. (Environment Canada)

LEGEND for Content analysis

Plain 12-point Recommendation from the Changing Atmosphere

Plain 12-point underlined Recommendations from the Changing Atmosphere
submitted by the NGOs

10-point Atmosphere section in Agenda 21

14 point. Climate Change Convention

Plain 10-point NGO treaty on the Atmosphere from the Global Forum: to be included

CONTENT ANALYSIS OF THE FOLLOWING DOCUMENTS, AND AN EXAMINATION OF THE CORRESPONDENCE AND LACK OF CORRESPONDENCE: BETWEEN RECOMMENDATIONS EMANATING FROM THE ACADEMIC , GOVERNMENT DEPARTMENT, AND NGO PARTICIPATION IN THE 1988, GLOBAL CHANGE CONVENTION IN TORONTO; THE CLIMATE CHANGE CONVENTION; THE ATMOSPHERE SECTION IN AGENDA 21, AND THE NGO ATMOSPHERE TREATY FROM THE GLOBAL FORUM.

URGENCY

THE CHALLENGE

- Concentrations of greenhouse gases including carbon dioxide, chlorofluorocarbons, tropospheric ozone, nitrous oxide, and methane are rising rapidly. these gases have already raised the average temperature of the earth. Rapid warming of the planet will lead to climatic instability that could disrupt precipitation and agricultural patterns, shift the location of deserts, collapse ecological systems, increase the probability and severity of droughts, hurricanes, and floods, and raise the level of the world's oceans. Some of these impacts are likely to fall on nations least able to respond to climate change. Each of these consequences could have devastating political and economic impacts. Unfortunately, past emissions of these gases have already committed us to significant climate change.
- Therefore, we believe the time has come to act to slow and then stop the anthropogenic warming of the earth. At the same time, we must set the stage for responding to climate changes that are already inevitable.
- Current rates of world-wide deforestation are about 10 times the rate of reforestation. This imbalance is particularly acute for tropical forests, which at present rates of destruction will disappear by about 2010. This imbalance compounds CO2 build-up by increasing CO2 emissions and decreasing CO2 uptake by the forests.
- Humanity is conducting an unintended, uncontrolled, globally pervasive experiment whose ultimate consequences could be second only to a global nuclear war. The Earth's atmosphere is being changed at an unprecedented rate by pollutants resulting from human activities, inefficient and wasteful. These changes represent a major threat to international security and are already having harmful consequences over many parts of the globe.
- Far-reaching impacts will be caused by global warming and sea-level rise, which are becoming increasingly evident as a result of continued growth in atmospheric concentrations of carbon dioxide and other greenhouse gases. Other major impacts are occurring from ozone- layer depletion resulting in increased damage from ultra-violet radiation. The best predictions available indicate potentially sever economic and social dislocation for present and future generations, which will worsen international tensions and increase risk of conflicts among and within nations. It is imperative to act now.
- The conference called upon governments, the United Nations and its specialized agencies, industry, educational institutions, non-governmental organizations and individuals to take specific actions to reduce the impending

crisis caused by pollution of the atmosphere. No country can tackle this problem in isolation. International cooperation in the management and monitoring of, and research on, this shared resource is essential.

- Continuing alteration of the global atmosphere threatens global security, the world economy, and the natural environment through:

- Climate warming, rising sea-level, altered precipitation patterns and changed frequencies of climatic extremes induced by the "heat trap" effects of greenhouse gases;

- Depletion of the ozone layer;

- long-range transport of toxic chemicals and acidifying substances

These changes will:

- Imperil human health and well-being;

- Diminish global food security, through increases in soil erosion and greater shifts and uncertainties in agricultural production particularly for many vulnerable regions;

- Changes the distribution and seasonal availability of fresh water resources

- increase political instability and the potential for international conflict;

- Jeopardize prospects for sustainable development and reduction of poverty;

- Accelerate the extinction of animal and plant species upon which human survival depends;

- Alter yield, productivity and biological diversity of natural and managed ecosystems, particularly forests.

- There has been observed increase of globally-averaged temperature of).5 degrees in the past century which is consistent with theoretical greenhouse gas predictions. The accelerating increase in concentrations of greenhouse gases in the atmosphere, if continued, will probably result in a rise in the mean surface temperature of the Earth of 12.5 to 4.5. degrees before the middle of the next century (1)

- Marked regional variations in the amount of warming are expected. For example, at high latitudes the warming may be twice the global average. Also, the warming would be accompanied by changes in the amount and distribution of rainfall and in atmospheric and ocean circulation patterns. The natural variability of the atmosphere and climate will continue and be superimposed on the long--term trend, forced by human activities. (2)

- If current trends continue, the rates and magnitude of climate change in the next century may substantially exceed those experienced over the last 5000 years. Such high rates of change would be sufficiently disruptive that no country is likely to benefit in toto from climate change. (3)

- The climate change will continue so long as the greenhouse gases accumulate in the atmosphere. 5. there can be a time lag of the order of decades between the emission of gases into the atmosphere and their full manifestation in atmospheric and biological consequences. Past emissions have already committed planet earth to a significant warming. (4)

- Global warming will accelerate the present sea-level rise. This will probably be of the order of 30 cm but could possibly be as much as 1.5. m by the middle of the next century. This could inundate low-lying coastal lands and islands, and reduce coastal water supplies by increased salt water intrusion. Many densely populated deltas and adjacent agricultural lands would be

threatened. The frequency of tropical cyclones may increase and storm tracks may change with consequent devastating impacts on coastal areas and islands by foods and storm surges. (6)

- Deforestation and bad agricultural practices are contributing to desertification and are reducing the biological storage of carbon dioxide, thereby contributing to the increase of this most important greenhouse gas. Deforestation and poor agricultural practices are also contributing to additional greenhouse gases such as nitrous oxide and methane. (7)

- **Concern about climate change and climate variability, air pollution and ozone depletion has created new demands for scientific, economic and social information to reduce the remaining uncertainties in these fields. Better understanding and prediction of the various properties of the atmosphere and of the affected ecosystems, as well as health impacts and their interactions with socio-economic factors, are needed. (9.6)**

- **Acknowledging that change in the Earth's climate and its adverse effects are a common concern of humankind (Preamble)**

- **Concerned that human activities have been substantially increasing the atmospheric concentrations of greenhouse gases, that these increases enhance the natural greenhouse effect, and that this will result on average in an additional warming of the Earth's surface and atmosphere and may adversely affect natural ecosystems and humankind (Preamble)**

- **Noting that the largest share of historical and current global emissions of greenhouse gases has originated in developed countries, that per capita emissions in developing countries are still relatively low and that the share of global emissions originating in developing countries will grow to meet their social and development needs (Preamble)**

NEED TO ACT

- The Conference urges immediate action by governments, the United Nations and their specialized agencies, other international bodies, non-governmental organizations, industry, educational institutions and individuals to counter the ongoing degradation of the atmosphere.

If rapid action is not taken now by the countries of the world, these problems will become progressively more serious, more difficult to reverse and more costly to address.

Scientific Basis for concern

TYPES OF ACTION

SETTING OF STANDARDS

- An Action plan for the protection of the Atmosphere needs to be developed, which includes an international framework convention, encourages other standard-setting agreement and national legislation to provide for the protection of the global atmosphere. This must be complemented by implementation of national action plans that address the

problems posed by atmospheric change (climate warming, ozone layer depletion, acidification and the long-range transport of toxic chemicals at their roots.

- **Recognizing that States should enact effective environmental legislation, that environmental standards, management objectives and priorities should reflect the environmental and developmental context to which they apply, and that standards applied by some countries may be inappropriate and of unwarranted economic and social cost to other countries, in particular developing countries (Preamble)**

PROPOSAL FOR INTERNATIONAL AGREEMENT

- An Action plan for the protection of the Atmosphere needs to be developed, which includes an international framework convention, encourages other standard-setting agreement and national legislation to provide for the protection of the global atmosphere. This must be complemented by implementation of national action plans that address the problems posed by atmospheric change (climate warming, ozone layer depletion, acidification and the long-range transport of toxic chemicals at their roots.

CO2 REDUCTION

- Reducing emissions of CO₂ is the single most important measure to arrest climate change. The key factors in CO₂ emission levels are the amounts and types of fuels burned throughout the world and the rates of deforestation and afforestation. As the primary sources of the present excessive atmospheric loading of greenhouse gases, the developed countries of the world should take the initiative in reducing emissions before internationally binding agreements are reached.

- Set energy policies to reduce the emissions of CO₂ and other trace gases. in order to reduce the risks of future global warming.
- Reduce CO₂ emissions by approximately 20% of 1988 levels by the year 2005 as an initial global goal. Clearly, the industrialized nations have a responsibility to lead the way, both through their national energy policies and their bilateral and multilateral assistance arrangements. About one-half of this reduction would be sought from energy efficiency and other conservation measures. The other half should be affected by modifications in supplies.

- **In order to promote progress to this end, each of these Parties shall communicate, within six months of the entry into force of the Convention for it and periodically thereafter, and in accordance with Article 12, detailed information on its policies and measures referred to in sub-paragraph (a) above, as well as on its resulting projected anthropogenic emissions by sources and removals by sinks of greenhouse gases not controlled by the Montreal Protocol for the period referred to in sub-paragraph (a), with the aim of returning individually or jointly to their 1990 levels these anthropogenic emissions of carbon dioxide and other greenhouse gases not controlled by the Montreal Protocol. This information will be reviewed by the Conference of the Parties, at its first session and periodically thereafter, in accordance with**

STABILIZATION OF CO2

- Stabilizing the atmospheric concentrations of CO2 is an imperative goal. It is currently estimated to require reductions of more than 50% from present emission levels. Energy research and development budgets must be massively directed to energy options which would eliminate or greatly reduce CO2 emissions and to studies undertaken to further refine the target reductions.

EMISSION REDUCTION GOALS

The major, wealthy CO2-producing nations should commit themselves to the goal of reducing CO2 emissions by approximately 20% by the year 2000, and approximately 50% by the year 2015. Policies to attain this objective should be judged by the principle of achieving the desired emissions reductions at the least economic cost. Least-cost energy planning should be institutes to assure this result.

REDUCING EMISSIONS

- Immediate world-wide adoption of existing and commercially demonstrated automobile emissions control technologies, such as catalytic converters. This would result in significant reductions in the formation of tropospheric ozone and methane.

CARBON EMISSION BUDGET

- In addition, the following policies should be part of the energy policies consistent with reducing greenhouse gas emissions: Establishment of explicit carbon emission "budgets" within an international framework of agreements.

CARBON TAXES

- A major rationalization of energy pricing, subsidies and tax policies, such as carbon taxes or permits to ensure that the true costs of energy production, including effects on the environment, such as CO2 emissions, are reflected in the price.

CONVERSION TO LESS CO2 FUELS

- Policies to encourage fuel switching to less CO2-intensive fuels as a short-term measure

REDIRECTION OF R & D TO ENERGY EFFICIENT

Redirection of Research and development budgets away from conventional energy supply options and towards energy efficient technologies and renewable energy sources

• REDIRECTION OF R & D TO RENEWABLE

• PHASE-OUT OF PRODUCTION

- A phase-out of production and emissions of ozone-depleting substances must be implemented *as soon as possible. immediately.* The fact

that emissions of substances that deplete the ozone layer represent 15-20% of the gases contributing to the current greenhouse forcing adds urgency to control efforts.

- The protocol should incorporate a stringent two-part approach. Firstly, it should require a phase-out of fully-halogenated CFC production by 1995. Secondly, a concurrent assessment must be made of the ozone-depleting and greenhouse warming potential of substitute chemicals. A major international effort must be made to research and develop completely safe alternatives. The protocol should also incorporate a timetable for eliminating dangerous substitutes.

- Emphasizing the Solution of Linked Problems

The slowing of ozone depletion requires the phase-out of the emissions of ozone-depleting substances and would have additional benefits in reducing the formation of tropospheric ozone that would otherwise occur.

ELIMINATION OF EMISSIONS

- Ratify the Montreal Protocol on Substances that Deplete the Ozone Layer. The Protocol should be revised in 1990 to ensure nearly complete elimination of emissions of fully halogenated CFCs by the year 2000. Additional measures to limit other ozone-destroying halocarbons should be considered

LIMITATION OF ANTHROPOGENIC EMISSIONS

- **Each of these Parties shall adopt national policies and take corresponding measures on the mitigation of climate change, by limiting its anthropogenic emissions of greenhouse gases and protecting and enhancing its greenhouse gas sinks and reservoirs (Article 4, 2a)**

MITIGATION OF CLIMATE CHANGE

- **Each of these Parties shall adopt national policies and take corresponding measures on the mitigation of climate change, by limiting its anthropogenic emissions of greenhouse gases and protecting and enhancing its greenhouse gas sinks and reservoirs. (Article 4, 2a)**

- **To develop strategies aimed at mitigating the adverse effects of ultraviolet radiation reaching the Earth's surface as a consequence of depletion and modification of the stratospheric ozone layer. (b)**

DISCOURAGING POLLUTING PRACTICES

- **Implement policies and programmes that will discourage inappropriate and polluting land-use practices and promote sustainable utilization of terrestrial and marine resources; (b)**

TRANSFER TO NON-GREENHOUSE BASED TECHNOLOGIES__

- To ensure world-wide action, a vigorous diplomatic initiative must be launched to encourage non-participating nations to join the Montreal Protocol. This initiative can be strengthened through transfers of non-fully halogenated CFCs and non-greenhouse gas-based technologies.

- Because of the long atmospheric lifetimes of CFCs and halons, actions to minimize the emissions of these gases must be taken while the Montreal Protocol is being strengthened and implemented. Individual nations should consider short-term steps including eliminating non-essential uses of CFCs and halons; installing emission control technologies; implementing recycling and recovery technologies; and safely destroying ozone-depleting compounds before they can enter the atmosphere. Governments should also consider taking measures that raise the price of CFCs and halons. High market prices will induce conservation programs and create opportunities for alternative chemicals and processes to be competitive.

ENDING DEFORESTATION

- Ending deforestation would slow the buildup of nitrous oxides from biomass burning and *forest decay*, and methane from termites.
- Halting the flaring of natural gas and recycling solid waste could make modes contributions to slowing methane emissions.
- Addressing acid deposition by reducing nitrogen oxides would also have benefits in reducing tropospheric ozone precursors and formation. A NOx convention to reduce emissions should be adopted and ratified
- Energy policies for the management of other greenhouse gases would also tend to reduce the emissions of methane and nitrous oxides and the formation of tropospheric ozone.
- World-wide urbanization is increasing rapidly and transit demand is enormous and growing. Solutions to this problem include public transit and urban cars fueled by alternative low carbon fuels.

EFFICIENCY ENERGY USE

-the cornerstone of policies to attain the CO2 reduction objective should be dramatically increased efficiency in energy use. With strong energy efficiency policies, it should be possible to improve substantially on the rate of the energy efficiency improvement of the past decade.

- Increased efficiency is not only the single most important and economic policy for reducing CO2 emissions, it also has a key role in encouraging rapid and sustainable development in the developing countries, reducing both consumer costs and other forms of harmful air pollution.
- Policies to assure production of more fuel-efficient motor vehicles, aimed at assuring an increase in fuel economies at least 50 % greater by the turn of the century, and doubling by the year 2010
- Policies to encourage more efficient energy supply systems, such as cogeneration
- Improving efficiency
Improved energy efficiency will reduce combustion, which will lower the emissions of hydrocarbons, carbon monoxide and nitrous oxides slowing the formation of tropospheric ozone and the emission of methane from fossil fuels.
- Set targets for energy efficiency improvements that are directly related to reductions in CO2 and other greenhouse gases. A challenging target would be to achieve the 10% energy efficiency improvements by the year 2005. Improving energy efficiency is not precisely the same as reducing total carbon emissions and the detailed policies will not all be familiar ones. A detailed

study of the systems implications of this target should be made. Equally, targets for energy supply should also be directly related to reductions in CO₂ and other greenhouse gases. As with efficiency, a challenging target would again be to achieve the 10% energy supply improvements by the year 2005. A detailed study of the systems implications of this target should also be made. The contributions to achieving this goal will vary from region to region; some countries have already demonstrated a capability for increasing efficiency by more than 2% a year for over a decade.

- **The need to control atmospheric emissions of greenhouse and other gases and substances will increasingly need to be based on efficiency in energy production, transmission, distribution and consumption, and on growing reliance on environmentally sound energy systems, particularly new and renewable sources of energy./1/ All energy sources will need to be used in ways that respect the atmosphere, human health, and the environment as a whole. (9.9)**
- **Promote efficient use of materials and resources, taking into account the life cycles of products, in order to realize the economic and environmental benefits of using resources more efficiently and producing less wastes; (e.)**

IMPROVED PRODUCTIVITY

- Improved agricultural productivity can reduce methane emissions by reducing the number of acres devoted to rice production and reduce fertilizer application and thus N₂O emissions. Improved livestock productivity will reduce animal numbers and methane emissions per animal through improved nutrition. These policies are also consistent with general economic development objectives.

ADVOCATING THE USE OF "RENEWABLE"

- Redirection of research and development budgets away from conventional energy supply options and towards energy efficient technologies and renewable energy sources
- apart from efficiency measures, the desired reduction will require (1) switching to lower CO₂ emitting fuels, (ii) reviewing strategies for the implementation of renewable energy especially advanced biomass conversion technologies;
- **New and renewable energy sources are solar thermal, solar photovoltaic, wind, hydro, biomass, geothermal, ocean, animal and human power, as referred to in the reports of the Committee on the Development and Utilization of New and Renewable Sources of Energy, prepared specifically for the Conference (see A/CONF.151/PC/119 and A/AC.218/1992/5).**
- **Energy is essential to economic and social development and improved quality of life. Much of the world's energy, however, is currently produced and consumed in ways that could not be sustained if technology were to remain constant and if overall quantities were to increase substantially. The need to control atmospheric emissions of greenhouse and other gases and substances will increasingly need to be based on efficiency in energy production, transmission, distribution**

and consumption, and on growing reliance on environmentally sound energy systems, particularly new and renewable sources of energy./1/ All energy sources will need to be used in ways that respect the atmosphere, human health, and the environment as a whole.

(9.9.)

- The basic and ultimate objective of this programme area is to reduce adverse effects on the atmosphere from the energy sector by promoting policies or programmes, as appropriate, to increase the contribution of environmentally safe and sound and cost effective energy systems, particularly new and renewable ones, through less polluting and more efficient energy production, transmission, distribution and use. This objective should reflect the need for equity, adequate energy supplies and increasing energy consumption in developing countries, and the need to take into consideration the situations of countries that are highly dependent on income generated from the production, processing and export, and/or consumption of fossil fuels and associated energy-intensive products and/or the use of fossil fuels for which countries have serious difficulties in switching to alternatives, and of countries highly vulnerable to adverse effects of climate change. (9.11.)
- Promote the research, development, transfer and use of technologies and practices for environmentally sound energy systems, including new and renewable energy systems, with particular attention to developing countries; (9.12. d)
- Review current energy supply mixes to determine how the contribution of environmentally sound energy systems as a whole, particularly new and renewable energy systems, could be increased in an economically efficient manner, taking into account respective countries' unique social, physical, economic and political characteristics, and examining and implementing, where appropriate, measures to overcome any barriers to their development and use (9.12. f)
- Coordinate energy plans regionally and subregionally, where applicable, and study the feasibility of efficient distribution of environmentally sound energy from new and renewable energy sources; (9.12 g)
- Support the promotion of less polluting and more efficient technologies and processes in industries, taking into account area-specific accessible potentials for energy, particularly safe and renewable sources of energy, with a view to limiting industrial pollution and adverse impacts on the atmosphere. (9.18. f)

Not in Convention on Climate Change

ADVOCATING SOLAR ENERGY

- New and renewable energy sources are solar thermal, solar photovoltaic, wind, hydro, biomass, geothermal, ocean, animal and human power, as referred to in the reports of the Committee on the Development and Utilization of New and Renewable Sources of Energy, prepared specifically for the Conference (see A/CONF.151/PC/119 and A/AC.218/1992/5).
No reference to "solar" in Climate Change Convention

REQUIREMENT FOR ENVIRONMENTAL ASSESSMENT

- the protocol should incorporate a stringent two-part approach. Firstly, it should require a phase-out of fully-halogenated CFC production by 1995. Secondly, a concurrent assessment must be made of the ozone-depleting and greenhouse warming potential of substitute chemicals. A major international effort must be made to research and develop completely safe alternatives.
- **Promote the development at the national level of appropriate methodologies for making integrated energy, environment and economic policy decisions for sustainable development, inter alia through environmental impact assessments; (9.12. b)**
- **Develop, improve and apply environmental impact assessments to foster sustainable industrial development; (9.18. d)**
- **Participate actively in the continuous assessment of scientific information and the health and environmental effects, as well as of the technological/economic implications of stratospheric ozone depletion; and consider further actions that prove warranted and feasible on the basis of these assessments; (9.24. c)**
- **The 1979 Economic Commission for Europe Convention on Long-range trans-boundary Air Pollution, and its protocols, have established a regional regime in Europe and North America, based on a review process and cooperative programmes for systematic observation of air pollution, assessment and information exchange. These programmes need to be continued and enhanced, and their experience needs to be shared with other regions of the world. (9.26)**
- **Take climate change considerations into account, to the extent feasible, in their relevant social, economic and environmental policies and actions, and employ appropriate methods, for example impact assessments, formulated and determined nationally, with a view to minimizing adverse effects on the economy, on public health and on the quality of the environment, of projects or measures undertaken by them to prevent mitigate or adapt to climate change; (Article 41 f)**
- **The Conference of the Parties shall, at its first session, review the adequacy of subparagraphs (a) and (b) above. Such review shall be carried out in the light of the best available scientific information and assessment on climate change and its impacts, as well as relevant technical, social and economic information. (Article 2 d)**

ADVERSE IMPACT ON THE ENVIRONMENT

- **Coordinate energy plans regionally and subregionally, where applicable, and study the feasibility of efficient distribution of environmentally sound energy from new and renewable energy sources; g.**
- **Develop or enhance, as appropriate, mechanisms to integrate transport planning strategies and urban and regional settlement planning strategies, with a view to reducing the environmental impacts of transport; 9.15 e.**

ADVERSE ENVIRONMENTAL EFFECTS

- **The basic objective of this programme area is to develop and promote cost-effective policies or programmes, as appropriate, to limit,**

reduce or control, as appropriate, harmful emissions into the atmosphere and other adverse environmental effects of the transport sector, taking into account development priorities as well as the specific local and national circumstances and safety aspects.9.14.

- Participate actively in the continuous assessment of scientific information and the health and environmental effects, as well as of the technological/economic implications of stratospheric ozone depletion; and consider further actions that prove warranted and feasible on the basis of these assessments; 9.24 c
- Cooperate on regional, multilateral and bilateral bases to assess trans-boundary air pollution, and elaborate and implement programmes identifying specific actions to reduce atmospheric emissions and to address their environmental, economic, social and other effects.9.28. d

DETRIMENTAL ENVIRONMENTAL IMPACTS

- trans-boundary air pollution has adverse health impacts on humans and other detrimental environmental impacts, such as tree and forest loss and the acidification of water bodies. The geographical distribution of atmospheric pollution monitoring networks is uneven, with the developing countries severely underrepresented. The lack of reliable emissions data outside Europe and North America is a major constraint to measuring trans-boundary air pollution. There is also insufficient information on the environmental and health effects of air pollution in other regions.9.25.

SINKS

- Therefore, we believe the time has come to act to slow and then stop the anthropogenic warming of the earth. At the same time, we must set the stage for responding to climate changes that are already inevitable. Although there is still uncertainty with regard to the sources and sinks of a small proportion of greenhouse gases and the precise regional impacts of climate change, the potential consequences are sufficient to require an immediate global emissions reduction.
- Current rates of world-wide deforestation are about 10 times the rate of reforestation. This imbalance is particularly acute for tropical forests, which at present rates of destruction will disappear by about 2010. This imbalance compounds CO₂ build-up by increasing CO₂ emissions and decreasing CO₂ uptake by the forests. By the year 2000, the relative rates of deforestation and reforestation should reach equilibrium, and then reverse. A range of options, including debt swapping and major changes in overseas aid policies should be utilized to attain this objective. In addition, nations *should be encouraged to must* enter into international agreements to maintain forests as carbon sinks to be able to comply with national carbon budgets.
- **Land-use and resource policies will both affect and be affected by changes in the atmosphere. Certain practices related to terrestrial and marine resources and land use can decrease greenhouse gas sinks and increase atmospheric emissions. 9.19.**
- **The conservation, sustainable management and enhancement, where appropriate, of all sinks for greenhouse gases;**

- d. Promote sustainable management and cooperation in the conservation and enhancement, as appropriate, of sinks and reservoirs of greenhouse gases, including biomass, forests and oceans, as well as other terrestrial, coastal and marine ecosystems.**
- **Aware of the role and importance in terrestrial and marine ecosystems of sinks and reservoirs of greenhouse gases,**
 - **"Sink" means any process, activity or mechanism which removes a greenhouse gas, an aerosol or a precursor of a greenhouse gas from the atmosphere. (Article 1)**
 - **To achieve this, such policies and measures should take into account different socio-economic contexts, be comprehensive, cover all relevant sources, sinks and reservoirs of greenhouse gases and adaptation, and comprise all economic sectors. Efforts to address climate change may be carried out cooperatively by interested Parties. (Article 3.3)**
 - **Develop, periodically update, publish and make available to the Conference of the Parties, in accordance with Article 12, national inventories of anthropogenic emissions by sources and removals by sinks of all greenhouse gases not controlled by the Montreal Protocol, using comparable methodologies to be agreed upon by the Conference of the Parties (Article 4. 1 a)**
 - **Formulate, implement, publish and regularly update national and, where appropriate, regional programmes containing measures to mitigate climate change by addressing anthropogenic emissions by sources and removals by sinks of all greenhouse gases not controlled by the Montreal Protocol, and measures to facilitate adequate adaptation to climate change (Article 4. 1. b)**
 - **Promote sustainable management, and promote and cooperate in the conservation and enhancement, as appropriate, of sinks and reservoirs of all greenhouse gases not controlled by the Montreal Protocol, including biomass, forests and oceans as well as other terrestrial, coastal and marine ecosystems (Article 4 1d)**
 - **The developed country Parties and other Parties included in annex I commit themselves specifically as provided for in the following: 2**
 - **Each of these Parties shall adopt national policies and take corresponding measures on the mitigation of climate change, by limiting its anthropogenic emissions of greenhouse gases and protecting and enhancing its greenhouse gas sinks and reservoirs.**
 - **In order to promote progress to this end, each of these Parties shall communicate, within six months of the entry into force of the Convention for it and periodically thereafter, and in accordance with Article 12, detailed information on its policies and measures referred to in sub-paragraph (a) above, as well as on its resulting projected anthropogenic emissions by sources and removals by sinks of greenhouse gases not controlled by the Montreal Protocol for the period referred to in sub-paragraph (a), with the aim of returning individually or jointly to their 1990 levels these anthropogenic emissions of carbon dioxide and other greenhouse gases not controlled by the Montreal Protocol. This information will be reviewed by the Conference of the**

Parties, at its first session and periodically thereafter, in accordance with Article 7;

- **Calculations of emissions by sources and removals by sinks of greenhouse gases for the purposes of sub-paragraph (b) above should take into account the best available scientific knowledge, including of the effective capacity of sinks and the respective contributions of such gases to climate change. The Conference of the Parties shall consider and agree on methodologies for these calculations at its first session and review them regularly thereafter; (c)**

- **In accordance with Article 4, paragraph 1, each Party shall communicate to the Conference of the Parties, through the secretariat, the following elements of information:**

A national inventory of anthropogenic emissions by sources and removals by sinks of all greenhouse gases not controlled by the Montreal Protocol, to the extent its capacities permit, using comparable methodologies to be promoted and agreed upon by the Conference of the Parties;(12 .1. a)

DOCUMENTING SOURCES AND SINKS

- **Develop, periodically update, publish and make available to the Conference of the Parties, in accordance with Article 12, national inventories of anthropogenic emissions by sources and removals by sinks of all greenhouse gases not controlled by the Montreal Protocol, using comparable methodologies to be agreed upon by the Conference of the Parties; (Article 4 1a)**

PRECAUTIONARY PRINCIPLE

- **The Parties should take precautionary measures to anticipate, prevent or minimize the causes of climate change and mitigate its adverse effects. Where there are threats of serious or irreversible damage, lack of full scientific certainty should not be used as a reason for postponing such measures, taking into account that policies and measures to deal with climate change should be cost-effective so as to ensure global benefits at the lowest possible cost. (Article 3.)**

PRESERVATION

NOTE: THE TERM PRESERVATION IS NOT USED IN ANY OF THE FOUR DOCUMENTS

INTERGENERATIONAL PROTECTION

- **The Parties should protect the climate system for the benefit of present and future generations of humankind, on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities. Accordingly, the developed country Parties should take the lead in combating climate change and the adverse effects thereof. (Principle 1)**

- **Recalling the provisions of General Assembly resolution 44/228 of 22 December 1989 on the United Nations Conference on Environment and Development, and resolutions 43/53 of 6 December 1988, 44/207 of 22 December 1989, 45/212 of 21 December 1990 and 46/169 of**

19 December 1991 on protection of global climate for present and future generations of mankind [humankind] (Preamble)

- **Determined to protect the climate system for present and future generations (Preamble)**

DETERMINED TO PROTECT FOR FUTURE GENERATIONS

- **Determined to protect the climate system for present and future generations (Preamble)**

CONSERVATION

- High market prices will induce conservation programs and create opportunities for alternative chemicals and processes to be competitive.
 - Reduce CO₂ emissions by approximately 20% of 1988 levels by the year 2005 as an initial global goal. Clearly, the industrialized nations have a responsibility to lead the way, both through their national energy policies and their bilateral and multilateral assistance arrangements. About one-half of this reduction would be sought from energy efficiency and other conservation measures. The other half should be affected by modifications in supplies.
 - **The conservation, sustainable management and enhancement, where appropriate, of all sinks for greenhouse gases;**
- 9.20 ii.**
- **The conservation and sustainable use of natural and environmental resources; iii.**
 - **Promote sustainable management and cooperation in the conservation and enhancement, as appropriate, of sinks and reservoirs of greenhouse gases, including biomass, forests and oceans, as well as other terrestrial, coastal and marine ecosystems. 9.20. d.**
 - **Promote sustainable management, and promote and cooperate in the conservation and enhancement, as appropriate, of sinks and reservoirs of all greenhouse gases not controlled by the Montreal Protocol, including biomass, forests and oceans as well as other terrestrial, coastal and marine ecosystems; 4. 1 (d)**

ECOLOGY

- Rapid warming of the planet will lead to climatic instability that could disrupt precipitation and agricultural patterns, shift the location of deserts, collapse ecological systems, increase the probability and severity of droughts, hurricanes, and floods, and raise the level of the world's oceans. 1
- **To ensure that actual and potential atmospheric changes and their socio-economic and ecological impacts are fully taken into account in planning and implementing policies and programmes concerning terrestrial and marine resources utilization and land-use practices. 9.20 (b)**

ECOSYSTEM

- Alter yield, productivity and biological diversity of natural and managed ecosystems, particularly forests.
- **Concern about climate change and climate variability, air pollution and ozone depletion has created new demands for scientific, economic**

and social information to reduce the remaining uncertainties in these fields. Better understanding and prediction of the various properties of the atmosphere and of the affected ecosystems, as well as health impacts and their interactions with socio-economic factors, are needed. 9.6.

- Promote research related to the natural processes affecting and being affected by the atmosphere, as well as the critical linkages between sustainable development and atmospheric changes, including impacts on human health, ecosystems, economic sectors, and society. 9.8.a.
- Cooperate in research to develop methodologies and identify threshold levels of atmospheric pollutants, as well as atmospheric levels of greenhouse gas concentrations, which would cause dangerous anthropogenic interference with the climate system and the environment as a whole, and the associated rates of change that would not allow ecosystems to adapt naturally. 9.8. d.
- Land-use and resource policies will both affect and be affected by changes in the atmosphere. Certain practices related to terrestrial and marine resources and land use can decrease greenhouse gas sinks and increase atmospheric emissions. The loss of biological diversity may reduce the resilience of ecosystems to climatic variations and air pollution damage. Atmospheric changes can have important impacts on forests, biodiversity, and freshwater and marine ecosystems, as well as on economic activities, such as agriculture. Policy objectives in different sectors may often diverge and will need to be handled in an integrated manner. 9.19.
- Concerned that human activities have been substantially increasing the atmospheric concentrations of greenhouse gases, that these increases enhance the natural greenhouse effect, and that this will result on average in an additional warming of the Earth's surface and atmosphere and may adversely affect natural ecosystems and humankind (Preamble)
- Aware of the role and importance in terrestrial and marine ecosystems of sinks and reservoirs of greenhouse gases (Preamble)
- Recognizing further that low-lying and other small island countries, countries with low-lying coastal, arid and semi-arid areas or areas liable to floods, drought and desertification, and developing countries with fragile mountainous ecosystems are particularly vulnerable to the adverse effects of climate change (Preamble)
- "Adverse effects of climate change" means changes in the physical environment or biota resulting from climate change which have significant deleterious effects on the composition, resilience or productivity of natural and managed ecosystems or on the operation of socio-economic systems or on human health and welfare. (Article 1)

ENVIRONMENT

- A major rationalization of energy pricing, subsidies and tax policies, such as carbon taxes or permits to ensure that the true costs of energy production, including effects on the environment, such as CO2 emissions, are reflected in the price. 2.

- It is imperative for governments and the international community to sustain the agricultural and marine resource base and provide development opportunities for the poor in light of this growing environmental threat to global food security.
- It takes a long time to develop an international consensus on complex issues such as these, to negotiate, sign and ratify international environmental instruments and to begin to implement them. It is therefore imperative that action on serious negotiations start now.
- Vigorously apply existing technologies in addition to gains made through reduction of fossil fuel combustion, to reduce (i) emissions of acidifying substances to reach the critical load that the environment can bear; (ii) substances which are precursors of tropospheric ozone, and (iii) other non-CO₂ greenhouse gases.
- Increase funding to non-governmental organizations to allow the establishment and improvement of environmental education programmes and public awareness campaigns related to the changing atmosphere. Such programmes would aim at sharpening perception of the issues, and changing public values and behaviour with respect to the environment.
- **the establishment and improvement of capabilities to predict such changes and fluctuations and to assess the resulting environmental and socio-economic impacts; 9.8. ii.**

ENVIRONMENTALLY SOUND

- **Energy is essential to economic and social development and improved quality of life. Much of the world's energy, however, is currently produced and consumed in ways that could not be sustained if technology were to remain constant and if overall quantities were to increase substantially. The need to control atmospheric emissions of greenhouse and other gases and substances will increasingly need to be based on efficiency in energy production, transmission, distribution and consumption, and on growing reliance on environmentally sound energy systems, particularly new and renewable sources of energy./1/ All energy sources will need to be used in ways that respect the atmosphere, human health, and the environment as a whole. 9.9.**
- **The existing constraints to increasing the environmentally sound energy supplies required for pursuing the path towards sustainable development, particularly in developing countries, need to be removed. 9.10.**
- **The basic and ultimate objective of this programme area is to reduce adverse effects on the atmosphere from the energy sector by promoting policies or programmes, as appropriate, to increase the contribution of environmentally safe and sound and cost effective energy systems, particularly new and renewable ones, through less polluting and more efficient energy production, transmission, distribution and use. 9.11.**
- **Cooperate in identifying and developing economically viable, and environmentally sound energy sources to promote the availability of increased energy supplies to support sustainable development efforts, in particular in developing countries;**

9.12 a.

- **Promote the research, development, transfer and use of technologies and practices for environmentally sound energy systems, including new and renewable energy systems, with particular attention to developing countries; (9.12. d.)**
- **Review current energy supply mixes to determine how the contribution of environmentally sound energy systems as a whole, particularly new and renewable energy systems, could be increased in an economically efficient manner, taking into account respective countries' unique social, physical, economic and political characteristics, and examining and implementing, where appropriate, measures to overcome any barriers to their development and use; 9.12.f.**
- **Coordinate energy plans regionally and subregionally, where applicable, and study the feasibility of efficient distribution of environmentally sound energy from new and renewable energy sources; g.**
- **Encourage education and awareness-raising programmes at the local, national, subregional and regional levels concerning energy efficiency and environmentally sound energy systems; k.**
- **Develop and promote, as appropriate, cost effective, more efficient, less polluting and safer transport systems, particularly integrated rural and urban mass transit, as well as environmentally sound road networks, taking into account the needs for sustainable social, economic and development priorities, particularly in developing countries; 9.15.a.**
- **The basic objective of this programme area is to encourage industrial development in ways that minimize adverse impacts on the atmosphere by, inter alia, increasing efficiency in the production and consumption by industry of all resources and materials, by improving pollution-abatement technologies, and by developing new environmentally sound technologies.**

9.17.

- **To develop and apply pollution control and measurement technologies for stationary and mobile sources of air pollution and to develop alternative environmentally sound technologies;**

9.27. a.

- **The developed country Parties and other developed Parties included in annex II shall take all practicable steps to promote, facilitate and finance, as appropriate, the transfer of, or access to, environmentally sound technologies and know-how to other Parties, particularly developing country Parties, to enable them to implement the provisions of the Convention. In this process, the developed country Parties shall support the development and enhancement of endogenous capacities and technologies of developing country Parties. Other Parties and organizations in a position to do so may also assist in facilitating the transfer of such technologies. (Article 4.3)**

ENVIRONMENT PRIORITIES

- In accordance with national socio-economic development and environment priorities, evaluate and, as appropriate, promote cost effective policies or programmes, including administrative, social and economic measures, in order to minimize industrial pollution and adverse impacts on the atmosphere; 9.18 a.
- In accordance with national socio-economic development and environment priorities, evaluate and, as appropriate, promote cost effective policies or programmes, including administrative, social and economic measures, in order to encourage environmentally sound land-use practices. 9.18a.

TRANSBOUNDARY EFFECTS

- to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction (Preamble)

ENVIRONMENTALLY EFFECTIVE

- Recognizing that steps required to understand and address climate change will be environmentally, socially and economically most effective if they are based on relevant scientific, technical and economic considerations and continually re-evaluated in the light of new findings in these areas (Preamble)

ENVIRONMENT POLICIES

- Recalling also that States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental and developmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction (Preamble)
- Take climate change considerations into account, to the extent feasible, in their relevant social, economic and environmental policies and actions, and employ appropriate methods, for example impact assessments, formulated and determined nationally, with a view to minimizing adverse effects on the economy, on public health and on the quality of the environment, of projects or measures undertaken by them to prevent mitigate or adapt to climate change;(Article 1 f)

ENVIRONMENTAL CONTEXT

Recognizing that States should enact effective environmental legislation, that environmental standards, management objectives and priorities should reflect the environmental and developmental context to which they apply, and that standards applied by some countries may be inappropriate and of unwarranted economic and social cost to other countries, in particular developing countries (Preamble)

TRANSFER OF TECHNOLOGY

AVOIDANCE OF IMPACTS ON ECONOMIC DEVELOPMENT

- **Affirming that responses to climate change should be coordinated with social and economic development in an integrated manner with a view to avoiding adverse impacts on the latter, taking into full account the legitimate priority needs of developing countries for the achievement of sustained economic growth and the eradication of poverty (Preamble)**
- **Recognizing that all countries, especially developing countries, need access to resources required to achieve sustainable social and economic development and that, in order for developing countries to progress towards that goal, their energy consumption will need to grow taking into account the possibilities for achieving greater energy efficiency and for controlling greenhouse gas emissions in general, including through the application of new technologies on terms which make such an application economically and socially beneficial (Preamble)**

DISSEMINATION OF INFORMATION

Promote and cooperate in scientific, technological, technical, socio-economic and other research, systematic observation and development of data archives related to the climate system and intended to further the understanding and to reduce or eliminate the remaining uncertainties regarding the causes, effects, magnitude and timing of climate change and the economic and social consequences of various response strategies; (Article 4.1 g)

EDUCATION AND PUBLIC AWARENESS

- **Promote and cooperate in education, training and public awareness related to climate change and encourage the widest participation in this process, including that of non-governmental organizations; and (Article 4.1 i)**

3.2.2.3. APPLICABILITY OF CLIMATE CHANGE CONVENTION TO BUILDING OF THE ISLAND HIGHWAY

INTERNATIONAL LAW AND OBLIGATIONS INSTITUTE (ILOI) REPORT
CARD ON B.C.'S NON-COMPLIANCE WITH THE CLIMATE CHANGE
CONVENTION

TO BE CIRCULATED ON VANCOUVER ISLAND FOR EVALUATION, AND
THE RESULTS OF THIS SURVEY WILL BE PRESENTED TO THE UNITED
NATIONS AS PART OF THE INDEPENDENT REPORT ON B.C.'S
COMPLIANCE TO ITS LEGAL OBLIGATIONS UNDER THE CLIMATE
CHANGE CONVENTION.

In many locations around the world the general environment (air, water, and land), workplaces and even individual dwellings are so badly polluted that the health of hundreds of millions of people is adversely affected. This is, inter alia, due to past and present developments in consumption and production patterns and lifestyles, in energy production and use, in industry, in transportation etc. with little or no regard for environmental protection. (6.40, Protection of health, Agenda 21)

International Law and Obligations Institute (ILOI) Report on Obligations under the Climate Change Convention and under the Chapter on Atmosphere in Agenda 21: "

- The Climate Change Convention was signed (June, 1992) and ratified by Canada (December, 1992) and this legally binding document has now come into force, March, 1994.
- Chapter 9 on Atmosphere in Agenda 21 was adopted by consensus by the states represented at UNCED.
- Chapter 6 on Protection of health in Agenda 21 was adopted by consensus by states represented at UNCED

PETITION TO EVALUATE THE B.C. GOVERNMENT'S
DECISION TO BUILD THE ISLAND HIGHWAY IN THE LIGHT
OF CANADA'S OBLIGATIONS UNDER THE CLIMATE
CHANGE CONVENTION

**IT IS QUESTIONABLE THAT AT A TIME WHERE THERE IS
SCIENTIFIC CERTAINTY THAT 33% OF THE CO2
EMISSIONS IN CANADA ARE FROM TRANSPORTATION
(ENVIRONMENT CANADA), THAT THE BRITISH COLUMBIA
GOVERNMENT UNDERTAKES TO INCREASE THESE
EMISSIONS BY BUILDING THE ISLAND HIGHWAY**

EVALUATION OF THE DECISION TO BUILD THE HIGHWAY IN THE LIGHT
OF INTERNATIONAL OBLIGATIONS UNDER THE CLIMATE CHANGE

CONVENTION AND UNDER THE ATMOSPHERE CHAPTER OF AGENDA
21

1. PRECAUTIONARY PRINCIPLE

- The Parties should take precautionary measures to anticipate, prevent or minimize the causes of climate change and mitigate its adverse effects. Where there are threats of serious or irreversible damage, lack of full scientific certainty should not be used as a reason for postponing such measures, taking into account that policies and measures to deal with climate change should be cost-effective so as to ensure global benefits at the lowest possible cost. (Climate Change Convention)

O A B C D E F

2. COMMITMENT TO ALTERNATIVE TRANSPORTATION

- " develop appropriate pollution control technology on the basis of risk assessment and epidemiological research for the introduction of environmentally sound production processes and suitable safe mass transport
- 6.42. a) i. Protection of health, Agenda 21)

O A B C D E F

3. DEVELOPMENT OF SAFE AND MORE EFFICIENT AND LESS POLLUTING TRANSPORTATION SYSTEM

- "to plan and develop [safe and] more efficient and less polluting transportation systems, especially mass transit to support economic development efforts in an environmentally [safe and] sound way, giving special attention to urban and metropolitan areas. (9.11.b Atmosphere, Agenda 21)

O A B C D E F

4. DOCUMENTING SOURCES AND SINKS

- Develop, periodically update, publish and make available to the Conference of the Parties, in accordance with Article 12, national inventories of anthropogenic emissions by sources and removals by sinks of all greenhouse gases not controlled by the Montreal Protocol, using comparable methodologies to be agreed upon by the Conference of the Parties; 4. (a) (Climate Change Convention)

O A B C D E F

5. CONSERVATION AND ENHANCEMENT OF SINKS (INCLUDING OLD GROWTH FOREST)

- The conservation, sustainable management and enhancement, where appropriate, of all sinks for greenhouse gases; (Atmosphere Chapter, Agenda 21)
- d. Promote sustainable management and cooperation in the conservation and enhancement, as appropriate, of sinks and reservoirs of greenhouse gases, including biomass, forests and oceans, as well as other terrestrial, coastal and marine ecosystems. (Atmosphere Chapter, Agenda 21)

- Aware of the role and importance in terrestrial and marine ecosystems of sinks and reservoirs of greenhouse gases,
- "Sink" means any process, activity or mechanism which removes a greenhouse gas, an aerosol or a precursor of a greenhouse gas from the atmosphere. (Climate Change Convention)

Formulate, implement, publish and regularly update national and, where appropriate, regional programmes containing measures to mitigate climate change by addressing anthropogenic emissions by sources and removals by sinks of all greenhouse gases not controlled by the Montreal Protocol, and measures to facilitate adequate adaptation to climate change; (Climate Change Convention 4.b) •

Aware of the role and importance in terrestrial and marine ecosystems of sinks and reservoirs of greenhouse gases,

Promote sustainable management, and promote and cooperate in the conservation and enhancement, as appropriate, of sinks and reservoirs of all greenhouse gases not controlled by the Montreal Protocol, including biomass, forests and oceans as well as other terrestrial, coastal and marine ecosystems; (4d, Climate Change Convention)

O A B C D E F

6. LIMITATION OF ANTHROPOGENIC EMISSIONS

- Each of these Parties shall adopt national policies and take corresponding measures on the mitigation of climate change, by limiting its anthropogenic emissions of greenhouse gases and protecting and enhancing its greenhouse gas sinks and reservoirs (Climate Change Convention)

O A B C D E F

7. MITIGATION OF CLIMATE CHANGE

- Each of these Parties shall adopt national policies and take corresponding measures on the mitigation of climate change, by limiting its anthropogenic emissions of greenhouse gases and protecting and enhancing its greenhouse gas sinks and reservoirs. (Climate Change Convention)

O A B C D E F

8. RECOGNITION THAT CERTAIN LAND USE PRACTICES WILL IMPACT ON CHANGES IN THE ATMOSPHERE

- Land-use and resource policies will both affect and be affected by changes in the atmosphere. Certain practices related to terrestrial and marine resources and land use can decrease greenhouse gas sinks and increase atmospheric emissions. 9.19. (Atmosphere Chapter, Agenda 21)

O A B C D E F

9. NECESSITY OF TRANSMITTING TO THE PARTIES THE INVENTORIES OF EMISSIONS OF CO₂

- Develop, periodically update, publish and make available to the Conference of the Parties, in accordance with Article 12, national inventories of anthropogenic emissions by sources and removals by sinks of all greenhouse gases not controlled by the Montreal Protocol, using comparable methodologies to be agreed upon by the Conference of the Parties; 4. (a) (Climate Change Convention)

O A B C D E F

10. REQUIREMENT OF GOVERNMENT TO REPORT IN 6 MONTHS ABOUT POLICIES TO MITIGATE CLIMATE CHANGE

- In order to promote progress to this end, each of these Parties shall communicate, within six months of the entry into force of the Convention for it and periodically thereafter, and in accordance with Article 12, detailed information on its policies and measures referred to in sub-paragraph (a) above, as well as on its resulting projected anthropogenic emissions by sources and removals by sinks of greenhouse gases not controlled by the Montreal Protocol for the period referred to in sub-paragraph (a), with the aim of returning individually or jointly to their 1990 levels these anthropogenic emissions of carbon dioxide and other greenhouse gases not controlled by the Montreal Protocol. This information will be reviewed by the Conference of the Parties, at its first session and periodically thereafter, in accordance with Article 7; (Climate Change Convention)

O A B C D E F

11. DOCUMENTATION OF SCIENTIFIC INFORMATION RELATED TO ANTHROPOGENIC RELEASES OF CO₂

- Calculations of emissions by sources and removals by sinks of greenhouse gases for the purposes of sub-paragraph (b) above should take into account the best available scientific knowledge, including of the effective capacity of sinks and the respective contributions of such gases to climate change. The Conference of the Parties shall consider and agree on methodologies for these calculations at its first session and review them regularly thereafter; (c) (Climate Change Convention)

O A B C D E F

The federal government has been traversing Canada “consulting” with “stakeholders” about the five options proposed in the Canadian National Action Program on Climate Change (NAPCC). All of the five options demonstrate lack of political will to seriously address the problem of climate change.

In the 1988 “Changing Atmosphere Conference” climate change was perceived as “a threat,” now in the 1994 NAPCC, Climate Change is only perceived to be “ a potential threat.”

Canada signed (June 1992) and ratified (December, 1992) the Climate Change Convention. The Convention came into force in March, 1994. Although Canada presumably is not fully bound by the Convention until the Convention comes into force, Canada has been bound since the signing of the Convention in June 1992, to not do anything in the interim between the signing of the Convention and the coming into force of the Convention “to defeat the purpose of the Convention” (Article 18, Convention of Law of Treaties).

In the Climate Change Convention, there are provisions to “conserve and enhance sinks” and “to document sinks.” NAPCC carefully ignores the impact of the failure to preserve carbon sinks such as old growth forests, and of the continuation of current forest practices such as clear-cut logging. Since June of 1992, numerous carbon sinks including forests and bogs have been destroyed even before they have been properly documented.

The NAPCC document also fails to seriously call for the phasing out of the use of fossil fuels, and the conversion of the infrastructures that support the use of fossil fuels. Although there is a call in the document for renewable energy, there appears to be little resolve to create a situation, with high mandatory standards and regulations that would attract serious conversion to renewable energy. Most of the document appears to rely on “voluntary initiatives”: Voluntary initiatives from the fossil fuel sector will not be sufficient to drive industry to embrace the principle of renewable energy.

“The NAPCC document also under the euphemism of “Electricity and Heat Co-generation Opportunities” keeps the door open for the nuclear power industry to prey on the public concern for climate change.

In the NAPCC document, the Federal Government offers 5 options. All five of these options demonstrate that Canada has caved into the forestry, fossil fuel and nuclear industry. If Canada is to seriously address the threat of Climate Change Canada should consider a sixth option.

OION 6 : THE MISSING OPTION

Adherence to three key principles;

The precautionary principle

Where there are threats of serious or irreversible damage, lack of full scientific certainty should not be used as a reason for postponing such measures (Climate Change Convention, 1992)

Reverse onus principle (proposed by Minister of Environment, the Hon. Sheila Copps, 1994)

The proponent of an intervention in the ecosystem shall have to demonstrate safety, rather than the opponent having to demonstrate harm

Future problem avoidance principle:

The addressing of one environmental problem should not itself be an action that could cause irreversible harm (Standing Committee on Environment “ Out of Balance; The Risks of Irreversible Climate Change, 1991)

Actions

- 1.. Preserve and enhance sinks (forests and bogs), [as required in the Climate Change Convention] , in particular preserve large areas of original growth and conservation corridors
2. Ban all forest practices such as clear cut logging and broadcast burn that reduce carbon sinks on crown and private lands
3. Encourage afforestation and restoration of damaged forest ecosystems such as on Not Sufficiently Restocked land
4. . Phase out the use of fossil fuels and nuclear energy (as recommended in the Nobel Laureate Declaration prepared for UNCED).
5. Establish and enforce a national dedicated program for energy conservation and efficiency
6. Establish extensive networks of alternative ecologically safe and sound means of transportation (Agenda 21), and cease the construction of all new highways
7. Synthesize the existing scientific information. No new studies are required to demonstrate that it is necessary to reduce anthropogenic emissions. “Inaction is negligence” (Digby McLaren, Past President of the Royal Society , Global Change Conference, 1991)
8. Adaptive measures shall not be used as a justification for not acting to preserve existing sinks and to prevent anthropogenic sources of greenhouse gases.
- 9 , Prohibit the proposals to seek far-off Southern carbon sinks to justify maintaining northern consumptive patterns.

(Morris Strong's Costa Rica Scheme — Ontario Hydro buying forests in Costa Rica to offset Ontario Hydro's CO2 emissions)

10 Avoid carbon emissions trading because this practice legitimizes continuing currently harmful emission practices

11. Transfer all energy-directed funding into renewable energies that are ecologically safe and sound

12. Transfer a significant proportion of the \$11 billion military budget to assist in implementing the above measures and in job conversion

As we near the 50th Anniversary of the United Nations (October 24, 1995), Canada continues to demonstrate its lack of resolve to seriously address its international obligations, and until Canada is willing to fulfil these obligations through enacting the necessary legislation with mandatory standards and regulations, little substantial change will occur.

3.2.2.4. COMMENT ON CANADA'S CURRENT ACTION PLAN TO IMPLEMENT THE FRAMEWORK CONVENTION ON CLIMATE CHANGE

CANADA'S NATIONAL ACTION PROGRAM ON CLIMATE CHANGE" (NAPCC): "THE PRELIMINARY DRAFT OF REPORT ON OPTIONS" DOCUMENT OF COMPROMISE AND INACTION A MAJOR STEP BACKWARDS:

Joan Russow
International Law and Obligations Institute (ILOI)
a project of the ERA, Ecological Rights Association

"Humanity is conducting an unintended, uncontrolled, globally pervasive experiment whose ultimate consequence could be second only to a global nuclear war. the Earth's atmosphere is being changed at an unprecedented rate by pollutants resulting from human activities, inefficient and wasteful fossil fuel use ... These changes represent a major threat to international security and are already having harmful consequences over many parts of the globe.... it is imperative to act now. Climate Change in the Conference statement, Changing Atmosphere Conference in 1988

The federal government has been traversing Canada "consulting" with "stakeholders" about the five options proposed in the Canadian National Action Program on Climate Change (NAPCC). All of the five options demonstrate lack of political will to seriously address the problem of climate change.

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Committee on Environment “Out of Balance; The Risks of Irreversible Climate Change, 1991)

Actions

- 1.. Preserve and enhance sinks (forests and bogs), [as required in the Climate Change Convention], in particular preserve large areas of original growth and conservation corridors
2. Ban all forest practices such as clear-cut logging and broadcast burn that reduce carbon sinks on crown and private lands
3. Encourage afforestation and restoration of damaged forest ecosystems such as on Not Sufficiently Restocked land
- 4.. Phase out the use of fossil fuels and nuclear energy (as recommended in the Nobel Laureate Declaration prepared for UNCED).
5. Establish and enforce a national dedicated program for energy conservation and efficiency
6. Establish extensive networks of alternative ecologically safe and sound means of transportation (Agenda 21), and cease the construction of all new highways
7. Synthesize the existing scientific information. No new studies are required to demonstrate that it is necessary to reduce anthropogenic emissions. “Inaction is negligence” (Digby McLaren, Past President of the Royal Society, Global Change Conference, 1991)
8. Adaptive measures shall not be used as a justification for not acting to preserve existing sinks and to prevent anthropogenic sources of greenhouse gases.
- 9, Prohibit the proposals to seek far-off Southern carbon sinks to justify maintaining northern consumptive patterns. (Morris Strong’s Costa Rica Scheme — Ontario Hydro buying forests in Costa Rica to offset Ontario Hydro’s CO₂ emissions)
- 10 Avoid carbon emissions trading because this practice legitimizes continuing currently harmful emission practices
11. Transfer all energy-directed funding into renewable energies that are ecologically safe and sound

12. Transfer a significant proportion of the \$11 billion military budget to assist in implementing the above measures and in job conversion

As we near the 50th Anniversary of the United Nations (October 24, 1995), Canada continues to demonstrate its lack of resolve to seriously discharge its international obligations, and until Canada is willing to fulfill these obligations through enacting the necessary legislation with mandatory standards and regulations, little substantial change will occur.

(Published in BCEN Report. December, 1994)

3.2.2.5. NEWS FLASH UPDATED

DEC. 8, 1994. LEAKED DOCUMENTS. NDP ADDITIONAL SPENDING ON PUBLIC TRANSIT SYSTEM

3.3. ON-GOING CONVENTIONS WITH PROTOCOLS

COMPARISON OF CONVENTIONS AND PROTOCOLS,

3.3.1. Ozone Conventions and protocols

3.3.1.1 CONVENTION FOR THE PROTECTION OF THE OZONE LAYER (VIENNA, MARCH 22, 1985) (CPOL)

Excerpts from the Convention

...

Aware of the potentially harmful impact on human health and the environment through modification of the ozone layer (CPOL)

... Mindful of the work and studies proceeding within both international and national organizations and, in particular, of the World Plan of Action on the Ozone Layer of United Nations Environment Programme (UNEP) (CPOL)

Mindful also of the precautionary measures for the protection of the ozone layer which have already been taken at the national and international levels. (CPOL)

Aware that measures to protect the ozone layer from modifications due to human activities require international co-operation and action, and should be based on relevant scientific and technical considerations, (CPOL)

...

Article 2

General Obligations

1. The Parties shall take appropriate measures in accordance with the provisions of this Convention and of those protocols in force to which they are party to protect human health and the environment against adverse effect resulting or likely to result from human activities which modify or are likely to modify the ozone layer. (CPOL)

2. To this end the Parties shall, in accordance with the means at their disposal and their capabilities:

(b) Adopt appropriate legislative or administrative measures and co-operate in harmonizing appropriate policies to control, limit, reduce or prevent human activities under their jurisdiction or control should it be found that these activities have or are likely to have adverse effects resulting from modification or likely modification of the ozone layer;

(c) Co-operate in the formulation of agreed measures, procedures and standards for the implementation of this convention, with a view to the adoption of protocols and annexes;

3. The provisions of this Convention shall in no way affect the right of Parties to adopt, in accordance with international law, domestic measures additional to those referred to in paragraphs 1 and 2 above, nor shall they affect additional domestic measures already taken by a Party, provided that these measures are not incompatible with their obligations under this Convention. (CPOL)

Article 3

Research and systematic observations

1. The Parties undertake, as appropriate, to initiate and co-operate in directly or through competent international bodies, the conduct of research and scientific assessments on:

- a) The physical and chemical processes that may affect the ozone layer (CPOL)
- b) The human health and other biological effects deriving from any modifications of the ozone layer, particularly those resulting from changes in ultra-violet solar radiation having biological effects (UV-B) (CPOL)
- c) Climatic effects deriving from any modifications of the ozone layer; (CPOL)
- d) Effects deriving from any modifications of the ozone layer and any consequent change in UV-B radiation on natural and synthetic materials useful to mankind (CPOL)
- e) Substances, practices, processes and activities that may affect the ozone layer and their cumulative effects (CPOL)
- f) alternative substances and technologies (CPOL)
- g) Related socio-economic matters; (CPOL)

...

Article 6 ss 5

The United nations, its specialized agencies and the *International Atomic Energy Agency*, as well as any State not party to this Convention, may be represented at meetings of the Conference of the Parties by observers. ... (CPOL)

3.3.1.2. MONTREAL PROTOCOL ON SUBSTANCES THAT DEplete THE OZONE LAYER (Sept. 16, 1987) (MPSDOL)

excerpts from the protocol

... **Mindful** of their obligation under that Convention to take appropriate measures to protect human health and the environment against adverse effects resulting or likely to result from human activities which modify or are likely to modify the ozone layer, (MPSDOL)

Recognizing that world-wide emissions of certain substances can significantly deplete and otherwise modify the ozone layer in a manner that is likely to result in adverse effects on human health and the environment, (MPSDOL)

Conscious of the potential climatic effects of emissions of these substances, be based on relevant scientific knowledge, taking into account technical and economic considerations, (MPSDOL)

Determined to protect the ozone layer by taking precautionary measures to control equitably total global emissions of substances that deplete it, with the ultimate objective of their elimination on the basis of developments in scientific knowledge, taking into account technical and economic considerations, (MPSDOL)

Acknowledging that special provision is required to meet the needs of developing countries for these substances, (MPSDOL)

Noting the precautionary measures for controlling emissions of certain chlorofluorocarbons that have already been taken at national and regional levels.,

Considering the importance of promoting international co-operation in the research and development of science and technology relating to the control and reduction of emissions of substances that deplete the ozone layer, bearing in mind in particular the needs of developing countries, (MPSDOL) have agreed as follows:

Article 1

Definitions

Article 2 Control Measures

1. "Each Party shall ensure that for the twelve-month period commencing on the first day of the seventh month following the date of the entry into force of this Protocol, and in each twelve-month period thereafter, its calculated level of consumption of the controlled substances in Group 1 of Annex A does not exceed its calculated level of consumption in 1986. By the end of the same period, each Party producing one or more of these substances shall ensure that its calculated level of production of the substances does not exceed its calculated level of production in 1986, except that such level may have increased by no more than ten per cent based on the 1986 level. Such increase shall be permitted only so as to satisfy the basic domestic needs of the Parties (MPSDOL)

2. Each Party shall ensure that for the twelve-month period commencing on the first day of the thirty-seventh month following the date of the entry into force of this Protocol, and in each twelve-month period thereafter, its calculated level of consumption of the controlled substances listed in Group II

of Annex A does not exceed its calculated level of consumption in 1986. Each Party producing one or more of these substances shall ensure that its calculated level of production of the substances does not exceed its calculated level of production in 1986, except that such level may have increased by no more than ten percent based on the 1986. Such increase shall be permitted only so as to satisfy the basic domestic needs of the Parties operating under Article 5 and for the purposes of *industrial rationalization* between Parties. The mechanisms for implementing these measures shall be decided by the Parties at their first meeting following the first scientific review. (MPSDOL)

3. Each Party shall ensure that for the period 1 July 1993 to 30 June 1994 and in each twelve-month period thereafter, its calculated level of consumption of the controlled substances in Group 1 of Annex A does not exceed, annually, eighty per cent of its calculated level of production in 1986. However, in order to satisfy the basic domestic needs of the Parties operating under Article 5 and for the purposes of *industrial rationalization* between Parties, its calculated level of production may exceed that limit by up to ten per cent of its calculated level of production in 1986. (MPSDOL)

4. Each Party shall ensure that the period 1 July 1998 to 30 June 1999, and in each twelve-month period thereafter, its calculated level of consumption of the controlled substances in Group I of Annex A does not exceed, annually, fifty per cent of its calculated level of consumption in 1986. Each Party producing one or more of these substances shall, for the same periods, ensure that its calculated level of production of the substances does not exceed, annually, fifty per cent of its calculated level of production in 1986. However, in order to satisfy the *basic domestic needs* of the Parties operating under Article 5 and for the purposes of *industrial rationalization* between Parties, its calculated level of production may exceed that limit by up to fifteen percent of its calculated level of production in 1986. This paragraph will apply unless the Parties decide otherwise at a meeting by a two-thirds majority of Parties present and voting, representing at least two-thirds of the total calculated level of consumption of these substances of the Parties. This decision shall be considered and made in the light of the assessments referred to in Article 6. (MPSDOL)

5. Any Party whose calculated level of production in 1986 of the controlled substances in Group I of Annex A was less than twenty-five kilotonnes may, for the purposes of *industrial rationalization*, transfer to or receive from any other Party, production in excess of the limits set out in paragraphs 1, 3 and 4 provided that the total combined calculated levels of production of the Parties concerned does not exceed the production limits set out in this Article. Any transfer of such production shall be notified to the secretariat, no later than the time of the transfer. (MPSDOL)

6. any Party not operating under Article 5, that has facilities for the production of controlled substances under construction, or contracted for, prior to 16 September 1987, and provided for in national legislation prior to 1 January 1987, may add the production from such facilities to its 1986 production of

such substances for the purposes of determining its calculated level of production for 1986, provided that such facilities are completed by 31 December 1990 and that such production does not raise that Party's annual calculated level of consumption of the controlled substances above 0.5 kilograms per capita. (MPSDOL)

7. Any transfer of production pursuant to paragraph 5 of any addition of production pursuant to paragraph 6 shall be notified to the secretariat, no later than the time of the transfer or addition. (MPSDOL)

8. (a) Any Parties which are Member States of a regional economic integration organization as defined in Article 1 (6) of the convention may agree that they shall jointly fulfill their obligations respecting consumption under this Article provided that their total combined calculated level of consumption does not exceed the levels required by this Article. (MPSDOL)

10 (a) Based on the assessments made pursuant to Article 6 of this Protocol and in accordance with the procedure set out in Article 9 of the Convention, the Parties may decide: (MPSDOL)

(i) whether any substances, and if so, which should be added to or removed from any annex to this Protocol; and (MPSDOL)

(ii) the mechanism, scope and timing of the control measures that should apply to those substances; (MPSDOL)

b) Any such decision shall become effective, provided that it has been accepted by a two-thirds majority vote of the Parties present and voting.

11. Notwithstanding the provisions contained in this Article, parties may take more stringent measures than those required by this Article.

Article 3

Calculation of Control Levels

for the purposes of Articles 2 and 5, each Party shall, for each Group of substances in Annex A, determine its calculated levels of:

a) production by:

(i) multiplying its annual production of each controlled substance by the ozone depleting potential specified in respect of it in Annex A; and

(ii) adding together, for each such Group, the resulting figures;

(b) imports and export, respectively, by following, mutatis mutandis, the procedure set out in sub-paragraph (a); and

(c) consumption by adding together its calculated levels of production and imports and subtracting its calculated level of exports as determined in accordance with subparagraphs (a) and (b). However, beginning on 1 January 1993, any export of controlled substances to non-Parties shall not be subtracted in calculating the consumption level of the exporting Party.

(MPSDOL)

Article 4

Control of Trade with Non-Parties

1. Within one year of the entry into force of this Protocol, each Party *shall ban the import of controlled substances from any State not party to this protocol* (MPSDOL)

...

Article 5

Special Situation of Developing Countries

1. Any Party that is a developing country and whose annual calculated level of consumption of the controlled substances is less than 0.3 kilograms per capita on the date of the entry into force of the Protocol for it, or any time thereafter within ten years of the date of entry into force of the Protocol shall, in order to meet *its basic domestic needs*, be entitled to *delay its compliance* with the control measures set out in paragraphs 1 to 4 of Article 2 by ten years after that specified in those paragraphs. However, such Party shall not exceed an annual calculated level of consumption of 0.3 kilograms per capita. Any such Party shall be entitled to use either the average of this annual calculated level of consumption of the period 1995 to 1997 inclusive or a calculated level of consumption of 0.3 kilograms per capita, whichever is the lower, as the basis for its compliance with the control measures. (MPSDOL)

2. The Parties undertake to facilitate access to environmentally safe alternative substances and technology for Parties that are developing countries and assist them to make expeditious use of such alternatives.

(MPSDOL)

Article 6

Assessment and Review of Control Measures

Article 7

Reporting of Data

1. Each Party shall provide to the secretariat, within three months of becoming a Party, statistical data on its production, imports and exports of each of the controlled substances for the year 1986, or the best possible estimates of such data where actual data are not available. (MPSDOL)

2. Each Party shall provide statistical data to the secretariat on its annual production (with separate data on amounts destroyed by technologies to be approved by the Parties), imports, and exports to Parties and non-Parties, respectively, of such substances for the year during which it becomes a Party and for each year thereafter. It shall forward the data no later than nine months after the end of the year to which the data relate. (MPSDOL)

Article 8

Non-compliance

the Parties, at their first meeting, shall consider and approve procedures and institutional mechanisms for determining non-compliance with the provisions of this Protocol and for the treatment of Parties found to be in non-compliance.

(MPSDOL)

Article 9

Research, Development, Public Awareness and Exchange of Information

1. The Parties shall co-operate, consistent with their national laws, regulations and practices and taking into account in particular the needs of developing countries, in promoting, directly or through competent international bodies, research, development and exchange of information on: (MPSDOL)

...2. The Parties, individually, jointly or through competent international bodies, shall co-operate in promoting public awareness of the environmental effects of

the emissions of controlled substances and other substances that deplete the ozone layer. (MPSDOL)

3. Within two years of the entry into force of this Protocol and every two years thereafter, each Party shall submit to the secretariat a summary of the activities it has conducted pursuant to this Article.” (MPSDOL)

Article 10

Technical assistance

Article 11

Meeting of the Parties

Article 12

Secretariat

Article 13

Financial Provisions

Article 14

Relationship of this Protocol to the Convention ...

Entry into Force

1. This Protocol shall enter into force on January 1989...

Article 17-20

Annex A

Controlled Substances

Group	Substance	Ozone Depleting Potential*	
Group 1	CFCl ₃ (CFC-11)	1.0	
	CF ₂ Cl ₂ (CFC-12)	1.0	
	C ₂ F ₃ Cl ₃ (CFC-113)	.8	
	C ₂ F ₃ Cl ₃ (CFC-114)	1.0	
	C ₂ F ₅ Cl (CFC-115)	.6	
	Group II	CF ₂ BrCl (halon-1211)	3.0
		C ₂ F ₄ Br ₂ (halon-2402)	to be determined.

3.3.2. Comparison among Convention and Protocols

3.3.2. 1. CONTENT ANALYSIS AMONG OZONE DOCUMENTS INTERNATIONAL RESPONSE TO INVOKING THE PRECAUTIONARY PRINCIPLE IN RELATION TO OZONE

LEGEND

CPOL (CONVENTION FOR THE PROTECTION OF THE OZONE
LAYER
MPSDOL (MONTREAL PROTOCOL)
(ATMP) (LONDON PROTOCOL, 1990)
(MPCD) (COPENHAGEN PROTOCOL, 1992)
(CHAPTER 9 Agenda 21, 1992)

STATEMENTS

PRECAUTION

[Note strong mandate to protect human health and the environment]

“Mindful also of the precautionary measures for the protection of the ozone layer which have already been taken at the national and international levels. (1985 CPOL)

General Obligations:

1. The Parties shall take appropriate measures in accordance with the provisions of this Convention and of those protocols in force to which they are party to protect human health and the environment against adverse effect resulting or likely to result from human activities which modify or are likely to modify the ozone layer. (1985 CPOL)

Adopt appropriate legislative or administrative measures and co-operate in harmonizing appropriate policies to control, limit, reduce or prevent human activities under their jurisdiction or control should it be found that these activities have or are likely to have adverse effects resulting from modification or likely modification of the ozone layer;” (2 (B) CPOL)

“... Mindful of their obligation under that Convention to take appropriate measures to protect human health and the environment against adverse effects resulting or likely to result from human activities which modify or are likely to modify the ozone layer, (MPSDOL)

Determined to protect the ozone layer by taking precautionary measures to control equitably total global emissions of substances that deplete it, with the ultimate objective of their elimination on the basis of developments in scientific knowledge, taking into account technical and economic considerations, (MPSDOL)

Acknowledging that special provision is required to meet the needs of developing countries for these substances,” (MPSDOL)

Noting the precautionary measures for controlling emissions of certain chlorofluorocarbons that have already been taken at national and regional levels.,

ACTIONS AND OBLIGATIONS

1. protection of ozone layer

“Aware that measures to protect the ozone layer from modifications due to human activities require international co-operation and action, and should be based on relevant scientific and technical considerations, (1985 CPOL

2. Control, limit, reduce, prevent

Adopt appropriate legislative or administrative measures and co-operate in harmonizing appropriate policies to control, limit, reduce or prevent human activities under their jurisdiction or control should it be found that these

activities have or are likely to have adverse effects resulting from modification or likely modification of the ozone layer;" (2 (B) CPOL)

3. Control and reduction of emission of substances that deplete the ozone layer

Considering the importance of promoting international co-operation in the research and development of **science and technology relating to the control and reduction of emissions of substances that deplete the ozone layer, bearing in mind in particular the needs of developing countries,** (1987 MPDOL)

have agreed as follows:

4. Replacement CFCs and other ozone-depleting substances with appropriate substitutes

Protection of the atmosphere can be enhanced, inter alia, by increasing resource and materials efficiency in industry, installing or improving pollution abatement technologies and replacing chlorofluorocarbons (CFCs) and other ozone-depleting substances with appropriate substitutes, as well as by reducing wastes and by-products. Objectives (9.16)

Replace CFCs and other ozone-depleting substances, consistent with the Montreal Protocol, recognizing that a replacement's suitability should be evaluated holistically and not simply based on its contribution to solving one atmospheric or environmental problem. (9.24, e Agenda 21)

5. Reduction of demand

To realize the objectives defined in the Vienna Convention and the Montreal Protocol and its 1990 amendments, including the consideration in those instruments of the special needs and conditions of the developing countries and the availability to them of alternatives to substances that deplete the ozone layer. Technologies and natural products that reduce demand for these substances should be encouraged; (9.22 a Agenda 21, 1992)

6. Facilitate access to environmentally safe alternatives

The Parties undertake to facilitate access to environmentally safe alternative substances and technology for Parties that are developing countries and assist them to make expeditious use of such alternatives. (1987 MPDOL)

SEE CHANGE

∞ • a use should qualify as "essential" only if it is necessary for the health, safety or is critical to the functioning of society (encompassing cultural and intellectual aspects) AND there are no available technically and economically feasible alternatives or substitutes. (11, 1992 MPCD)

8. to phase out production and consumption

9. to phase "bridging" chemicals by 2020-2040 (ATMP)

as "bridging" chemicals that should be phased out by 2020-2040. Completely acceptable substitutes for long-term use must have no ozone-depleting or global warming potential. (ATMP)

10. to substitute for long term - no ozone depleting or global warming potential

Completely acceptable substitutes for long-term use must have no ozone-depleting or global warming potential. (ATMP)

11. To develop strategies aimed at mitigating the adverse effects of ultraviolet radiation reaching the Earth's surface as a consequence of depletion and modification of the stratospheric ozone layer. (9.23 b)

NEED FOR INTERNATIONAL COOPERATION

Aware that measures to protect the ozone layer from modifications due to human activities require international co-operation and action, and should be based on relevant scientific and technical considerations, (1985 CPOL)

CONTROL MEASURES

Annex A

Controlled Substances

Group	Substance	Ozone Depleting Potential*
Group 1	CFC13	1.0
	(CFC-11)	
	CF2Cl2	1.0
	(CFC-13)	
	C2F3Cl3	
	(CFC-113)	.8
	C2F3Cl3	1.0
	(CFC-114)	
	C2F5Cl	.6
	(CFC-115)	

CFC -11, CFC0-12, CFC-113, CFC-114 AND CFC-115

July 1989 and within 12 months and thereafter, the level of consumption and production should not exceed the 1986 level (1987 MPSDOL)

As of July 1989, and within 12 months and thereafter, the level of consumption and production should not exceed the 1986 level (1987 MPSDOL)

As of July 1991, to 31 December 1992 and thereafter, the annual level of consumption and production should not exceed 150 per cent of the 1986 level. (1990 ATMP)

As of 1 July 1993, and within 12 months, and thereafter, the level of consumption and production should not exceed 80 per cent of the 1986 level (MPSDOL)

As of January 1, 1994, 75% reduction of production and consumption of CFCs (11, 1992 MPCD)

As of 1 January 1995, and within 12 months, and thereafter, the annual level of consumption and production should not exceed 50% of the 1986 level (1990 ATMP)

As of January 1, 1996, 100% elimination of production and consumption *subject to possible essential use exemptions* (11, 1992 MPCD)

As of January 1997, and within 12 months and thereafter, the annual level of consumption and production should not exceed 15 per cent of the 1986 level (1990 ATMP)

As of 1 July 1998, and within 12 months and thereafter, the level of consumption and production should not exceed 50 per cent of the 1986 level. (1987 MPDOL)

As of 1 January 2000, and within 12 months, and thereafter, the consumption and production should be zero (1990 ATMP)

CFC-13, 111, 112, 211 TO 217

As of 1 January 1993, and within 12 months, and thereafter, the annual level of consumption and production should not exceed 80% of the 1989 level (1990 ATMP)

As of 1 July 1997, and within 12 months and thereafter, the annual level of consumption and production should not exceed 15% of the 1989 level (1990 ATMP)

As of 1 July 2000, and within 12 months and thereafter, consumption and production should be zero. (1990 ATMP)

Carbon Tetrachloride:

As of 1 January 1995, and with 12 months and thereafter, the annual level of consumption and production should not exceed 15 percent of the 1989 level (ATMP)

As of January 2000, and with 12 months, and thereafter, consumption and production should be zero. (ATMP)

As of January 1, 1995, 85% reduction of production and consumption (11, 1992 MPCD)

As of January 1, 1996, elimination of production and consumption **subject to possible essential use exemptions.** (11, 1992 MPCD)

Methyl chloroform

phase our production and consumption by 2005 with intermediate cuts of 30 % by 1995 and 70% by 2000 of the 1989 level (ATMP)

As of January 1, 1994, 50% phase-out of production and consumption (11, 1992 MPCD)

As of January 1 100%, elimination of production and consumption **subject to possible essential use exemptions.** (11, 1992 MPCD)

Methyl bromide

As of January 1996, freeze in production and consumption of Methyl Bromide (MPCD)

Parties agreed to add Methyl Bromide into the control structure of the Protocol through an "amendment," the amendment is binding only on those Parties who ratify it. The Amendment will enter into force on January 1, 1994 or 90 days after the date on which ratification by a minimum of 20 parties has occurred. (it took over 26 months for the 1990 London amendment to enter into force.) (11, 1992 MPCD)

AS of January 1, 1996, freeze production and consumption **excluding amounts used for quarantine and Pre-shipment** (11, 1992 MPCD)

Deferred decision on reductions until 1995 after full assessment (11, 1992 MPCD)

CFC Substitutes

All CFC substitutes (HCFC-21, 22, 31, 121-124, 131-133, 141, 142, 151, 221-226, 231-235, 241-244, 251-253, 261, 262, 271) have been included on a separate list with a requirement for annual reports on their production and consumption, strict guidelines for their use plus a commitment to phase them out within a specified period. The replacement HCFCs have lower atmospheric lifetimes and lower chlorine-loading potentials than fully halogenated CFCs and are therefore less ozone-depleting. However, they are considered as "bridging" chemicals that should be phased out by 2020-2040. Completely acceptable substitutes for long-term use must have no ozone-depleting or global warming potential. (ATMP)

As of January 1996, freeze in consumption (only) as well as controls on use beginning in 1996 of HCFC **(MPCD)**

As of 2020 virtual phase out by 2020

Annex C. Group 1 HCFCs (11, 1992 MPCD)

As of January 1, 1996, freeze consumption at agreed base level (11, 1992 MPCD)

As of January 1, 1996, freeze consumption not production **at base level beginning January 1, 1996 (11, 1992 MPCD)**

As of January 2004, 35% reduction (11, 1992 MPCD)

As of January 1 2010, 65% reduction (11, 1992 MPCD)

As of January 1, 2015, 90% reduction (11, 1992 MPCD)

As of January 1, 2020 (virtual elimination) (11, 1992 MPCD)

As of January 1, 2030, 100% elimination (11, 1992 MPCD)

The base level for each Party is the sum of its 1989 weighted HCFC consumption plus 3.1 % of its 1989 weighted CFC consumption. (11, 1992 MPCD) "Under this formula, Canada's aggregate allowable consumption limit beginning January 1, 1996 is 943.5 ODP-weighted tonnes of HCFCs (the sum of the actual gross tonnage of each individual HCFC multiplied by its respective ODP value)

-the HCFC control regime applies only to consumption not production. This will allow for the global rationalization of production facilities by permitting production for export purposes. (11, 1992 MPCD) **John Reid**

"Use Controls" Beginning January 1, 1996 each Party is to "endeavour to ensure that"

(i) the use of HCFCs is limited to applications where other more environmentally acceptable alternatives are not available; (11, 1992 MPCD)

(ii) the use of HCFCs is not outside areas of application currently met by controlled substances; (11, 1992 MPCD)

(iii) HCFCs are selected for use in a manner which minimizes the ozone depleting potential (11, 1992 MPCD)

HBFCs

As of January 1, 1996, elimination subject to the essential use provision includes article 4 trade measures (11, 1992 MPCD)

Group II	CF ₂ BrCl (halon-1211) C ₂ F ₄ Br ₂ (halon-2402)	3.0 to be determined. ((MPSDOL))
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Halons 1301, 1211 and 2402

As of 1 February 1992, and within 12 months, and thereafter, the level of consumption and production should not exceed the 1986 level (MPSDOL)

As of January 1, 1994, the phase-out of halons (11, 1992 MPCD)

Parties agree to facilitate the international transfer and management of Halons (11, 1992 MPCD)

As of January 1, 1994, 100% elimination of production and consumption ***subject to possible exemption of essential uses*** (11, 1992 MPCD)

(ATMP) Adjustments to the Montreal Protocol London (MPCD)

measures were adopted that encourage recovery, recycle, leakage control and destruction of ozone depleting substances (11, 1992MPCD)

Temporary relief from the trade restrictions under Article 4 was granted to several non-party developing countries in recognition of domestic difficulties in ratifying the Protocol (11, 1992 MPCD)

EXPORT TO NON-PARTIES

NOTWITHSTANDING CLAUSES AND ESCAPE PHRASES

Essential use exemptions:

There are some important applications for which *acceptable alternatives have not yet been developed and may not be available in time for the adjusted phase out date*. The Parties agreed on the criteria and process to be used in considering possible exemptions for essential uses beyond the final phase out date. (11, 1992 MPCD)

∞ • a use should qualify as "essential" only if it is necessary for the health, safety or is critical to the functioning of society (encompassing cultural and intellectual aspects) AND there *are no available technically and economically feasible alternatives or substitutes*. (11, 1992 MPCD) COMPARE TO ENVIRONMENTALLY SAFE ALTERNATIVES AGENDA 21

• *production and consumption* of a controlled substance for an essential use will be permitted post-phase out *only if all economically feasible steps have been taken to minimize the use and associated emissions and the controlled substance is not available in sufficient quality or quantity from existing stocks of banked material* (11, 1992 MPCD)

production and consumption of a controlled substance for an essential use to be permitted only if all feasible steps have been taken to minimize the essential use and associated emissions and if the controlled substance is not available in sufficient quantity or quality from existing stocks (11, 1992 MPCD)

Nomination of essential uses.

Only parties can nominate essential uses, Nominations evaluated by TEAP for final decision by meeting of parties.

• Parties are to nominate possible essential uses for evaluation by the Technology and Economic Assessment Panel using the above criteria. Recommendations of the Panel will be considered by a meeting of the parties for final decision. (11, 1992 MPCD)

• Nominations are generally due 9 months prior to the meeting of the Parties at which a decision is required. (6 months for Halons) (11, 1992 MPCD)

"The base level for each Party is the sum of its 1989 weighted HCFC consumption plus 3.1 % of its 1989 weighted CFC consumption. (11, 1992 MPCD) Under this formula, Canada's aggregate allowable consumption limit beginning January 1, 1996 is 943.5 ODP-weighted tonnes of HCFCs (the sum of the actual gross tonnage of each individual HCFC multiplied by its respective ODP value) (11, 1992 MPCD)]" **John Reed**

Global rationalization of production for export purposes

-the HCFC control regime applies only to consumption not production. This will allow for the global rationalization of production facilities by permitting production for export purposes. (11, 1992 MPCD)

Such increase shall be permitted only so as to satisfy the *basic domestic needs* of the Parties operating under Article 5 and for the **purposes of industrial rationalization between Parties**. The mechanisms for implementing these measures shall be decided by the Parties at their first meeting following the first scientific review. (MPSDOL)

Recovery and recycling: redefinition of "Consumption"

10. The Protocol assumes - and allows - that every molecule of ozone depleting substance ever produced will ultimately be released into the atmosphere. "It is estimated that preventing leakage from existing equipment expected over the next decade will provide equal if not greater environmental benefit than controls on HCFCs" John Reed's comment
"Canada was a strong advocate for building recovery and recycling provisions into the protocol. The Parties agreed to the following elements"; John reed's comment

- *Trade in recycled and used controlled substances would no longer be used in the calculation of consumption, although data reporting on such transfers is still required (11, 1992 MPCD)*

Should instead of shall
use of "should" instead of shall in legally binding agreements

Incidental production/trace impurities

Incidental production /trace impurities - clarified definition of 'controlled substance' to exclude insignificant quantities of ODS originated from inadvertent or coincidental production from unrelated feedstock or from use as a process agent which are present in products as trace impurities or emitted during manufacture or handling (11, 1992 MPCD)

Inappropriate inclusion

The United nations, its specialized agencies and the International Atomic Energy Agency, as well as any State not party to this Convention, may be represented at meetings of the Conference of the Parties by observers. ... (Article 6 ss5 CPOL)

Basic domestic needs

Delayed compliance

Article 5

Special Situation of Developing Countries

1. Any Party that is a developing country and whose annual calculated level of consumption of the controlled substances is less than 0.3 kilograms per capita on the date of the entry into force of the Protocol for it, or any time thereafter within ten years of the date of entry into force of the Protocol shall, in order to meet its *basic domestic needs*, be entitled to *delay its compliance* with the control measures set out in paragraphs 1 to 4 of Article 2 by ten years after that specified in those paragraphs. However, such Party shall not exceed an annual calculated level of consumption of 0.3 kilograms per capita. Any such Party shall be entitled to use either the average of this annual calculated level

of consumption of the period 1995 to 1997 inclusive or a calculated level of consumption of 0.3 kilograms per capita, whichever is the lower, as the basis for its compliance with the control measures. (1987 MPSDOL)

Such increase shall be permitted only so as to satisfy the basic domestic needs of the Parties operating under Article 5 and for the **purposes of industrial rationalization between Parties**. The mechanisms for implementing these measures shall be decided by the Parties at their first meeting following the first scientific review. (MPSDOL 1987)

Any Party whose calculated level of production in 1986 of the controlled substances in Group I of Annex A was less than twenty-five kilotonnes may, for the purposes of *industrial rationalization*, transfer to or receive from any other Party, production in excess of the limits set out in paragraphs 1, 3 and 4 provided that the total combined calculated levels of production of the Parties concerned does not exceed the production limits set out in this Article. Any transfer of such production shall be notified to the secretariat, no later than the time of the transfer. (5 1987 MPSDOL)

The Parties undertake to facilitate access to environmentally safe alternative substances and technology for Parties that are developing countries and assist them to make expeditious use of such alternatives. (1987 MPSDOL)

Temporary relief from the trade restrictions
(11, 1992 MPCD)

Complex calculation of control levels

3.3.2.2. A COMPARISON BETWEEN THE PRECAUTIONARY PRINCIPLE AND THE CAUTIONARY PRINCIPLE

The Cautionary principle: Beyond the precautionary principle OZONE AND INTERNATIONAL RESOLUTIONS, OBLIGATIONS AND LEGALLY BINDING TREATIES

Joan Russow: Notes for Presentation at Ozone Conference, 1994

3.3.2.2.1. The evolution of the precautionary principle from its initial enunciation in 1972, through its reinforcement in 1982 to its realignment in 1992

"it also seems clear that the road from declaring global principles to effective world-wide action will be a very long and hard one. (15, Man's environment and the Atlantic Alliance" 1972)

Since 1972, the essence of the precautionary principle was agreed to by the global community,

A point has been reached in history when we must shape our actions throughout the world with a more prudent care for their

environmental consequences. Through ignorance or indifference, we can do massive and irreversible harm to the earthly environment...Declaration of the United Nations Conference on the Human Environment (Declaration of the United Nations Conference on the Human Environment (1972) 1972)

This principle was further reinforced in 1982, in the World Charter of Nature:

Avoidance of activities if adverse effects not fully understood principle

Activities which are likely to pose a significant risk to nature shall be preceded by an exhaustive examination; their proponents shall demonstrate that expected benefits outweigh potential damage to nature, and where potential adverse effects are not fully understood, the activities should not proceed (11 b) World Charter of Nature (1982)

Avoidance of irreversible damage to nature principle

Activities which are likely to cause irreversible damage to nature shall be avoided (11. a) World Charter of Nature (1982)

In 1992, in the UNCED documents there is the full enunciation of the precautionary principle. This principle is present in all the documents in differing forms:

In the Rio Declaration it is expressed in the following way

Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation." (Rio Declaration, 1992).

and in the Framework for a Climate Change Convention it is phrased in a different way:

3. The Parties should take precautionary measures to anticipate, prevent or minimize the causes of climate change and mitigate its adverse effects. Where there are threats of serious or irreversible damage, lack of full scientific certainty should not be used as a reason for postponing such measures, taking into account that policies and measures to deal with climate change should be cost-effective so as to ensure global benefits at the lowest possible cost. To achieve this, such policies and measures should take into account different socio-economic contexts, be comprehensive, cover all relevant sources, sinks and reservoirs of greenhouse gases and adaptation, and comprise all economic sectors. Efforts to address climate change may be carried out co-operatively by interested Parties. (Climate Change Convention, 1992)

A comparison of these two enunciations of the precautionary principle indicate that the principle has been considerably weakened in the Climate Change Convention where it has moved from "shall" to "should", and where there is no mention made of the need to prevent environmental degradation. The Rio Declaration, though adopted by the global community by consensus, is not legally binding, whereas the Convention, is legally binding. However, in using the term "should" in a legally binding document the framers have perhaps given it no more status that it had in a non-legally binding document with "shall"

3.3.2.2.2. Elements of the precautionary principle

The precautionary principle has been expressed in different ways: A current version proposed by the Committee set up to establish guidelines for "B.C. Province wide discharge criteria and standards":

Where there are threats of serious or irreversible damage, lack of scientific certainty shall not be used as a reason for postponing measures to prevent environmental degradation.

- **threats irreversible damage**
- **not having to wait for scientific certainty**
- **not postponing measures to prevent environmental degradation**

- **threats irreversible damage**

RECOGNITION OF THREATS OF IRREVERSIBLE DAMAGE

While the 1985 Vienna Convention for the Protection of the Ozone Layer and the 1987 Montreal Protocol on Substances that Deplete the Ozone Layer (as amended in London in 1990) were important steps in international action, the total chlorine loading of the atmosphere of ozone-depleting substances has continued to rise. This can be changed through compliance with the control measures identified within the Protocol. (Basis for action, 9.22, Agenda 21, 1992)

- Every country will likely experience significant impacts from ozone depletion
- Canada's health care system and resource-based economy could face a variety of challenges under ozone-depleted conditions?
- Our use of industrial halocarbons including CFCs will have a far-reaching impact on the atmosphere. The effects of these chemicals are extremely complex. They are not yet fully understood but are potentially severe. (Environment, Canada, Primer on ozone depletion, 1993)

Ozone depletion will affect the way Canadians live, work and play. Global ozone levels are expected to be less than normal for the next 50 to 60 years. Countries closest to the poles, including Canada, are expected to be hardest hit by the effects of ozone depletion.

Public health

Canadian skin cancer rates have steadily increased during the past two decades. Approximately 50m000 new cases of skin cancer were expected in 1992, most of which were the result of UV-B exposure prior to 1980 before the ozone layer began to thin substantially. (Environment, Canada, Primer on ozone depletion, 1993, p 42)

Agriculture- crops and livestock

many agricultural crops are sensitive to the burning rays of the sun including most of the world's major food crops - wheat, rice corn and soybeans. Decreased crop yields are one of the expected effects of increased ozone depletion. (Environment, Canada, Primer on ozone depletion, 1993, p42)

Fruit and vegetable production regions could be disrupted. early results from Canadian studies suggest that specific crop yields may be reduced by 5 - 7 %. Lost productivity will very costly to industry. (Environment, Canada, Primer on ozone depletion, 1993, p. 43)

Fisheries

Canada's marine fisheries are already under stress because of over-fishing and water pollution and may be further threatened by ozone depletion. Environment, Canada, Primer on ozone depletion, 1993 P. 43

SCIENTIFIC CERTAINTY

...

Aware of the potentially harmful impact on human health and the environment through modification of the ozone layer (1985 CONVENTION FOR THE PROTECTION OF THE OZONE LAYER (VIENNA, MARCH 22, 1985) (CPOL)

Mindful of the work and studies proceeding within both international and national organizations and, in particular, of the World Plan of Action on the Ozone Layer of United Nations Environment Programme (UNEP) (1985 CPOL)

Recognizing that world-wide emissions of certain substances can significantly deplete and otherwise modify the ozone layer in a manner that is likely to result in adverse effects on human health and the environment, (MONTREAL PROTOCOL ON SUBSTANCES THAT DEplete THE OZONE LAYER (Sept. 16, 1987) (MPSDOL) MPSDOL)

9.22. Analysis of recent scientific data has confirmed the growing concern about the continuing depletion of the Earth's stratospheric ozone layer by reactive chlorine and bromine from man-made CFCs, halons and related substances. (1992 Chapter 9 Agenda 21)

Article 3

Stratospheric ozone depletion threatens us with enhanced ultra-violet radiation at the earth's surface, which can be damaging or lethal to many life forms. Air pollution near ground level and acid precipitation, are already causing widespread injury to humans, forests and crops. (World Scientists Warning to Humanity 1993 *The Atmosphere* WSWH)

Research and systematic observations

1. The Parties undertake, as appropriate, to initiate and co-operate in directly or through competent international bodies, the conduct of research and scientific assessments on:

- a) The physical and chemical processes that may affect the ozone layer (1985 CPOL)
- b) The human health and other biological effects deriving from any modifications of the ozone layer, particularly those resulting from changes in ultra-violet solar radiation having biological effects (UV-B) (1985 CPOL)
- c) Climatic effects deriving from any modifications of the ozone layer; (1985 CPOL)
- d) Effects deriving from any modifications of the ozone layer and any consequent change in UV-B radiation on natural and synthetic materials useful to mankind (1985 CPOL)
- e) Substances, practices, processes and activities that may affect the ozone layer and their cumulative effects (1985 CPOL)
- f) alternative substances and technologies (1985 CPOL)
- g) Related socio-economic matters; (1985 CPOL)

NOT POSTPONING MEASURES TO PREVENT ENVIRONMENTAL DEGRADATION

RECOGNITION OF GOVERNMENT OF THE EXACERBATION OF CURRENT ACTIVITIES BECAUSE OF OZONE DEPLETION; YET GOVERNMENT CONTINUE TO PERMIT THE ACTIVITIES

Forestry

Although only a few commercially important trees have been tested for UV-B sensitivity, early results suggest that plant growth, especially seedlings is affected negatively. If young, sensitive species in clear-cut logged areas fail to thrive, the productivity of the forestry sector will decline. Good forestry practices, including selective cutting could reduce potential losses. Environment, Canada, Primer on ozone depletion, 1993 p. 43

Fresh water resources

Industrial pollutants can become much more toxic and carcinogenic when exposed to UV rays. Early results have also indicated that mercury concentrations in lakes increase with increase UV radiation. The cost of cleaning up polluted lakes and rivers could escalate as a result of these effects Environment, Canada, Primer on ozone depletion, 1993 p43

Enhancement of reactivity of some chemicals.

Increased levels of UV radiation reaching the lower atmosphere are expected to enhance the reactivity of some chemicals. Concentrations of certain potentially harmful substances... are expected to increase because of this enhanced reactivity. Current air pollution goals more difficult and expensive to achieve. (Environment, Canada, Primer on ozone depletion, 1993, p38)

Contribution to climate change

To further complicate matters, carbon dioxide in the atmosphere may indirectly contribute to stratospheric cooling and could hasten the onset of an Arctic ozone hole. Global carbon dioxide levels are on the rise because of the burning of fossil fuels. When carbon dioxide, a greenhouse gas, traps the Earth's heat in the lower atmosphere, the stratosphere becomes cooler. If the stratosphere becomes cool enough to allow the formation of polar stratospheric clouds, the probability of Arctic ozone hole increases.

Economic considerations

Conscious of the potential climatic effects of emissions of these substances, be based on relevant scientific knowledge, *taking into account technical and economic considerations*, (MPSDOL)

CAUTIONARY PRINCIPLE

Rhetoric and Notwithstanding clauses and escape phrases have allowed the global community to bypass the precautionary principle, and as a result of bypassing the precautionary principle the situation has becoming increasingly more urgent; it is now time to invoke the "cautionary principle"

It would appear that the precautionary principle applies to both planned and existing activities. It applies to the case of climate change where there is no scientific certainty, as yet, that harm will occur. The "cautionary" principle should apply when there is scientific certainty that harm will occur i.e. in the case of ozone depletion. However, there are cases where there is scientific certainty that harm will occur, but the proponents of the activity that could cause the potential harm claim that there is scientific uncertainty i.e. nuclear energy. And even though nuclear energy could fulfill the more stringent condition for the application of the "caution" principle, the precautionary principle is certainly not followed.

The evolution of the cautionary principle:

Aspects of the cautionary principle:

Recycling of dangerous substances becomes a way of bypassing international obligations to reduce or phase out consumption and production.

1. the cautionary principle involves a shift in the onus of proof. the proponent of an intervention into the ecosystem has to demonstrate that the intervention will not cause environmental degradation rather than the opponent of the intervention having to demonstrate that environmental degradation will occur or has occurred

2. the cautionary principle

The cautionary principle moves away from the usual cycle of attempted rectification, where (1) a substance is introduced, (2) the substance is found to be harmful; (3) the substance is continued in use because the scientific certainty is questioned (4) the environment industry develops a means for disposing of the substance so that the continued production is justified (5) the substance, if production and consumption of it has been curtailed, then the "environment industry's recycled substance is not deemed to be consumption.

3. Mitigation of impacts is not a solution it may be necessary when we get to the stage where the cautionary principle has to apply mitigation is necessary but not as a justification to continue emissions

- **The invoking of the cautionary principle to address one environmental problem should not cause another problem or that the solution to the environmental problem should not itself be an activity or a substance that could potentially cause irreversible harm.**

1991 There is little merit in solving one problem by creating others. The Committee has therefore endeavoured to be responsible in making recommendations that clearly have wider implications beyond the problem of *global warming*. **ozone depletion**
(Standing Committee on the Environment, p. 18)

- **The invoking of the cautionary principle might require substantial change in our life as usual**

At the same time, however we need to insist that the character and importance of *global warming* **ozone depletion** will demand significant changes in the present situation. If we do not alter our "life as usual" to reduce the threat of *global warming* **ozone depletion**, *changes of climate and rises in sea-level will force unpleasant consequences on us.* (Standing Committee on the Environment, p. 18)

- **the invoking of the cautionary principle might require the acknowledgment that the inaction could involve risks**

Title of Standing Committee report " out of balance: the risks of irreversible climate change (Standing Committee on the Environment, 1991)

- **the invoking of the precautionary principle could require supportable evidence not necessarily in the certainty of environmental harm but at least in the likelihood**

" *global warming* **ozone depletion** is real and serious
1.1. Our report is based on three main premises:
• *global warming* **ozone depletion** has been proved scientifically;
• It is an inevitable and continuing consequence of past; and present patterns of human activity; and
• it represents a severe threat to both Canada and the planet as a whole
(1991, Standing Committee on the environment)

- **The invoking of the cautionary principle will require commitment to the principle that even though a particular state may not benefit, for the sake of the global community, the state must act.**

1.16.4. Even if global warming could be shown to benefit Canada, which is far from being the case, there is growing

evidence of its potentially severe and even disastrous implications in other parts of the world, and especially in developing countries. Canada cannot adopt a laissez-faire attitude to what is happening. Many millions of people live on the margin of survival not merely in terms of nutrition and similar measures; small changes of climate or of sea-level would make their physical environment uninhabitable. Man-made emissions are substantially increasing the atmospheric concentrations of greenhouse.

"environmental policy should be integrated fully into other policies. It should be considered as a fundamental factor when economic decisions are taken. In this context we stress the importance of sustainable development; prevention rather than cure; environmental impact assessment; setting environmental standards on the basis of best technology; and development of less polluting and more cost-effective technologies, including those for controlling emissions at source. (5) "the Way forward Environment ministers London, 1984

"environmental policy should be integrated fully into other policies. It should be considered as a fundamental factor when economic decisions are taken. In this context we stress the importance of sustainable development; prevention rather than cure; environmental impact assessment; setting environmental standards on the basis of best technology; and development of less polluting and more cost-effective technologies, including those for controlling emissions at source. (5) "the Way forward Environment ministers London, 1984

• **The invoking of the cautionary principle will require the commitment that the solution lies in prevention not cure or repair**

"It is essential, in both developing and developed countries, to manage sustainable resources wisely, and to this end **we emphasize that prevention of damage is better than repair.** This principle is fully effective only in the framework of intensive international co-operation because many of these problems range far more widely than any one of our countries. (2) "the Way forward Environment ministers London, 1984

"the 'polluter pays Principle' is of key importance to ensuring that environmentally correct prices and market signals are given and should be developed and applied more widely (5) "the Way forward Environment ministers London, 1984

" we must also be more forward-looking in addressing emerging environmental issues such as possible climatic changes resulting from human activities, the need to examine alternative energy strategies, and the environmental impact of new forms of industry including biotechnology. (5) "the Way forward Environment ministers London, 1984

IV Environmental Policies

12. New approaches and strengthened international co-operation are essential to anticipate and prevent damage to the environment, which knows no national frontiers. We shall also address other concerns such as climatic change, the protection of the ozone layer... 1985 Bonn economic Declaration May 4, 1985

4. Economic progress and the preservation of the natural environment are necessary and mutually supportive goals. Effective environmental protection is a central element in our national and international policies. 1985 Bonn economic Declaration May 4, 1985

13. We shall harness both the mechanisms of governmental vigilance and the disciplines of the market to solve environmental problems. We shall develop and apply the polluter pays principles more widely. Science and technology must contribute to reconciling environmental protection and economic growth. 1985 Bonn economic Declaration May 4, 1985

• The invoking of the cautionary principle will require the commitment that the solution calls for new initiatives and the maintaining of options (non-reduction of options)

1980 The Global 2000

" if these trends are to be altered and the problems diminished, vigorous, determined new initiatives will be required worldwide to meet human needs while protecting and restoring the earth's capacity to support life. Basic natural resources — farmlands, fisheries, forests, minerals, energy, air and water — must be conserved and better managed. Changes in public policy are needed around the world before problems worsen and options for effective action are reduced. iv

" If decisions are delayed until the problems become worse, options for effective action will be severely reduced (5)

• The invoking of the cautionary principle will require global actions

Nonetheless, given the urgency, scope, and complexity of the challenges before us, the efforts now underway around the world fall far short of what is needed. An era of unprecedented global co-operation and commitment is essential. iv)

We can avoid polluting our own environment, and we must take care that we do not degrade the global environment. iv Finally to meet the challenges described in the Global 2000 Study our

federal government requires a much stronger capability to project and analyze long-term trends. 1980 The Global 2000

- **The invoking of the cautionary principle will require not waiting for scientific near- certainty**

However, if governments wait for scientific near-certainty, it will often be too late for them to act at all either because of the inertia of the natural phenomena, or because of the time lags associated with policy development and international negotiation. "(1981, Van Lennep, Secretary-General of the OECD "The Environment Challenges for the 80s,)

- **The invoking of the cautionary principle requires the summoning up of the international political will**

" I am sure it is clear to everyone that it will not be easy for our nations collectively to Marshall the political will necessary to deal with these issues.

In the absence of scientific consensus, political consensus, especially international consensus, is hard to achieve. However, if governments wait for scientific near-certainty, it will often be too late for them to act at all either because of the inertia of the natural phenomena, or because of the time lags associated with policy development and international negotiation. "(Van Lennep, Secretary-General of the OECD "The Environment Challenges for the 80s)

3.3.2.2.3 essential properties of the cautionary principle drawn from international documents and national documents.

In this section, to begin to assess policy maker's response in Canada to the precautionary principle, we will examine different properties that have been identified as being essential to addressing the problem in Canada. We have selected as the principal document for this examination, the 1991, Canadian document from the Standing Committee of Global Warming because this is a document that arose from a set of hearings carried out by a committee of parliamentarians from all three political parties. Additional properties are also drawn from other documents from policy makers or advisory or consultative bodies.

The cautionary principle has a number of underlying implicit properties that would have to be considered in determining adherence to the precautionary principle: these properties are evident in a number of documents emanating from policy makers.

- **the invoking of the cautionary principle to address one environmental problem should not cause another problem or that the solution to the environmental problem should not itself be an activity or a substance that could potentially cause irreversible harm.**

1991 There is little merit in solving one problem by creating others. The Committee has therefore endeavoured to be responsible in making recommendations that clearly have wider implications beyond the problem of *global warming*. **ozone depletion**
(Standing Committee on the Environment, p. 18)

- **the invoking of the cautionary principle might require substantial change**

At the same time, however we need to insist that the character and importance of *global warming* **ozone depletion** will demand significant changes in the present situation. If we do not alter our "life as usual" to reduce the threat of *global warming* **ozone depletion**, *changes of climate and rises in sea-level will force unpleasant consequences on us.* (Standing Committee on the Environment, p. 18)

- **the invoking of the cautionary principle might require the acknowledgment that the inaction could involve risks**

Title of Standing Committee report " out of balance: the risks of irreversible climate change (Standing Committee on the Environment, 1991)

- **the invoking of the cautionary principle could require supportable evidence not necessarily in the certainty of environmental harm but at least in the likelihood**

" *global warming ozone depletion* is real and serious

1.1. Our report is based on three main premises:

- *global warming ozone depletion* has been proved scientifically;
- It is an inevitable and continuing consequence of past; and present patterns of human activity; and
- it represents a severe threat to both Canada and the planet as a whole

(1991, Standing Committee on the environment)

. The invoking of the cautionary principle will require a demonstration of the credibility of those who frame the problem

1.7 As regards the reality of *global warming ozone depletion* the international scientific community *has during the last two to three years, undertaken and urgent and comprehensive review of the evidence. This inquiry by the IPCC under the auspices of the WMO and UNEP reported its findings at the Second World Climate Conference in 1990. The panel reported that we are certain of the following:*

the greenhouse effect is real

Manmade emissions are substantially increasing the atmospheric concentrations of the greenhouse gases: carbon dioxide, methane, the CFCs, nitrous oxide and tropospheric ozone. These increases will lead to a warming of the Earth's surface...

We calculate with confidence that:

Atmospheric concentrations of the long-lived gases (Carbon dioxide, nitrous oxide and the CFCs) adjust only slowly to changes in emissions. Present day emissions of these gases are committing us to increased concentrations for decades to centuries...

the long -lived gases would require reductions in man-made emissions of 60-80% to stabilize their concentrations at today's levels; methane would require only a 15%-20% reduction. (Intergovernmental panel on Global change p. 29 as cited in the standing committee Report, p. 5)

. The invoking of the cautionary principle will require an understanding of the position of experts who do not agree with the assessment of the problem, and the supplying of good arguments to justify the position to implement the precautionary principle

1.5 There is no mystery to what is happening, yet there are still some who are unconvinced. A very few of these are scientists who offer alternative explanations for the measurements and other data that have convinced the vast majority of their colleagues. A larger group of people lack the scientific background required to evaluate the evidence and appears reluctant to accept as reality what cannot yet be seen or touched.

A third groups, apparently including many Canadians, regards the prospect of global warming as something desirable, and therefore no cause for concern.

1.6. the Committee's first task, therefore is to explain briefly why we are convinced to the basic premises set out in para 1.1. In doing so, we need to respond both to those who doubt global warming and to those who accept that it is taking place, but believe that it should be welcomed by Canadians.

1.10. In any case, it is clear from the evidence it provided to us, and from its report, that the Marshall Institute is mainly urging expanded research on global warming in a 3-5-year period and the avoidance of drastic policy changes before that research h is undertaken.

Dr. Seitz,

" ... I want to make it clear that I do not place those who express a word of warning in the same category as the boy who cried wolf too often, since there may indeed be a wolf somewhere in the forest. There is too much to be gained by continuing on with our form of civilization to deviate radically without more solid evidence that the biosphere is in mortal danger in the immediate future from uncontrolled warming. I fully realize that this attitude involves a calculated risk, but I also feel that we must balance that risk against the certain damage that will be done if we shut down our power stations and our factories, halt the great advances in communication and transportation achieved in the last century or so. These comments do not imply that we should not use fossil fuel in the most efficient and conservative manner or that we should not consider the use of alternative, non-polluting sources such as nuclear energy when appropriate. Indeed, economic factors alone may dictate such shifts.

"Scientific Perspectives on the Greenhouse Problem, George C. Marshall Institute, Washington, D.C., 1989

1.11. We recommend that action should be taken now, not 3 to 5 years from now, to reduce substantially the rate of greenhouse gas emissions throughout the world and specifically in Canada.

1.16. Canada should be as active as other nations in taking action to reduce or delay such warming. (p. 8)

. The invoking of the cautionary principle will require commitment to the principle that even though Canada may not benefit, for the sake of the global community, Canada must act.

1.16.4. Even if global warming could be shown to benefit Canada, which is far from being the case, there is growing evidence of its potentially severe and even disastrous implications in other parts of the world, and especially in developing countries. Canada cannot adopt a laissez-faire attitude to what is happening. Many millions of people live on the margin of survival not merely in terms of nutrition and similar

measures; small changes of climate or of sea-level would make their physical environment uninhabitable.
Manmade emissions are substantially increasing the atmospheric concentrations of greenhouse.

"environmental policy should be integrated fully into other policies. It should be considered as a fundamental factor when economic decisions are taken. In this context we stress the importance of sustainable development; prevention rather than cure; environmental impact assessment; setting environmental standards on the basis of best technology; and development of less polluting and more cost-effective technologies, including those for controlling emissions at source. (5) "the Way forward Environment ministers London, 1984

"environmental policy should be integrated fully into other policies. It should be considered as a fundamental factor when economic decisions are taken. In this context we stress the importance of sustainable development; prevention rather than cure; environmental impact assessment; setting environmental standards on the basis of best technology; and development of less polluting and more cost-effective technologies, including those for controlling emissions at source. (5) "the Way forward Environment ministers London, 1984

. The invoking of the cautionary principle will require the commitment that the solution lies in prevention not cure or repair

"It is essential, in both developing and developed countries, to manage sustainable resources wisely, and to this end **we emphasize that prevention of damage is better than repair.** This principle is fully effective only in the framework of intensive international co-operation because many of these problems range far more widely than any one of our countries. (2) "the Way forward Environment ministers London, 1984

"the 'polluter pays Principle' is of key importance to ensuring that environmentally correct prices and market signals are given and should be developed and applied more widely (5) "the Way forward Environment ministers London, 1984

" we must also be more forward-looking in addressing emerging environmental issues such as possible climatic changes resulting from human activities, the need to examine alternative energy strategies, and the environmental impact of new forms of industry including biotechnology. (5) "the Way forward Environment ministers London, 1984

IV Environmental Policies

12. New approaches and strengthened international co-operation are essential to anticipate and prevent damage to the environment, which knows no national frontiers. We shall also address other concerns such as climatic change, the protection

of the ozone layer... 1985 Bonn economic Declaration May 4, 1985

4. Economic progress and the preservation of the natural environment are necessary and mutually supportive goals. Effective environmental protection is a central element in our national and international policies. 1985 Bonn economic Declaration May 4, 1985

13. We shall harness both the mechanisms of governmental vigilance and the disciplines of the market to solve environmental problems. We shall develop and apply the polluter pays principles more widely. Science and technology must contribute to reconciling environmental protection and economic growth. 1985 Bonn economic Declaration May 4, 1985

. The invoking of the cautionary principle will require the commitment that the solution calls for new initiatives and the maintaining of options (non-reduction of options)

1980 The Global 2000

" if these trends are to be altered and the problems diminished, vigorous, determined new initiatives will be required worldwide to meet human needs while protecting and restoring the earth's capacity to support life. Basic natural resources — farmlands, fisheries, forests, minerals, energy, air and water — must be conserved and better managed. Changes in public policy are needed around the world before problems worsen and options for effective action are reduced. iv

" If decisions are delayed until the problems become worse, options for effective action will be severely reduced (5)

. The invoking of the cautionary principle will require global actions

Nonetheless, given the urgency, scope, and complexity of the challenges before us, the efforts now underway around the world fall far short of what is needed. An era of unprecedented global co-operation and commitment is essential. iv)

We can avoid polluting our own environment, and we must take care that we do not degrade the global environment. iv Finally to meet the challenges described in the Global 2000 Study our federal government requires a much stronger capability to project and analyze long-term trends. 1980 The Global 2000

"in a remarkable report to the Economic and Social Council of the UN (in May 1969) U Thant, then Secretary General of the

UN, portrayed the extraordinary world-wide dangers to man's environment. HE said:

It has become clear that we all live in one biosphere with which space and resources, though vast are limited.

HE then proposed, and the General Assembly agreed to hold an International Conference on Human Environment, in Stockholm in June 1972. " Huntly Man's environment and the Atlantic Alliance" 1972

. The solving of the environmental problem will require acknowledgment of the inertia and time lag that affects effective action

1981

OECD publications

"Our Governments today face inflation, unemployment, a leveling-off in the growth of productivity and rising energy prices. At the same time, they have to respond to popular aspirations including continued pressure for an improved environment. Governments are also faced with a lack of consensus among scientists about the nature, extent and damage of some of the phenomena. Judging from a recent OECD - IEA workshop this is true, for example, of the rate and impact of rising levels of CO₂ on climatic change. In the absence of scientific consensus, political consensus, especially international consensus, is hard to achieve. However, if governments wait for scientific near-certainty, it will often be too late for them to act at all either because of the inertia of the natural phenomena, or because of the time lags associated with policy development and international negotiation. "(Van Lennep, Secretary-General of the OECD "The Environment Challenges for the 80s)

. The invoking of the cautionary principle requires the summoning up of the international political will

" I am sure it is clear to everyone that it will not be easy for our nations collectively to Marshall the political will necessary to deal with these issues.

In the absence of scientific consensus, political consensus, especially international consensus, is hard to achieve. However, if governments wait for scientific near-certainty, it will often be too late for them to act at all either because of the inertia of the natural phenomena, or because of the time lags associated with policy development and international negotiation. "(Van Lennep, Secretary-General of the OECD "The Environment Challenges for the 80s)

Prevention technology — doing it right the first time, through giving the ecosystem primacy and though invoking the anticipatory principle- not introducing anything that will eventually cause harm to the ecosystem, or to human health.

- **Preventive approach**

" A preventive waste management approach focused on changes in lifestyles and in production and consumption patterns offers the best change for reversing current trends (21.7 Solid wastes)

A preventive approach, where appropriate, is crucial to the avoiding of costly subsequent measures to rehabilitate, treat and develop new water supplies. (18.45 Fresh water)

" undertake measures to prevent soil erosion and promote erosion-control activities in all sectors. (13.16 Fragile ecosystem)

" other areas of risk reduction encompass the prevention of chemical accidents, prevention of poisoning by chemicals and the undertaking of toxicovigilance and coordination of clean-up and rehabilitation of areas damaged by toxic chemicals. (19.47, Toxic chemicals)

' Governments should include in national planning and legislation an integrated approach to environmental protection, driven by prevention and source reduction criteria, taking into account the 'polluter pays' principle, and adopt programmes for hazardous waste reduction, including targets and adequate environmental control (20.20 b Hazardous Wastes)

THE FOLLOWING IS TAKEN FROM RUSSOW, J. PRELIMINARY CONTENT ANALYSIS OF AGENDA 21. THESE PRINCIPLES ARE ONLY OFFERED HERE AS A MINIMUM

- **Precautionary, anticipatory and life-cycle approaches**

"consider adopting policies based on accepted producer liability principles, where appropriate, as well as precautionary, anticipatory and life-cycle approaches to chemical management, covering manufacturing, trade, transport, use and disposal (19.50 a Toxic chemicals)

" Undertake concerted activities to reduce risks for toxic chemicals, taking into account the entire life cycle of the chemicals. These activities could encompass both regulatory and non-regulatory measures, such ... and the phasing out or banning of toxic chemicals that pose an unreasonable and otherwise unmanageable risk to the environment or human health and those that are toxic, persistent and bio-accumulative and whose use cannot be adequately controlled (19.50 b toxic chemicals)

- **Need for foresight**

"Each country should develop the knowledge and practical skills to foresee and identify environmental health hazards, and the capacity to reduce the risks. Basic capacity requirements must include knowledge about environmental health problems and awareness on the part of leaders, citizens and specialists... (6.46 d Protection of health)

- **Polluter pay principle**

' Governments should include in national planning and legislation an integrated approach to environmental protection, driven by prevention and source reduction criteria, taking into account the 'polluter pays' principle, and adopt programmes for hazardous waste reduction, including targets and adequate environmental control (20.20 b Hazardous Wastes)

" Governments should ...(b) apply the 'polluter pays' principle, where appropriate, by setting waste management charges at rates that reflect the costs of providing the service and ensure that those who generate the wastes pay the full cost of disposal in an environmentally safe way (21.42 b Solid wastes)

- **Environmental costs**

Adopt policies that minimize if not altogether avoid environmental damage, whenever possible (7.42 a Settlement) social costs of environmental

[Continue research and other work aimed at developing methodologies and criteria for incorporating the social costs of the environmental and other impacts caused by industrial production, as well as the treatment and disposal of wastes generated, into the prices of the final products;] (9.15 d)

" a lack of awareness of the environmental costs incurred by sectoral and macroeconomic policies and hence their threat to sustainability (14.7 a. agriculture)

(It is necessary to (17.5 Marine) " promote the development and application of methods, such as national resources and environmental accounting, that reflect changes in value resulting from uses of coastal and marine areas, including pollution, marine erosion, loss of resources and habitat destruction

Governments, in collaboration with industry and appropriate international organizations, should develop procedures for monitoring the application of the cradle to grave approach, including environmental audits (20.20 e Hazardous wastes)

- **Environmental assessment review**

" develop appropriate pollution control technology on the basis of risk assessment and epidemiological research for the introduction of environmentally sound production processes and suitable safe mass transport 6.42. a) i. Protection of health)

Ensure that relevant decisions are preceded by environmental impact assessments and also take into account the costs of any ecological consequences (7.42 Settlement)

" Develop improve and apply environmental impact assessments to foster sustainable industrial development (9.15 b. Atmosphere)

" Introduce appropriate environmental impact assessment procedures for proposed projects likely to have significant impacts upon biological diversity... and encourage the assessment of the impacts of relevant policies and programmes on biological diversity (15.5 k Biological diversity)

" Development of public education programmes directed at decision makers and the general public to encourage awareness and understanding of the relative benefits and risks of modern biotechnology, according to ethical and cultural considerations. (16.16 b, Biotechnology)

" There is a need for further development of internationally agreed principles on risk assessment and management of all aspects of biotechnology which should build upon those developed at the national level. (16.32 Biotechnology)

" The aim of this programme area is to ensure safety in biotechnology development, application, exchange and transfer through international agreement on principles to be applied on risk assessment and management, *** (16.33 Biotechnology)

" develop processes to reduce waste generation, treat waste before disposal and make use of biodegradable materials (16.25 Biotechnology)

" a precautionary and anticipatory rather than a reactive approach is necessary to prevent the degradation of the marine environment. This requires inter alia, the adoption of precautionary measures, environmental impact assessments, clean production techniques, recycling, waste audits and minimization, construction and/or improvements of sewage treatment facilities, quality management criteria for the proper handling of hazardous substances, and a comprehensive approach to damaging impacts from air, land and water (17.22. Marine)

States, in accordance with the provisions of the United Nations convention on the Law of the Sea on protection and preservation of the marine environment, commit themselves, in accordance with their policies, priorities and resources, to prevent, reduce and control degradations of the marine environmental so as to maintain and improve its life-support and productive capacities. : (17.23 Marine)

To this end, it is necessary to

" apply preventive, precautionary and anticipatory approaches so as to avoid degradation of the main environment, as well as

to reduce the risk of long-term or irreversible adverse effects upon it; (17.23 a Marine)

" Ensure prior assessment of activities that may have significant adverse impacts upon the marine environment; (17.23 b Marine)

" as concerns other sources of pollution, priority actions to be considered by States may include (17.29 Marine)

" promoting risk and environmental impact assessments to help ensure an acceptable level of environmental quality (17.29 b Marine)

"could provide for prior environmental impact assessment, systematic observation and follow-up of major projects, including the systematic incorporation of results in decision-making (17.6 d marine)

"could provide for periodic assessment of the impacts of external factors and phenomena to ensure that the objectives of integrated management and sustainable development of coastal areas and the marine environment are met (17.6 g Marine)

"it is necessary to conduct regular environmental assessment of the state of the environment of coastal and marine areas (17.8 c Marine)

"A preventive approach, where appropriate, is crucial to the avoiding of costly subsequent measures to rehabilitate treat and develop new water supplies. (18.45 Freshwater)

Governments, in collaboration with industry and appropriate international organizations, should develop procedures for monitoring the application of the cradle to grave approach, including environmental audits (20.20 e Hazardous wastes)

' In order to promote and strengthen international cooperation in the management, including control and monitoring, of trans-boundary movements of hazardous wastes, a precautionary approach should be applied. (20.33 Hazardous wastes)

"States, in cooperation with relevant international organizations, where appropriate, should ...b) encourage the London Dumping convention to expedite work to complete studies on replacing the current voluntary moratorium on disposal of low-level radioactive wastes at sea by a ban, taking into account the precautionary approach, with a view to taking a well informed and time decision on the issue (22.5 Radioactive wastes)

" Governments should take the lead in establishing and strengthening, as appropriate, national procedures for

environmental impact assessment, taking into account the cradle-to-grave approach to the management of hazardous wastes, in order to identify options for minimizing the generation of hazardous wastes, through safer handling, storage, disposal and destruction (20.20 e Hazardous wastes)

' Governments, according to their capacities and available resources and with the cooperation of the United Nations and other relevant organizations, as appropriate, should promote and support the integration and operation, at the regional and local levels as appropriate, of institutional and interdisciplinary groups that collaborate, according to their capabilities, in activities oriented towards strengthening risk assessment, risk management and risk reduction with respect to hazardous wastes (20.25 a Hazardous wastes)

- **Cradle-to-grave approach**

taking into account the cradle-to-grave approach to the management of hazardous wastes, in order to identify options for minimizing the generation of hazardous wastes, through safer handling, storage, disposal and destruction (20.20 e Hazardous wastes)

- **Monitoring cradle to grave approach**

Governments, in collaboration with industry and appropriate international organizations, should develop procedures for monitoring the application of the cradle to grave approach, including environmental audits (20.20 e Hazardous wastes)

- **Full life cycle care**

"[promote efficient use of materials and resources, taking into account all aspects related to life cycles of products.] 9.15 e

"risk reduction involves broad-based approaches to reducing the risks of toxic chemicals, taking into account the entire life cycle of the chemicals. (19.45, Toxic chemicals)

- **Culture of safety**

"to promote a 'culture of safety" in all countries, especially those that are disaster-prone, the following activities should be carried out: (7.60, Disasters)

- **Responsible care**

Industry should be encouraged to “develop application of a “responsible care approach” by producers and manufacturers towards chemical products, taking into account the total life cycle of such products (19.51 toxic chemicals)

"States should encourage industry to exercise environmentally responsible care through hazardous waste reduction and by

ensuring the environmentally sound reuse, recycling and recovery of hazardous wastes, as well as their final disposal (20.18 d Hazardous wastes)

- **Unacceptability of insufficient or outdated criteria of acceptance**

Governments, in cooperation with relevant international organizations and programmes, should carry out national reviews, as appropriate, of previously accepted pesticides whose acceptance was based on criteria now recognized as insufficient or outdated and of their possible replacement with other pest control methods, particularly in the case of pesticides that are toxic, persistent and/or bio-accumulative. (19.55 b Toxic chemicals))

- **Substitution of less harmful**

there are often alternatives to toxic chemicals currently in use. Thus, risk reduction can sometimes be achieved by using other chemicals or even non-chemical technologies. The classic example of risk reduction is the substitution of harmless or less harmful substances for harmful ones. establishment of pollution prevention procedures and setting standards for chemicals in each environmental medium, including food and water, and in consumer goods, constitute another example of risk reduction (19.45 Toxic chemicals)

" Reduce overdependence on the use of agricultural chemicals through alternative farming practices, integrated pest management and other appropriate means (19.50, Toxic chemicals)

- **Reduction**

" to reduce the generation of hazardous wastes, to the extent feasible, as part of an integrated cleaner production approach (20.11 a Hazardous waste)

" Establishment of long-term programmes and policies including targets where appropriate for reducing the amount of hazardous waste produced per unit of manufacture (20.12 d. Hazardous wastes)

- **Minimization**

" Integration of cleaner production approaches and hazardous waste minimizations in all planning and the adoption of specific goals; (20.11a hazardous wastes)

Economics of prevention?? (20.11c Hazardous wastes)

" Promoting waste prevention and minimization as the principal objective of national waste management programmes (21.14 Solid wastes)

"States, in cooperation with relevant international organizations, where appropriate, should a) promote policies and practical measures to minimize and limit, where appropriate, the

generation of radioactive wastes and provide for their safe processing, conditioning, transportation and disposal (22.4 a Radioactive wastes)

(a) (d 1) Activities which are likely to pose a significant risk to nature shall be preceded by an exhaustive examination; their proponents shall demonstrate that expected benefits outweigh potential damage to nature, and where potential adverse effect are not fully understood, the activities should not proceed (World Charter of Nature)

(e) applying the principles of pollution prevention as the foundation of environmental protection

[from definition of "pollution prevention"]

(a 0) _ the prevention of the use, generation and release of any substance into the environment in such a manner or quantity as to cause pollution [repeated from 41 1)

(a0) the adoption of "prevention technologies — technologies that emphasize "protecting, conserving and sustaining the environment from the beginning, and thus avoiding the cycle of rectification of error.

(a1) no product introduced into the environment will be hazardous; the onus of proving the non-hazardous nature of the product will be on the introducer of this new type of product

(a) the elimination of the use of polluting substances

(b 0) the substitution of polluting substance with non-polluting substances

(b) the substitution of polluting substances with less polluting substances

(c) the reduction in the introduction and use of [non-renewable] resources and polluting substances

(d) the elimination and reduction in the generation of polluting substances

[e, f, g removed because not deemed appropriate for prevention; Discussion Environmental Group, February 19]

(b) *The economic feasibility of the techniques or technology*

If the precautionary principle is to be applied in the assessment of costs, the full environmental costs have to be taken into consideration, as well as the full economic costs of monitoring and enforcement of legislation to regulate ecologically unsound practices, and the projected economic costs and environmental costs of accidents, and restoration if accidents occur.

(a) (d 1) Activities which are likely to pose a significant risk to nature shall be preceded by an exhaustive examination; their proponents shall demonstrate that expected benefits outweigh potential damage to nature, and where potential adverse effect are not fully understood, the activities should not proceed (World Charter of Nature)

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(b) the substitution of polluting substances with less polluting substances

(c) the reduction in the introduction and use of [non-renewable] resources and polluting substances

(d) the elimination and reduction in the generation of polluting substances

[e, f, g removed because not deemed appropriate for prevention; Discussion Environmental Group, February 19]

Consideration will be given to innovative technologies if these technologies fulfill the criteria of prevention.

• **PHASE-OUT OF PRODUCTION**

• A phase-out of production and emissions of ozone-depleting substances must be implemented *as soon as possible. immediately.* The fact that emissions of substances that deplete the ozone layer represent 15-20% of the gases contributing to the current greenhouse forcing adds urgency to control efforts.

• The protocol should incorporate a stringent two-part approach. Firstly, it should require a phase-out of fully-halogenated CFC production by 1995. Secondly, a concurrent assessment must be made of the ozone-depleting and greenhouse warming potential of substitute chemicals. A major international effort must be made to research and develop completely safe alternatives. The protocol should also incorporate a timetable for eliminating dangerous substitutes.

• Emphasizing the Solution of Linked Problems

The slowing of ozone depletion requires the phase-out of the emissions of ozone-depleting substances and would have additional benefits in reducing the formation of tropospheric ozone that would otherwise occur.

Because of the long atmospheric lifetimes of CFCs and halons, actions to minimize the emissions of these gases must be taken while the Montreal Protocol is being strengthened and implemented. Individual nations should consider short-term steps including eliminating non-essential uses of CFCs and halons; installing emission control technologies; implementing recycling and recovery technologies; and safely destroying ozone-depleting compounds before they can enter the atmosphere. Governments should also consider

taking measures that raise the price of CFCs and halons. High market prices will induce conservation programs and create opportunities for alternative chemicals and processes to be competitive.
the protocol should incorporate a stringent two-part approach. Firstly, it should require a phase-out of fully-halogenated CFC production by 1995. Secondly, a concurrent assessment must be made of the ozone-depleting and greenhouse warming potential of substitute chemicals. A major international effort must be made to research and develop completely safe alternatives.

Participate actively in the continuous assessment of scientific information and the health and environmental effects, as well as of the technological/economic implications of stratospheric ozone depletion; and consider further actions that prove warranted and feasible on the basis of these assessments; (9.24. c)
Concern about climate change and climate variability, air pollution and ozone depletion has created new demands for scientific, economic and social information to reduce the remaining uncertainties in these fields. Better understanding and prediction of the various properties of the atmosphere and of the affected ecosystems, as well as health impacts and their interactions with socio-economic factors, are needed. 9.6.

ELIMINATION OF EMISSIONS

- Ratify the Montreal Protocol on Substances that Deplete the Ozone Layer. The Protocol should be revised in 1990 to ensure nearly complete elimination of emissions of fully halogenated CFCs by the year 2000. Additional measures to limit other ozone-destroying halocarbons should be considered
- **To develop strategies aimed at mitigating the adverse effects of ultraviolet radiation reaching the Earth's surface as a consequence of depletion and modification of the stratospheric ozone layer. (b)**

MISPLACED FUNDING NOW INTO RECYCLING PROCESSES RATHER THAN REPLACEMENT.

In conclusion, it would appear that the precautionary principle applies to both planned and existing activities. It applies to the case of climate change where there is no scientific certainty, as yet, that harm will occur. The "cautionary" principle should apply when there is scientific certainty that harm will occur i.e. in the case of ozone depletion. However, there are cases where there is scientific certainty that harm will occur, but the proponents of the activity that could cause the potential harm claim that there is scientific uncertainty i.e. nuclear energy. And even though nuclear energy could fulfill the more stringent condition for the application of the "caution" principle, the precautionary principle is certainly not followed.

3.3.3. Recommendations from conference on ozone and comparisons of ozone documents, and a comparison between the precautionary principle and the cautionary principle

April 29, 1994

Skies Above Ozone Conference,
Victoria, B.C.

ATMOSPHERIC OZONE AND CHEMISTRY GROUP

There is an urgent need for more understanding of the role of high UV-B events (especially those in the springtime) and the relationship to the apparent continuing decline in the ozone layer thickness over Canada and the US. This information would be valuable to workers in biosphere and health impacts.

One approach is the use of synoptic analysis of events associated with minimum ozone layer thickness and elevated UV levels. Such analysis should focus on those periods when tree foliage and crops are emerging and public outdoor recreation is increasing.

The goal of this work should be to improve our ability to anticipate what the maximum short-term UV-B exposures may be early in the next century.

PUBLIC EDUCATION

The importance of educating the public to protect the environment cannot be overstated. It is important that people with information related to environmental protection and action consider themselves as educators. Everyone must play a role in passing on information to the world's most important decision-makers. This involves all of us.

The goal of public education on stratospheric ozone depletion is to translate awareness into action and to result in the necessary change of peoples' lifestyles to those which are "survival rich" and which are in harmony with others and the Earth.

Because ozone depletion is a classic tragedy of the commons, all individuals are both part of the problem and part of the solution. There is a wealth of information and research on the problem of ozone depletion. There is a need to target this information to several groups, in particular to children, youth, the general public, media, industry, and government decision-makers.

We challenge all members of this assembly to accept their role as educators.

RECOMMENDATIONS RELATED TO INDUSTRY'S INVOLVEMENT IN EDUCATION:

Given that "corporate scientists" have been involved in developing educational material that has not been sufficiently reviewed and that is prepared for the sole purpose of promoting particular corporate interests, we recommend that a body of non-vested interest scientists review materials for inclusion in school libraries and curriculum, and conduct workshops for teachers on the distinction between science and technology and between 'juried or credible' science and pseudo-science.

RESOURCE MANAGEMENT

The role of UV radiation on ecosystems is poorly understood. We are now faced with the problem of the effect of increased UV-B without knowing the effect of ambient UV-B. Observations have been made which indicate that there is reason for concern. Finding urgent answers to these problems will identify the justifiable level of concern for the problem.

The conference endorses the "Basic Research Implementation Plan" in the UN Scope report, Effects of Increased Ultraviolet Radiation on Biological Systems. The conference urges governments to ensure that such research is initiated.

Some research areas are:

- 1) Determination of the effect of increasing levels of UV-B radiation on plant and animal species.
- 2) Determination of the effects of interactions between UV-B and other environmental stresses for plants and animals.
- 3) Determination of how changes in UV-B might affect competitive interactions in plant communities.
- 4) Determination of how present vegetation management regimes can be adapted to mitigate UV-B impacts on organisms.

We may not have the ability to manage forests and aquatic ecosystems so as to protect them from changes that may be induced by large increases in UV-B. Thus, it is imperative that increases in UV-B exposure caused by a thinning of the ozone layer be minimized.

The conference urges all governments to ensure prompt and full compliance with the Montreal and subsequent protocols on the elimination of ozone-depleting compounds. Consideration should be given to accelerating implementation schedules, in the face of uncertainty brought about by increasing UV-B radiation over the next two decades. It is consistent with the precautionary principle (Convention of Biodiversity wording) that terrestrial and aquatic management practices conserve, perpetuate and restore the integrity of ecosystems and minimize the potential adverse UV-B impacts on all organisms.

FORESTS

Current forest management in the temperate rain forests, which already risks compromise of the integrity of these ecosystems, must be re-evaluated in light of the many factors already changed by management practices, the projected large increases in early growing season UVB, and the risks that radiation presents to decomposer processes, species, and the growth of young seedlings.

Studies have demonstrated that increases in UV-B radiation may alter plant biochemistry and physiological processes, as well as reduce biomass in a large number of species. Forest ecosystems may be particularly vulnerable to increased levels of UV-B radiation exposure due to short-term (acute) effects on physiology or growth due to protracted exposure over extended time periods (chronic effects). Therefore, we recommend that studies on forests be emphasized.

AQUATIC RESOURCES (FRESHWATER AND MARINE)

Short-term experiments have clearly demonstrated that existing levels of UV-B can inhibit phytoplankton photosynthesis, growth and their ability to take up nutrients. This results in changes in their molecular composition reducing their food values by reduction in protein content. The effects vary with location but include lakes, ponds, rivers, tidewaters, coastal waters continental shelf waters and even the oceanic domain. Even though UV-B penetration is restricted to the surface waters, the circulation patterns expose all organisms in the mixed zone to surface conditions at the same time. The question is how long does it take to cause damage and how quickly they recover.

This effect is, in part, masked by an even greater effect on zooplankton and other herbivores. Consequently, the effects on primary producers is magnified at higher trophic levels (fish, marine mammals and birds). This of course means that those who rely on country and fishery resources will be affected.

Complicating this simple picture is the possibility of shifts in phytoplankton community structure toward larger and more tolerant species. In Antarctica, for example, cells smaller than 20 microns are most damaged by UV-B and this is the principal food for small krill. Without krill, the Antarctic food chain would collapse. In other areas, when phytoplankton become too large to be eaten by filter-feeding zooplankton, their productivity is reduced and consequently fish yield will also fall. More tolerant phytoplankton are often of poor food quality and may even be toxic.

Besides the direct effects on organisms, there are indirect effects through the generation of photochemical reactions which alter biogeochemical cycles, metal toxicity, and toxicity of certain toxic organic chemicals. While some organic chemicals are degraded through reaction with UV-B light, others are simply altered and are not detected by conventional analytical techniques. They are still present and still toxic.

The substance most responsible for reducing UV-B light penetration in lakes and oceans is called dissolved organic matter. This is the coloured material which is exported from the drainage basin. In some lakes this protective shield is half what it was 20 years ago. UV-B radiation has been implicated in this process.

Direct effects on fish also occur. Young salmon orient using UV-B sensors. The effect of an increase in UV-B cannot be predicted at the present time. Alteration of hormone activity and damage to other receptors that control their migration patterns require urgent attention. Direct effects on fish eggs, embryonic development, hatching success, larval viability, and juvenile development especially in unshaded shallow waters are predicted. This has critical implications for species that spawn and develop in clear rivers without the benefit of shade provided by trees.

Ocular, epidermal and immunosuppressive effects of UV radiation to marine mammals (whales, seals, walrus, and others) are also potential problems. Disruption of these communities would seriously impact the food supply of indigenous peoples.

We should develop an integrated management strategy that is anticipatory and precautionary in establishing sustainable harvests and

protecting commercial and recreational activities. This requires that research be conducted to reduce the uncertainties illustrated above.

We recommend that UV radiation effects and synergistic effects of contaminants are integrated into a broader understanding of ecosystems' response.

In addition, we should establish active contingency planning with local and indigenous communities most likely to be affected.

ARCTIC

Arctic terrestrial resources are especially vulnerable to increases in Ultra-violet radiation. This is due partly to the relatively short terrestrial food web.

Research in Greenland also indicates that increased UV radiation damages the algae that make up part of the lichen community. Should the damage become extensive throughout the Arctic countries, species dependent upon them will decline, with consequent effects on food supplies of the indigenous peoples.

Resource managers and human health and social service institutions need to be made aware of the implications of these risks for populations dependent on indigenous foods. Risk awareness programs should be implemented for communities at risk, and considered at the regional, national and international level.

INTERNATIONAL LAW FOR LOCAL ACTION

Recommended provision for the Montreal Protocol

- phase out HCFCs by 1996
- elimination of methyl bromide in the year 1996
- Adopt the use of short-term ODPS
- Accelerate phase-out of article 5 countries to match that of industrialized countries. this should be facilitated through augmentation of the multilateral fund

We are concerned about the weakening of the international resolve to eliminate ozone depleting substances though the following adjustments in Copenhagen Protocol (1992):

- Non-compliance with deadlines for phasing out and elimination of ozone depleting substance
- Re-definition of "consumption" to exclude recycled CFCs
- Qualification of phasing out by applying criteria of "essential need"

Recommend states to:

- Develop an environmentally sound ODC destruction technology. In the interim, until such technology is developed recovered ODCs should be stored for later destruction
- Fund the development of environmentally safe alternatives to ozone depleting substances, rather than into the development of "bridge technologies" (such as HCFCs 22)

- Synthesize and disseminate information about environmentally sound alternatives to ODC-using technologies
- Development of environmentally safe and sound retrofitting technologies
- Recommend that all states of the UN institute programs that will allow for the issuance of public UV advisories

We also call for the Fund designed to assist non-industrial countries to comply with the protocols be increased to the amounts commensurate with that goal, and to prohibit the current proliferation of Bridge technologies in these countries to ensure that the replacements for ozone and sound non-ozone depleting substances.

PUBLIC HEALTH

Recommendations to Decrease Ozone Destruction

1. Accelerate ban on manufacturing of ozone depleters internationally.
2. Research feasibility of inactivating depleters in atmosphere.
3. Create think tanks for solving ozone depletion problems and implement alternatives to ODS.
4. More conferences on ozone depletion.
5. Analyze risk/benefit use of depleters.
6. Involve industry and involve public in industry decisions.
7. Continue conference on internet.

Health Effects

1. Discourage ads promoting unprotected UV exposure.
2. Concentrate on youth.
3. Regulate tanning parlors.
4. Look at our own lives to make changes.
5. Market information to cultural producers including film industry.
6. Strengthen human and ecosystem immunity.
7. Promote use of protective clothes, hats, sunglasses and make available to indigenous population.
8. Target high risk groups.
9. Avoid mid-day sun.
10. Record UV-related deaths (melanoma) on death certificates.
11. Implement emergency warning program for peak UV incidents.
12. Research sunscreen value in protecting from immuno-suppressive effects; label sunscreens with warning re: immuno-suppression.
13. Factor UV related illness in public health modeling to assess costs and resource needs.
14. Establish standards for sunglasses and sunblocks.
15. Examine potential for synergistic UV effects re: immuno-suppression and body burden of contaminants such as pesticides and other commercially manufactured substances. Human resilience to UVB needs to be assessed, as do the combined effects of UVB and contaminants on human health.

PROTECTING FOOD SUPPLY

There is enough evidence to start taking precautionary measures immediately since there are serious problems on the horizon.

We need to broaden the list of food species whose performance under UV-B needs to be assessed.

We need more protection for unmanaged ecosystems and more research on UV-B impact on these ecosystems and we need to recognize the maintenance of biodiversity both inside and outside of the food supply system.

1. Need to empower communities and shift research to community level (which includes universities, gardeners, fishermen, farmers, and government).
2. We need to create a hot-line and e-mail system and publications where farmers and fishermen can identify the suspected problem. This would hopefully direct research priorities by the "voters" input.
3. We need to send the message out by getting involved with organizations for fishermen, farmers, churches and gardeners, by organizing meetings with local groups of "producers." Our actions need to be grounded in the community.
4. We need to encourage public pressure, by writing letters to the editor and informing local politicians.
5. Skies Above Foundation needs to create a package of information from this meeting, adapted for community educators and written in user-friendly form! This package would be done in collaboration with an advisory group created here today.
6. Use gardening magazines such as Organic Gardening or Harrow smith to spread the information.
7. Support and promote organic agriculture ideas.
8. Support and promote local food production for local consumption.
9. Collaborate our research with producers.
10. Adopt-a-field, farmer research.
11. Examine additional impacts of UV-B on Third World food supplies which are already suffering from agricultural and militarization practices imposed in the 1950's.

COMMUNITY PLANNING

The primary objectives of community planning initiatives should address two important areas of concern:

- 1) Prevention of further ozone depletion,
- 2) Protection against UV-B.

In addition, to the many environmental concerns, community planning efforts address, emphasis needs to be placed on incorporating UV radiation impacts into "health, safety and general welfare" as well as environmental rationale for community growth management and land use plans. We can achieve this best by educating communities on their ability to achieve the

most they can by becoming independent entities focusing on sustainability, equality, and health and environmental protection.

The explicit mention of ozone depletion and UV-B exposure needs to be backed up by measures such as site plan criteria and building code standards.

Prevention of Further Ozone Depletion Municipal/Local Government Actions

- 1) Community plans to phase out Ozone Depleters (ODP) and enact by-laws/ordinances for enforcement.
- 2) Enact recapture programs for refrigeration units, using an incentive approach.
- 3) Plans for conversion/redesign of ODP units (air conditioning, refrigeration)
- 4) Encourage retailers to sell alternatives such as ozone friendly refrigerators and insulation.

Initiatives Providing UV Protection Municipal/Local Government Actions

- 1) Localized UV monitoring and broadcasting (TV, radio, phone-in)
- 2) Regulate or change recreational facilities/programs, i.e. close community pools during mid-day or build cover/enclosure, shade public playgrounds, provide indoor recreational facilities/programs for mid-day
- 3) Incorporate planning rationale to protect public health, safety, welfare from excess UV due to ozone depletion
- 4) Planning for local self-reliance, sustainability
- 5) Adopt municipal by-laws or ordinances regarding UV protection:
 - a) health/safety regulations for local government employees
 - b) site plan criteria
 - c) tree ordinances
 - d) regulate tanning salons
 - e) child care facility criteria
- 6) School Board regulate UV protection for students:
 - a) re-schedule athletic and physical education programs for early morning, late afternoon
 - b) students must be UV-protected while outdoors
- 7) Initiate public health outreach program

Civic Group Actions

- 1) Medical community outreach
- 2) Mobilize scientists/technical experts
- 3) Encourage retailing of "sun smart" protective products (clothing, eye glasses)
- 4) Public education
- 5) Civic groups such as labour, trade associations, chamber of commerce, service clubs to encourage "sun smart" practices.

READINGS AND DIAGRAMS AVAILABLE THROUGH IN-HOUSE LIBRARY

Climate Change

- Diagram linking information from International project on Climate Change based in Harvard. This project examined social learning related to Climate Change in eight different countries
- Documents on Climate change related to actions taken by different states to address climate change and forestry

Biodiversity

Current working documents from the 1994 Conference of the parties of the Convention on Biological Diversity

Ozone

- papers presented at the International Ozone conference on "Ozone Depletion and Ultraviolet radiation"

CHAPTER 4

International obligations as instruments of positive global change

International customary law, Doctrine of legitimate expectations, Global environmental security, globally adopted obligations (Agenda 21, Rio Declaration, Forest Principles, World Charter of Nature etc.)

4.1. PRECURSORS TO UNCED

4.1.1. Declaration of the United Nations Conferences on the Human Environment (UNCHE)

Excerpts from the Stockholm Declaration (1972)

Proclaims that:

1. Both aspects of [man's] environment, the natural and the man-made, are essential to his well-being and to the enjoyment of basic human rights — even the right to life itself. (UNCHE)

2. The protection and improvement of the human environment is a major issue which affects the well-being of peoples and economic development throughout the world; it is the urgent desire of the peoples of the whole world and the duty of all Governments. (UNCHE)

3... We see around us growing evidence of man-made harm in many regions of the earth: dangerous levels of pollution in water, air, earth and living beings; major and undesirable disturbances to the ecological balance of the biosphere; destruction and depletion of irreplaceable resources ... (UNCHE)

4. In the developing countries most of the environmental problems are caused by under-development. Millions continue to live far below the minimum levels required for a decent human existence, deprived of adequate food and clothing, shelter and education, health and sanitation. Therefore, the developing countries must direct their efforts to development, bearing in mind their priorities and the need to safeguard and improve the environment. For the same purpose, the industrialized countries should make efforts to reduce the gap between themselves and the developing countries. In the industrialized countries environmental problems are generally related to industrialization and technological development. (UNCHE)

5. the natural growth of population continuously presents problems on the preservation of the environment, and adequate policies and measures should be adopted, as appropriate, to face these problems. UNCHE

...Along with social progress and the advance of production, science and technology, the capability of man to improve the environment increases with each passing day (UNCHE)

...Along with social progress and the advance of production, science and technology, the capability of man to improve the environment increases with each passing day

6. A point has been reached in history when we must shape our actions throughout the world with more prudent care for their environmental consequences. (UNCHE)

Through ignorance or indifference, we can do massive and irreversible harm to the earthly environment on which our life and well-being depend. (UNCHE)

... for the purpose of attaining freedom in the world of nature, man must use knowledge to build, in collaboration with nature, a better environment. (UNCHE)

..To defend and improve the human environment for present and future generations has become an imperative goal for mankind — a goal to be pursued together with, and in harmony with the established and fundamental goals of peace and of world-wide economic and social development. (UNCHE)
Recognizing the imperative to defend and improve the human environment for present and future generations UNCHE

7. To achieve this environmental goal will demand the acceptance of responsibility by citizens and communities and by enterprises and institutions at every level, all sharing equitably in common efforts. (UNCHE)

... International co-operation is also needed in order to raise resources to support the developing countries in carrying out their responsibilities in this field. (UNCHE)

... A growing class of environmental problems, because they are regional or global in extent or because they affect the common international realm, will require extensive co-operation among nations and action by international organizations in the common interest.

the conference calls upon governments and peoples to exert common efforts for the preservation and improvement of the human environment, for the benefit of all the people and for their posterity. (UNCHE)

II PRINCIPLES

Principle 1

Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations. In this respect, policies promoting or perpetuating apartheid, racial segregation, discrimination, colonial and other forms of oppression and foreign domination stand condemned and must be eliminated. (UNCHE)

Principle 2

The natural resources of the earth including the air, water, land, flora and fauna and especially representative samples of natural ecosystems must be safeguarded for the benefit of present and future generations through careful planning or management, as appropriate. (UNCHE)

Principle 3

the capacity of the earth to produce vital renewable resources must be maintained and, wherever practicable, restored or improved. (UNCHE)

Principle 4

Man has a special responsibility to safeguard and wisely manage the heritage of wildlife and its habitat which are now gravely imperiled by a combination of adverse factors. Nature conservation including wildlife must therefore receive importance in planning for economic development (UNCHE)

Principle 5.

The non-renewable resources of the earth must be employed in such a way as to guard against the danger of their future exhaustion and to ensure that benefits from such employment are shared by all mankind. (UNCHE)

Principle 6

the discharge of toxic substances or of other substances and the release of heat, in such quantities or concentrations as to exceed the capacity of the environment to render them harmless, must be halted in order to ensure that serious or irreversible damage is not inflicted upon ecosystems. The just struggle of the peoples of all countries against pollution should be supported (UNCHE)

Principle 7

States shall take all possible steps to prevent pollution of the seas by substances that are liable to create hazards to human health, to harm living resources and marine life, to damage amenities or to interfere with other legitimate uses of the sea (UNCHE)

Principle 8.

Economic and social development is essential for ensuring a favourable living and working environment for man and for creating conditions on earth that are necessary for the improvement of the quality of life (UNCHE)

Principle 9

Environmental deficiencies generated by the conditions of underdevelopment and natural disasters pose grave problems and can best be remedied by accelerated development through the transfer of substantial quantities of financial and technological assistance as a supplement to the domestic effort of the developing countries and such timely assistance as may be required. (UNCHE)

Principle 11

The environment policies of all states should enhance and not adversely affect the present or future development potential of developing countries, nor should they hamper the attainment of better living conditions for all, and appropriate steps should be taken by States and international organization with a view to reaching agreement on meeting the possible national and international economic consequences resulting from the application of environmental measures (UNCHE)

Principle 13

In order to achieve a more rational management of resources and thus to improve the environment, States should adopt an integrated and co-ordinated approach to their development planning so as to ensure that development is compatible with the need to protect and improve the human environment for the benefit of their population. (UNCHE)

Principle 14

Rational planning constitutes an essential tool for reconciling any conflict between the needs of development and the need to protect and improve the environment. (UNCHE)

Principle 15

Planning must be applied to human settlements and urbanization with a view to avoiding adverse effects on the environment and obtaining maximum social economic and environmental benefits for all. In this respect projects which are designed for colonialist and racist domination must be abandoned. (UNCHE)

Principle 16

Demographic policies, which are without prejudice to basic human rights and which are deemed appropriate by Governments concerned, should be applied in those regions where the rate of population growth or excessive population concentrations are likely to have adverse effects on the environment or development, or where low population density may prevent improvement of the human environment and impede development. (UNCHE)

Principle 18

Science and technology, as part of their contribution to economic and social development, must be applied to the identification, avoidance and control of environmental risks and the solution of environmental problems and for the common good of mankind. (UNCHE)

Principle 19

Education in environmental matters, for the younger generation as well as adults, giving due consideration to the underprivileged, is essential in order to broaden the basis for an enlightened opinion and responsible conduct by individuals, enterprises and communities in protecting and improving the environment in its full human dimension. It is also essential that mass media of communications avoid contributing to the deterioration of the environment, but, on the contrary, disseminate information of an educational nature, on the

need to protect and improve the environment in order to enable man to develop in every respect. (UNCHE)

Principle 20

... environmental technologies should be made available to development countries on terms which would encourage their wide dissemination without constituting an economic burden on the developing countries. (UNCHE)

Principle 21

States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction (UNCHE)

Principle 22

States shall co-operate to develop further the international law regarding liability and compensation for the victims of pollution and other environmental damage caused by activities within the jurisdiction or control of such States to areas beyond their jurisdiction. (UNCHE)

Principle 23

Without prejudice to such criteria as may be agreed upon by the international community, or to standards which will have to be determined nationally, it will be essential in all cases to consider the systems of values prevailing in each country, and the extent of the applicability of standards which are valid for the most advanced countries but which may be inappropriate and of unwarranted social cost for the developing countries. (UNCHE)

Principle 26

Man, and his environment must be spared the effects of nuclear weapons and all other means of mass destruction. States must strive to reach prompt agreement, in the relevant international organs, on the elimination and complete destruction of such weapons. (UNCHE)

4.1.2. UN Resolution 37/7 (1982) the World Charter of Nature

The General Assembly,

Reaffirming the fundamental purposes of the United Nations, in particular the maintenance of international peace and security, the development of friendly relations among nations and the achievement of international co-operation in solving international problems of an economic, social, cultural, technical, intellectual or humanitarian character,
(WCN)

Aware that:

(a) {Mankind} is part of nature and life depends on the uninterrupted functioning of natural systems which ensure the supply of energy and nutrients (WCN)

(b) Civilization is rooted in nature, which has shaped human culture and influences all artistic and scientific achievement, and living in harmony with nature gives man the best opportunities for the development of his creativity, and for rest and recreation, (WCN)

Convinced that:

(a) Every form of life is unique, warranting respect regardless of its worth to man, and to accord other organisms such recognition's, man must be guided by a moral code of action,

(b) Man can alter nature and exhaust natural resources by his action or its consequences and, therefore, must fully recognize the urgency of maintaining the stability and quality of nature and of conserving natural resources, (WCN)

Persuaded that:

(a) Lasting benefits from nature depend upon the maintenance of essential ecological processes and life support systems, and upon the diversity of life forms, which are jeopardized through excessive exploitation and habitat destruction by man (WCN)

(b) The degradation of natural systems owing to excessive consumption and misuse of natural resources as well as to failure to establish an appropriate economic order among peoples and among States, leads to the breakdown of the economic, social and political framework of civilization, (WCN)

(c) Competition for scarce resources creates conflicts, whereas the conservation of nature and natural resources contributes to justice and the maintenance of peace and cannot be achieved until mankind learns to live in peace and to forsake war and armaments, (WCN)

Reaffirming that man must acquire the knowledge to maintain and enhance his ability to use natural resources in a manner which ensures the preservation of the species and ecosystems for the benefit of present and future generations, (WCN)

Firmly convinced of the need for appropriate measures, at the national and international, individual and collective, and private and public levels, to protect nature and promote international co-operation in this field. (WCN)

Adopts, to these ends, the present World Charter for Nature, which proclaims the following principles of conservation by which all human conduct affecting nature is to be guided and judged. (WCN)

1. General Principles

- 1.** Nature shall be respected and its essential processes shall not be impaired (WCN)
- 2.** The genetic viability on the earth shall not be compromised: the population levels of all life forms, wild and domesticated, must be at least sufficient for their survival, and to this end necessary habitats shall be safeguarded (WCN)
- 3.** all areas of the earth, both land and sea, shall be subject to these principles of conservation; special protection shall be given to unique areas, to representative samples of all the different types of ecosystems and to the habitats of rare or endangered species. (WCN)
- 4.** Ecosystems and organisms, as well as the land, marine and atmospheric resources that are utilized by man, shall be managed to achieve and maintain optimum sustainable productivity, but not in such a way as to endanger the integrity of those other ecosystems or species with which they coexist. (WCN)
- 5.** Nature shall be secured against degradation caused by warfare or other hostile activities. (WCN)

II Functions

- 6.** In the decision-making process it shall be recognized that man's needs can be met only by ensuring the proper functioning of natural systems and by respecting the principles set forth in the present Charter. (WCN)
- 7.** In the planning and implementation of social and economic development activities, due account shall be taken of the fact that the conservation of nature is an integral part of those activities. (WCN)
- 8.** In formulating long-term plans for economic development, population growth and the improvement of standards of living, due account shall be taken of the long-term capacity of natural systems to ensure the subsistence and settlement of the populations concerned, recognizing that this capacity may be enhanced through science and technology. (WCN)
- 9.** The allocation of areas of the earth to various uses shall be planned and due account shall be taken of the physical constraints, the biological productivity and diversity and the natural beauty of the areas concerned. (WCN)
- 10.** Natural resources shall not be wasted, but used with a restraint appropriate to the principles set forth in the present Charter, in accordance with the following rules: (WCN)
 - (a) Living resources shall not be utilized in excess of their natural capacity for regeneration; (WCN)
 - (b) The productivity of soils shall be maintained or enhanced through measures which safeguard their long-term fertility and the process of organic decomposition and prevent erosion and all other forms of degradation; (WCN)
 - (c) Resources, including water, which are not consumed as they are used shall be reused or recycled; (WCN)
 - (d) Non-renewable resources which are consumed as they are used shall be exploited with restraint, taking into account their abundance, the rational possibilities of converting them for consumption, and the compatibility of their exploitation with functioning of natural systems. (WCN)

- 11.** Activities which might have an impact on nature shall be controlled, and the best available technologies that minimize significant risks to nature or other adverse effects shall be used; in particular, (WCN)
- (a) activities which are likely to cause irreversible damage to nature shall be avoided; (WCN)
 - (b) Activities which are likely to pose a significant risk to nature shall be preceded by an exhaustive examination; their proponents shall demonstrate that expected benefits outweigh potential damage to nature, and where potential adverse effects are not fully understood, the activities should not proceed; (WCN)
 - (c) Activities which may disturb nature shall be preceded by assessment of their consequences, and environmental impact studies of development projects shall be conducted sufficiently in advance, and if they are to be undertaken, such activities shall be planned and carried out so as to minimize potential adverse effects; (WCN)
 - (d) Agriculture, grazing forestry and fisheries practices shall be adapted to the natural characteristics and constraints of given areas; (WCN)
 - (e) Areas degraded by human activities shall be rehabilitated for purposes in accord with their natural potential and compatible with the well-being of affected populations (WCN)
- 12.** Discharge of pollutants into natural systems shall be avoided and: (WCN)
- (a) Where this is not feasible, such pollutants shall be treated at the source, using the best practicable means available; (WCN)
 - (b) special precautions shall be taken to prevent discharge of radioactive or toxic wastes (WCN)
- 13.** Measures intended to prevent, control or limit natural disasters, infestations and diseases shall be specifically directed to the causes of these scourges and shall avoid adverse side-effects on nature. (WCN)

III Implementation

- 14.** The principles set forth in the present Charter shall be reflected in the law and practice of each State, as well as at that international level. (WCN)
- 15.** Knowledge of nature shall be broadly disseminated by all possible means, particularly by ecological education as an integral part of general education. (WCN)
- 16.** All planning shall include, among its essential elements, the formulation of strategies for the conservation of nature, the establishment of inventories of ecosystems and assessments of the effects on nature of proposed policies and activities; all of these elements shall be disclosed to the public by appropriate means in time to permit effective consultation and participation. (WCN)
- 17.** Funds, programmes and administrative structures necessary to achieve the objective of the conservation of nature shall be provided. (WCN)
- 18.** constant efforts shall be made to increase knowledge of nature by scientific research and to disseminate such knowledge unimpeded by restrictions of any kind. (WCN)
- 19.** The status of natural processes, ecosystems and species shall be closely monitored to enable early detection of degradation or threat, ensure timely intervention and facilitate the evaluation of conservation policies and methods. (WCN)

20 Military activities damaging to nature shall be avoided (WCN)

21. States and, to the extent they are able, other public authorities, international organizations, individuals, groups and corporations shall: (WCN)

(a) Co-operate in the task of conserving nature through common activities and other relevant actions, including information exchange and consultations; (WCN)

(b) Establish standards for products and manufacturing processes that may have adverse effects on nature, as well as agreed methodologies for assessing these effects; (WCN)

(c) Implement the applicable international legal provisions for the conservation of nature and the protection of the environment; (WCN)

(d) Ensure that activities within their jurisdiction or control do not cause damage to the natural systems located within other States or in the areas beyond the limit of national jurisdiction; (WCN)

(e) Safeguard and conserve nature in areas beyond national jurisdiction. (WCN)

22. Taking fully into account the sovereignty of States over their natural resources, each State shall give effect to the provisions of the present Charter through its competent organs and in co-operation with other States. (WCN)

23. All persons, in accordance with their national legislation, shall have the opportunity to participate, individually or with others, in the formulation of decisions of direct concern to their environment, and shall have access to means of redress when their environment has suffered damage or degradation. (WCN)

24. Each person has a duty to act in accordance with the provisions of the present Charter; acting individually, in association with others or through participation in the political process, each person shall strive to ensure that the objectives and requirements of the present Charter are met. (WCN)

4.1.3. NGO/ STATE DECLARATION

4.1.3.1. Non-UN International Document with representation from government and Non-Government Organizations from over 125 states

THE CARACAS DECLARATION (CD)

We, over fifteen hundred leaders and participants deeply committed to world conservation, brought together by the World Conservation Union for the fourth World Congress on National Parks and Protected Areas in Caracas, Venezuela, between 10 and 21 February 1992, ADOPT this Declaration of our belief in the vital importance of well-managed national parks and protected areas to all people. (CD)

WE RECOGNIZE THAT:

- nature has intrinsic worth and warrants respect regardless of its usefulness to humanity (CD)
- the future of human societies depends upon people living in peace among themselves and in harmony within nature; (CD)

- development depends on the maintenance of the diversity and productivity of life on Earth; (CD)
- this natural wealth is being eroded at an unprecedented rate, because of the rapid growth in human numbers, the uneven and often excessive consumption of natural resources, mistaken and socially harmful styles of development, global pollution and defective economic regimes, so that the future of humanity is now threatened; (CD)
- this threat will not be averted until these problems have been redressed, the economies of many countries have been strengthened and poverty has been conquered through processes of sustainable development; (CD)
- many people must modify their styles of living and the world community must adopt new and equitable styles of development, based on the care and sustainable use of the environment, and the safeguarding of global life-supporting systems (CD)

WE CONSIDER THAT the establishment and effective management of networks of national parks and other areas in which critical natural habitats, fauna and flora are protected must have high priority and must be carried out in a manner sensitive to the needs and concerns of local people. These areas are of crucial, and growing, importance because:

- they safeguard many of the world's outstanding areas of living richness, natural beauty and cultural significance, are a source of inspiration and are an irreplaceable asset of the countries to which they belong; (CD)
- they help to maintain the diversity of ecosystems, species, genetic varieties and ecological processes (including the regulation of water flow and climate) which are vital for the support of all life on Earth and for the improvement of human social and economic conditions; (CD)
- they protect genetic varieties and species, which are vital in meeting human needs, for example in agriculture and medicine, and are the basis for human social and cultural adaptation in an uncertain and changing world; (CD)
- they may be home to communities of people with traditional cultures and irreplaceable knowledge of nature; (CD)
- they may contain landscapes which reflect a long history of interaction between people and their environment; (CD)
- they may have immense scientific, educational, cultural, recreational and spiritual value; (CD)
- they provide major direct and indirect benefits to local and national economies and modes for sustainable conservation which may be applied elsewhere in the world (CD)

ACCORDINGLY, and bearing in mind the message of *Caring for the Earth: A strategy for Sustainable Living*, *The Global Biodiversity Strategy*, launched at this Congress, and the earlier messages of the World Conservation Strategy, the World Charter for Nature and the World Commission on Environment and Development,

WE, the PARTICIPANTS OF THE CARACAS CONGRESS

- 1. REAFFIRM** the responsibility of humanity to safeguard the living world; (CD)
- 2. EMPHASIZE** the spiritual, social, economic, scientific and cultural importance of national parks and other kinds of protected area; (CD)
- 3. STRESS** that the conservation of global biological diversity and the achievement of sustainable development depends upon effective and vigorous international action to reform the world's economic and trading systems, and to halt the global pollution that threatens to bring about climate change; (CD)
- 4. STRONGLY URGE** all governments, regional and local authorities and international institutions to include protected areas as integral elements in development policies, programmes, plans and projects; (CD)
- 5. ENCOURAGE** communities, non-governmental organizations, and private sector institutions to participate actively in the establishment and management of national parks and protected areas; (CD)
- 6. URGE** all governments, local authorities, international institutions and non-governmental organizations to inform and educate all sectors of society about the importance of protected areas, and the economic, social and environmental benefits they provide, and so make the public active partners and supporters in their protection; (CD)
- 7. INSIST THAT** industry (including tourism, agriculture, forestry and the extraction of oil and minerals) must adopt the highest standards of environmental protection and eliminate damaging impacts on protected areas; (CD)
- 8. STRONGLY URGE** industry, especially multi-national corporations, and governments, to ensure that any exploitation of biodiversity conforms with rigorous controls established by the sovereign State concerned (CD)
- 9. EMPHASIZE** the vital role of environmental education and urge all governments to strengthen their programmes, especially in and relating to national parks and protected areas, constituting appropriate national organizations to develop and coordinate this process (CD)
- 10. EMPHASIZE** that although national parks and other protected areas are of special importance, all lands and seas should be managed so as to maintain (or restore) the highest environmental quality. (CD)
- 11. STRESS** the need for international cooperation and assistance to place the latest knowledge and best available technology at the disposal of all governments and especially their protected area managers. (CD)

TO THESE ENDS WE STRONGLY URGE ALL GOVERNMENTS AND APPROPRIATE NATIONAL AND INTERNATIONAL BODIES;

- 1.** to take urgent action to consolidate and enlarge national systems of well-managed protected areas with buffer zones and corridors, so that by the year 2000 they safeguard the full representative range of land, freshwater, coastal and marine ecosystems of each country and allow these ecosystems space to adapt to climate change (CD)
- 2.** To ensure that the environmental and economic benefits which protected areas provide are fully recognized in national development strategies and national accounting systems. (CD)

- 3** To support the development of national protected area policies which are sensitive to customs and traditions, safeguard the interest of indigenous people, take full account of the roles and interests of both men and women, and respect the interests of children of this and future generations (CD)
- 4.** To ensure that effective international, national, regional and local administrative, legal, accounting and financial mechanisms for supporting protected areas are established as a matter of priority and regularly reviews. (CD)
- 5.** To allocate adequate financial and other resources so that, once designated, protected areas are managed effectively, to achieve their intended objectives. (CD)
- 6.** To strengthen environmental education, and to provide training that will improve professionalism in the management of protected areas. (CD)
- 7.** To facilitate the establishment of effective and efficient networks of NGOs cooperating at a local, national and international level to further national part and protected area objectives. (CD)
- 8.** To recognize the significance of demographic change and its consequences for the survival of biological diversity and to take appropriate actions to reduce this threat. (CD)
- 9.** To foster publicly funded scientific research and monitoring that will improve the planning and management of protected areas, and to use such areas as sites for studies that will improve understanding of the environment. (CD)
- 10.** To develop mechanisms that will allow all sectors of society, especially long-standing local populations, to be partners in the planning, establishment, and management of protected areas, and will ensure they share equitably in the associated costs and benefits. (CD)
- 11** To participate actively in global and regional Conventions and other legal instruments, action programmes, and procedures to promote protected terrestrial, coastal and marine areas and the conservation of biological diversity. (CD)
- 12.** To work energetically to safeguard the world's tropical forests, particularly those of Amazonia which are reservoirs of outstanding biological diversity and under severe pressure (CD)
- 13.** To strengthen international technical and financial cooperation that will assist developing countries to establish and manage protected areas and to safeguard biological diversity. (CD)
- 14.** To cooperate to safeguard species, ecosystems and landscapes that extend across national borders and therefore require protection through the collaboration of neighbouring countries. (CD)

RECOGNIZING that action to safeguard the living riches and natural beauty of the Earth depends on the commitment of all people, WE PLEDGE OURSELVES to work wholeheartedly to implement the provisions of this Declaration

EMPHASIZING that the establishment and maintenance of protected areas is essential to sustaining human society and conserving global biological diversity, WE INVITE THE PRESIDENT OF THE REPUBLIC OF VENEZUELA to convey this Declaration to the Earth Summit, to be held at

Rio de Janeiro, Brazil, in June 1992 with the purpose of ensuring that its conclusions are incorporated in Agenda 21, the agreed world action plan for the next century (CD)

March 30, 1992

Commitment by Ministry of Environment, Lands and Parks and the Ministry of Forests (CMEF)

"At the fourth World Parks Congress, a resolution was passed which we believe to be of interest to you all. So, we are taking this opportunity to pass along the "Caracas Declaration." (CD) (CMEF)

As we, in BC Parks and BC Forest Service begin to work on implementing our components of B.C.'s protected areas under the aegis of the Commission on Resources and Environment, we will be mindful of this Declaration and its implications. Our objective will be to have a system of protected areas which we are proud to present to the world. (CD) (CMEF)

4.1.4. NGO Declarations

4.1.4.1. WOMAN'S ACTION AGENDA

WOMAN'S ACTION AGENDA 21 (Excerpts the World Women's congress Action Agenda) (WAG)

PREAMBLE: TOWARD A HEALTHY PLANET

People everywhere are frightened by mounting evidence of the deterioration of Earth's life-giving systems. Human beings are part of the web of life, not above its laws. We have a special responsibility to respect all of the Earth Community, including our air, water, soil and natural resources, our fauna and flora, and the atmosphere that shelters us. (WAG)

We are deeply troubled by the increasing quality of life disparities between inhabitants of industrialized nations and those in so-called "developing" nations and by the growing numbers of poor within the rich countries. In all instances, women children, minorities and indigenous people are the chief victims. ... (WAG)

We are outraged by the inequities among children the world over, with millions denied food, shelter, health care, education, and opportunities for a full and productive life. We condemn the racism and disrespect of diversity on which this inequity feeds. ... (WAG)

We will no longer tolerate the enormous role played by military establishments and industries in making the 20th century the bloodiest and most violent in all of human history. Militarism is impoverishing and maiming both the Earth and humanity. It is urgent that resources currently consumed by the military be redirected to meet the needs of people and our planet. (WAG)

We believe that a healthy and sustainable environment is contingent upon world peace, respect for human rights, participatory democracy, the self-

determination of peoples, respect for indigenous people and their lands, cultures and traditions, and the protection of all species (WAG)

We believe that basic human rights, include access to clear air and water, food, shelter, health, education, personal liberty, and freedom of information...

ACTIONS

Democratic Rights, Diversity and solidarity

Recognizing that Nature is not limited by national sovereignty or boundaries and that environmental degradation is global ... (WAG)

We demand that all governments comply with requirements of the Nairobi Forward -looking Strategies for the Advancement of Women and they ratify and implement the UN Convention on the Elimination of all forms of Discrimination Against Women, the UN Convention on Human Rights, and the UN Convention on the Rights of the Child.

Code of Environmental Ethics and Accountability.... (WAG)

Insisting that national boundaries should not impede the development of global concepts of the environment and responsibility on a global level (WAG)

we will work for adoption of an International Code of Environmental Conduct by business and industry, governments, UN agencies, and non-governmental organizations that includes precautionary and preventive approaches, considering the true value of the environment and the effect on women when planning activities that may affect the Earth (WAG)

We support new principles of international environmental law, including: strict liability for environmental harms (the polluter pays), the intrinsic value of biodiversity, and non-adversarial dispute resolution mechanisms to include the public in decision -making about compensation for victims (WAG)

We call for non-governmental monitoring systems that will hold institutions, corporations, states, organizations, and individuals accountable for their actions, products and policies. (WAG)

We require governments, the World Bank, International Monetary Fund, and lending agencies to establish environmental audits with which every funding proposal must comply before implementation of loans. (WAG)

Women, Militarism and the Environment

Knowing that military expenditures, the international arms trade, and armed conflict deprive billions of human beings of basic security and well-being.... (WAG)

Realizing the disastrous environmental impact of all military activity, including research, development, production of weaponry, testing, maneuvers, presence of military bases, disposal of toxic materials, transport, and resources use (WAG)

Aware that research on and use of military weaponry, including nuclear, chemical, and biological weapons, contribute significantly to environmental degradation, genetic mutation, illness and death (WAG)

Recognizing that militarism often leads to the occupation of lands and the denial human and environmental rights. (WAG)

We call on UNCED to include in its Agenda 21 and final documents statements on the impact of militarism on the environment, developments, and humanity and to support measures that will transfer the world's vast military resources to positive, life-enforcing programs. (WAG)

We urge an immediate 50% reduction in military spending with the money saved reallocated to socially useful and environmentally friendly purposes. ... (WAG)

We demand that nuclear weapons be dismantled, that nuclear testing cease immediately, and a global nuclear test ban treaty be negotiated, signed and enforced (WAG)

We demand the cessation of space activities and supersonic flights that release carbon dioxide into the atmosphere and threaten the ozone layer. (WAG)

We demand that more decisive action be taken to ban international traffic in nuclear, chemical, biological and poison gas weapons or constituent of such weapons. Mechanisms should be developed to enforce this ban, whether against governments, businesses, or individuals. (WAG)

We support a UN commission report that recommended re-assigning military-related satellites and other information gathering systems to monitor and share global environmental data (WAG)

We demand that armies be used as environmental protection cops to monitor and repair damage to natural systems, including clean-up of war zones, military bases and surrounding areas, and to be available to assist citizens in times of natural and man-made disasters. (WAG)

We condemn governments that turn their armies against their citizens causing millions of individuals to become refugees and displaced persons. (WAG)

Foreign Debt and Trade

In full knowledge that the industrialized nations have been the net beneficiaries of exploitation of the abundant natural resources of poor nations, (WAG)

Observing the disastrous social, environmental, and economic consequences of international lending practices and current terms of trade between industrialized and non-industrialized nations, (WAG)

Concerned about the negative impact on the poor, especially women and children, of the International Monetary Fund and World Bank structural adjustment policies (WAG)

Appalled by the flow of capital from poor nations to the banking systems of rich nations, depriving them of funds for needed domestic, social, economic, health and education programs (WAG)

Recognizing the grievous consequences of this practice for poor families in the developing countries and for the natural resources upon which we all depend, (WAG)

We demand immediate official foreign debt cancellation. ... (WAG)

We will oppose those debt for nature exchanges (swaps) that are not subject to wide public debate and that threaten sovereignty and indigenous peoples' rights to land and self-determination (WAG)

We will hold personally accountable corrupt officials, who borrow in the name of their people, for the social and environmental consequences of those loans and for personal misuse of such funds.(WAG)

We demand a total ban on the export of goods rejected for local consumption in or by the country of origin. (WAG)

We suggest that historic audits of nation states (from 1945 onward) be conducted to determine the net beneficiary of natural resources exploitation, an assessment that would serve as the basis to cancel current foreign debt. (WAG)

Women, Poverty, Land Rights Food Security and Credit.

.... We will strive to create awareness of the environmental impact of land use technology guided by immediate profit at the cost of long-term sustainability and productivity.... (WAG)

Women's Rights, Population Policies and Health

Knowing that the major causes of environmental degradation are industrial and military pollutants, toxic wastes, and economic systems that exploit and misuse nature and people, we are outraged by suggestions that women's fertility rates (euphemistically called population pressures) are to blame, (WAG)

Recognizing that this analysis, if unchallenged, lays the ground work for these-emergency of top-down, demographically-driven population policies and programs that are deeply disrespectful of the basic human rights of women as guaranteed in the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) (WAG)

Knowing that it is the number of people plus their consumption of resources plus their wastes that determine their environmental impact, we note that a person in the industrialized world has a far greater negative impact on the environment than a person living in a poor country, (WAG)

Aware that the right to reproductive health and choice is a basic human right of all individuals, we point out that the World fertility Survey estimates that there are 500 million couples who wish to plan their family size but have no access to the means to do so, (WAG)

Fearful of the threat to women's lives by the HIV pandemic and recognizing that women's ability to protect themselves from AIDS and other sexually transmitted diseases and to determine when-and-if to have children is a prerequisite for women's health, self-determination, and empowerment, (WAG)

We condemn any attempt to deprive women of reproductive freedom or the knowledge to exercise that freedom. (WAG)

We demand women-centred, women-managed comprehensive reproductive health care and family planning including the right to prenatal care, safe and legal voluntary contraceptive and abortion, sex education and information (WAG)

We urge governments, multilateral and donor agency to increase investments in comprehensive reproductive health services and to include men as beneficiaries of family planning education and services. Family support services should include child care and parental leave. (WAG)

We call on policy-makers to recognize that raising the economic, health, education, and social status of women are essential to ending environmental degradation. (WAG)

We call for recognition of the existence of a global, environmentally induced cancer epidemic and demand removal for the environment of carcinogenic substances, which have particularly adverse effects on women and children. Particular attention in medical research and treatment should be paid to women's cancers: breast, ovarian, cervical, uterine, and vaginal. Research and remedial action should also focus on the effects on health of toxic chemicals, nuclear wastes, radiation, pesticides and fertilizers. (WAG)

We demand that all governments systematically alert their citizens to the danger of AIDS and provide them with the information on how to avoid contamination. (WAG)

We ask the World Health Organization, International Labour Organization, national governments, public health groups, corporations, and unions to increase efforts to eliminate environmental occupational hazards in factories, offices, and on the land. (WAG)

Biodiversity and biotechnology

Concerned by the deterioration of habitats and ecosystems that are home to the millions of species with which we share the Earth

Realizing the tragic loss of species upon which our interdependent ecosystems depend, (WAG)

Recognizing the treasure of plant and animal knowledge that is tended and passed on by the indigenous people of the world. (WAG)

Knowing the attempt of commercial interests of the industrialized nations and multinationals to control the natural heritage of species in the nations of the south through patenting life forms and attempting to control gene banks, (WAG)

Aware that genetically engineered organisms released into the environment pose a threat to natural biological diversity. (WAG)

We insist that the UNCED convention on Biological Diversity address the risks of biotechnology as well as the conservation of species ... re biotechnology (WAG)

We call for a redefinition of biology, one that gives priority to conservation biology and ecology and stops the trend in reductionism methods at the gene and molecular level, a trend that negates the primacy of the organism and ecosystem. (WAG)

Nuclear Power and Alternative Energy

Noting alarming increases in levels of radiation from man-made sources in our air, water, soil, and space, (WAG)

Concerned at the rising death toll from nuclear power accidents, exposure to nuclear wastes and other radiation emissions, (WAG)

Aware that women's breast and uterine tissue, fetuses, and children are particularly vulnerable to radiation-induced cancers and disease, (WAG)

We urge that new nuclear research, development, production, and use be stopped, that uranium mining be halted, and that nuclear power production and use be phased out and replaced by environment-friendly energy sources, (WAG)

We deplore the environmental racism responsible for the dumping, siting, or placement of environmentally hazardous facilities in the communities of color around the world, including those in North America. (WAG)

We demand that export of radioactive and other toxic wastes to countries of the South and communities of color be stopped and that the nations responsible for such wastes be responsible for cleaning them up. ... (WAG)

We propose that energy efficiency, conservation, and self-renewing sources such as sun, wind, and water be implemented globally as an alternative to nuclear power and fossil fuels. Available technology for these alternatives should be refined and implemented and retraining programs provided for workers displaced by this transition. (WAG)

We call for promotion of mass transportation systems, including accommodations for bicycles, reduction reliance on fossil-fuel cars, and development of more energy-efficient motor vehicles (WAG)

Science and Technology Transfer

Believing that science and technology should be at the service of the many rather than for the benefit of the few, (WAG)

Observing that, on the contrary, they are used to "harness" Nature, contributing to the degradation of ecosystems for short-term profit, (WAG)

Aware that a very small proportion of the world's research and development resources are devoted to meeting basic needs of the rural poor, (WAG)

....

We urge the marriage of ethical values with scientific investigation and use, and the development of people-friendly, non-violent criteria for all technologies, including their appropriateness for both women and the environment. (WAG)

We urge that developing nations, and particularly women, be provided with immediate access to appropriate technologies that lead to provision of safe water for drinking and farming; transport; renewable energy sources; sustainable agriculture practices; and basic health care, such as sanitation and vaccinations for children. Benign technology transfer should include public transportation and computer technology and training, with guarantees that computer data and other information technologies not be used to violate rights to privacy and security. (WAG)

....

Recommendation to the United Nations

Realizing that there may be an attempt to create new institutions to manage the world's ecosystem based on the current "economic growth " model, (WAG)

Believing that such institutions might not have as their primary objective the long-term sustainability of the Earth's species and ecosystems, (WAG)

We call instead for the creation of a permanent gender-balanced UN Commission on Environment and Development (analogous to the UN Commission on Human Rights) to promote environmental awareness and to station ombudspersons in every region of the world, to receive and investigate

NGO, group, and individual complaints about environmental hazards, maldevelopment, government, and private misuse of UN and international aid funds and violations of UN conventions, treaties, and international law. Its duties should include monitoring compliance and enforcing principles of an International Code of Environmental Conduct. (WAG)

We urge governments to increase their contributions to and support of the UN Environment Program (UNEP) which assists governments in environmental assessment, undertakes studies, training, and major environmental management tasks, and negotiates and facilitates international environmental law. Its budget should be increased, to triple its current \$40 million a year. ... (WAG)

We support the recommendations of a "swords into ploughshares" report by a UN study group on "Charting Potential Uses of Military Resources for Civilian Endeavours to protect the Environment. " It proposes developing mechanisms for transferring to environmental protection and development programs some of the world's vast military resources. (WAG)

UNCED

....

We call on world leaders attending the 1992 Earth Summit to sign a Global Climate Change Convention (with industrialized countries making a minimum commitment to a 20 % reduction of carbon dioxide by the year 2000 and a Convention on Biological Diversity). new agreements are also needed on the safeguarding of forests and the conservation of Antarctic ... (WAG)

4.1.4.2 INTERNATIONAL CHAMBER OF COMMERCE: BUSINESS CHARTER FOR SUSTAINABLE DEVELOPMENT (ICCBSD)

1. Corporate Priority.

To recognize environmental management as among the highest corporate priorities and as a key determinant to sustainable development: to establish policies, programmes and practices for conducting operations in an environmentally sound manner. (ICCBSD)

2. Integrate Management

To integrate these policies, programmes and practices fully into each business as an essential element of management in all its functions. (ICCBSD)

3. Process of Improvement

To continue to improve corporate policies programmes and environmental performance, taking into account technical developments, scientific understanding, consumer needs and community expectations, with legal regulations as a starting point: and to apply the same environmental criteria internationally. (ICCBSD)

4. Employee Education

To educate, train and motivate employees to conduct their activities in an environmentally responsible manner (ICCBCSD)

5. Prior Assessment

To assess environmental impacts; before starting a new activity or project and before decommissioning a facility or leaving a site (ICCBCSD)

6. Products and Services

To develop and provide products or services that have no undue environmental impact and are safe in their intended use, that are efficient in their consumption of energy and natural resources, and that can be recycled, reused, or disposed of safely. (ICCBCSD)

7. customer Advice

To advise, and where relevant, educate customers, distributors and the public in the safe use, transportation, storage, and disposal of products provided; and to apply similar considerations to the provision of services. (ICCBCSD)

8. Facilities and Operations

To develop, design and operate facilities and conduct activities taking into consideration the efficient use of energy and materials, the sustainable use of renewable resources, the minimization of adverse environmental impact and waste generation, and the safe and responsible disposal of residual wastes (ICCBCSD)

9. Research

To conduct or support research on the environmental impacts of raw materials, products, processes, emissions and wastes associated with the enterprise and on the means of minimizing such adverse impacts. (ICCBCSD)

10. Precautionary Approach

To modify the manufacture, marketing or use of products or services or the conduct of activities, consistent with scientific and technical understanding, to prevent serious or irreversible environmental degradation. (ICCBCSD)

11. Contractors and Suppliers

To promote the adoption of these principles by contractors acting on behalf of the enterprise, encouraging and, where appropriate, requiring improvements into their practices to make them consistent with those of the enterprise: and to encourage the wider adoption of these principles by suppliers. (ICCBCSD)

12. Emergency Preparedness

To develop and maintain where significant hazards exist, emergency preparedness plans in conjunction with the emergency services, relevant authorities and the local community, recognizing potential trans-boundary impacts. (ICCBCSD)

13. Transfer of Technology

To contribute to the transfer of environmentally sound technology and management methods throughout the industrial and public sectors. (ICCB/CSD)

14. Contributing to the Common Effort

To contribute to the development of public policy and to business, governmental, and intergovernmental programmes and educational initiatives that will enhance environmental awareness and protection. (ICCB/CSD)

15. Openness to Concern

To foster openness and dialogue with employees and the public, anticipating and responding to their concerns about the potential hazards and impacts of operations, products, wastes, or services, including those of trans-boundary or global significance. (ICCB/CSD)

16. Compliance and Reporting'

To measure environmental performance; to conduct regular environmental audits and assessments of compliance with company requirements, legal requirements and these principles; and periodically, to provide appropriate information to the Board of Directors, shareholders, employees, the authorities and the public (ICCB/CSD)

endorsed by

the National Round Table on the Environment and the Economy
the International Chamber of Commerce
the Canadian Chamber of Commerce

4.1.4.3. NOBEL LAUREATE STATEMENT TO UNCED 92 (NLSU) SIGNED BY 37 NOBEL LAUREATES

"The primary goal of the summit will be to lay the foundation for a global partnership between developing and developed countries based on mutual need and common interest, to ensure the future of the planet. This partnership will undoubtedly require the mutual solution of the population and overconsumption issues. Equity and environment problems are linked and must be solved together. Further, the only major source of the discretionary funds necessary for addressing these issues rests in the radical reduction of the military budgets of the Nations of the World" — Dr. Fred Knelman, Vice President of the Whistler foundation For a Sustainable Environment; and Dr. David Krieger, President of the Nuclear Age Peace Foundations. (NLSU)

NOBEL LAUREATE STATEMENT TO UNCED 92

We the undersigned Nobel Laureates, urge all nations and peoples to unite in the great cause of creating a secure and sustainable Earth.

The important conference, earth Summit, links two key issues of sustainability— environment and development — and offers a unique opportunity to find global solutions to problems threatening our common future; Recognizing that we all inhabit one Earth and share a common responsibility to posterity; we urge you to act decisively (NLSU)

- to protect and preserve the integrity of the biosphere that sustains all life by establishing adequate global regulations, penalties and enforcement mechanisms to prevent human induced global warming, depletion of the ozone layer, destruction of forests and fisheries, pollution of air and water, irreversible loss of species, and release of hazardous substances into the environment; (NLSU)
- to establish a time-table for phasing out fossil fuel and nuclear energy and for the rapid development of solar and other forms of non-polluting energy, and for more efficient energy use; (NLSU)
- to end hunger and poverty in the world by the transfer of adequate resources and environmentally sound technologies required for this task; (NLSU)
- To demand an immediate end to all nuclear weapons tests; (NLSU)
- To prevent further proliferation of nuclear weapons and other weapons of mass destruction by establishing effective international controls; (NLSU)
- to develop international regulations regarding nuclear waste disposal and nuclear power plant operations; (NLSU)
- to initiate a global program of population stabilization; (NLSU)
- to promote a global educational campaign to encourage resource conservation, recycling and environmental protection; and (NLSU)
- to bring protection of the environment under the rule of international law, establishing appropriate regulations, criminal penalties and methods of enforcement, within the structure of the United nations and other international organizations (NLSU)

POST SCRIPT TO THE NOBEL LAUREATE DECLARATION

The Page is the Message

[Within the opponents of nuclear energy.]

Nobel laureates represent the highest level of scientific credibility. Thus, when they lend their names to appeals or declarations, this causes a great deal of political weight. There were three declarations of Nobel Laureates distributed at UNCED 92. They all related directly and indirectly to nuclear power by omission in two and inclusion in the third.

The first of these which has been very widely circulated. It is the World Scientists' warning to Humanity, sponsored by the Union of Concerned Scientists (UCS) of Cambridge, Mass, USA whose chairman is a Nobel Laureate in nuclear Physics, Dr. Henry Kendall. Some 1700 senior scientists from 71 countries including 104 Laureates have signed this document. The appeal focuses on the danger of climate change and makes five major suggestions on what has to be done to avoid the planet being "irretrievably mutilated." Conspicuous by its absence is any mention of nuclear power, despite the fact that UCS's central concern continues to be its strong rejection of this energy option.

The second document, which was widely circulated at Rio, is the Heidelberg Appeal, signed by 30 Nobel Laureates and several other senior scientists. The major thrust of this document is its strong support of "scientific criteria and not on irrational preconceptions" and its concern "at the dawn of the 21st century at the emergence of an irrational ideology which is opposed to scientific and industrial progress and impedes economic and social development." The assumptions are that there is no such thing as the "natural State" in so far as humanity has always progressed by increasingly (our underlining- harnessing Nature to its needs and not the reverse." They talk about the need to accept the manipulation of hazardous substances: and increasing control over hostile forces to the benefit of mankind." Finally, they assert that the greatest evils which stalk our Earth are ignorance and oppression, and not Science, technology and Industry (our underlining. The above two which are eulogized in the Heidelberg Appeal as the very source of the environmental problems we face, derived from the hazardous substances that have been released. Again, what we really have in this "Appeal" is the obvious but barely concealed omission of nuclear power. Most of the Laureates who signed the appeal are physicists, chemists and medical researchers and among the first group the majority are in nuclear physics. [proponents only?] The choice of language in this appeal, which represents an ultimate expression of scienticism, the theology of absolute faith in technical means to achieve human ends, is very similar to the ideological of "nuclearism" with a strong elitist bias and an even stronger anthropocentric view of the world in which Nature is the enemy which is to be subdued and conquered [statement to support this]. It also embodies a strong belief in the paradigm of progress. In effect it is the mirror-image of fundamentalist belief i.e. it is blind reason so similar to blind faith in its anatomy of mindset.

The third document is the Nobel Laureate Declaration for UNCED appended to this chapter, [and it was signed by 37 Nobel Laureates]. Unlike the other two it explicitly takes aim at nuclear technology, civil and military. Over 600 copies of this document were circulated to delegates and to the press throughout the world.

The politics of these three declarations are fairly obvious. UCS's "warning" achieved a large support by avoiding the issue of nuclear power.

[the director justified the exclusion of nuclear on the basis of wishing to secure more signatures]

In many ways this is a serious failing since it leaves open the propagandist claim of climate change. The Heidelberg Appeal, which also omits any reference to nuclear power nevertheless makes it obvious that in fact, nuclear power is the subject between the lines i.e. only ignorance and "anti-science" elements stand in the way of the nuclear rationale. It would be very valuable to do research on the position of the Nobel laureates who signed USCs warning and the Heidelberg Appeal vis-a vis their organizational affiliation and their direct assessment of nuclear power. With some exceptions i.e. Linus Pauling and Elie Wiesel, we suggest that the majority are unabashedly pro-nuclear or supporters of the alleged benefits of the biochem-medical revolution.

The Nobel Laureate, George Wold, has been a consistent opponent of nuclear power for decades and was one of the major supporters of the Whistler Foundation/Nuclear Age and Peace foundation sponsored Nobel Laureate Statement for UNCED 92 (see appended.) In the 1970s a full-page ad appeared in the New York Times, signed by 11 Nobel Laureates, extolling the virtues of nuclear power as clean, safe and necessary. George Wald in return managed to get 9 Nobel Laureates to place a dissenting ad in the NY times whose message was that nuclear power posed unresolvable problems and that we could totally dispense with it. Afterwards in a letter to the N.Y. times George Wold made an interesting observation. Using the freedom of information act (FOIA), he had obtained all the institutional affiliations of all 20 of the above Nobel Laureates. He pointed out that all 11 of the pro-nuclear group had some corporate affiliation to the nuclear industry while none of 9 opponents had any such affiliation. He ended with a most perceptive statement. "This doesn't prove conflict of interest, it defines it." This is sound advice for the concerned public who are not experts to make a judgment Nobel Laureates all operate under an umbrella of the highest recognized scientific authority and therefore in a context of judgment, where uncertainty may be present, conflict of interest is a sound guide.

4.2. UNCED GLOBALLY ADOPTED DOCUMENTS

4.2.1. Agenda 21 & Rio Declaration (available on disk)

4.2.1. 1. A very preliminary content analysis of the Rio Declaration and of sections 1-22 of Agenda 21 and (June 30, 1992) and extraction of principles of action

Note 1: this content analysis was done on the documents that were distributed at Rio prior to the resolution of the bracketed sections. When a section was in brackets, which indicates that a section is still under discussion, the brackets will be indicated. The categories used in the content analysis reflect significant aspects of the global environmental situation. The statements selected under each category were selected because they were assessed to be ones that, if implemented, would bring about the needed changes.

All the statements in Agenda 21 and the Rio Declaration were adopted by consensus by the member states of the United Nations at UNCED. More analysis has to be done particularly for issues that pertain specifically to the "developing" countries.

Note: Phrases in italics are those that appear to weaken the statements

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PART 1: CONTENT ANALYSIS

“Acknowledgments” and principles, from UNCED, that could facilitate change

Although many of the above constraints appear to have influenced the ability of the global community to address the urgency of the global situation, there are many internationally adopted acknowledgments and principles arising out of UNCED that do express the global condemnation of ecologically unsound practices.

In general, the NGO community has concentrated on the 40 treaties emerging from the Global Forum, and have, recognizing the limitations of the formal negotiating process, neglected to examine the documents emerging from the formal proceedings at the Rio Centro. Although the 40 treaties make a significant contribution to addressing the urgency of the current global situation, and are worthy of continued distribution and commitment; the NGO, the general public and professional groups can use the globally agreed to principles contained in the official UNCED documents as moral suasion to ensure that as a minimum states undertake to fulfill the principles agreed to at Rio.

I have attempted to do a content analysis of the significant acknowledgments and principles that have emerged from the Rio Declaration and from Agenda 21, the two documents from UNCED that were adopted through global consensus at Rio. The Rio Declaration which is a precursor to an Earth Charter enunciates certain principles which though not binding could be of strong moral suasion. Agenda 21 delineates certain acknowledgments of the current global situation and advocates actions which though not binding also could be of strong moral suasion.

Agenda 21 is divided into distinct sections and chapters dealing with the following issues:

Section I Social and economic dimensions

1. Preamble
2. International cooperation to accelerate sustainable development in developing countries and related domestic policies
3. Combating poverty
4. Changing consumption patterns
5. Demographic dynamics and sustainability
6. Protecting and promoting human health conditions
7. Promoting sustainable human settlement development
8. Integrating environment and development in decision-making

Section II Conservation and management of resources for development

9. Protection of the atmosphere
10. Integrated approach to the planning and management of land resources
11. Combating deforestation
12. Managing fragile ecosystems: combating desertification and drought
13. Managing fragile ecosystems: sustainable mountain development

14. Promoting sustainable agriculture and rural development
 15. Conservation of biological diversity
 16. Environmentally sound management of biotechnology
 17. Protection of oceans, all kinds of seas, including enclosed and semi-enclosed seas, and coastal areas and the protection, rational use and development of their living resources
 18. Protection of the quality and supply of freshwater resources: application of integrated approaches to the development, management and use of water resources
 19. Environmentally sound management of toxic chemicals, including prevention of illegal international traffic in toxic and dangerous products
 20. Environmentally sound management of hazardous wastes, including prevention of illegal international traffic in hazardous wastes
 21. Environmentally sound management of solid wastes and sewage-related issues
 22. Safe and environmentally sound management of radioactive wastes
- Section III Strengthening the role of major groups (chapter topics not listed in this paper)
- Section IV Means of Implementation (chapter topics not listed in this paper)
- (Organizational structure of Agenda 21)

0. OVERVIEW:

A VERY PRELIMINARY CONTENT ANALYSIS OF THE RIO DECLARATION AND OF SECTIONS 1-22 OF AGENDA 21 AND (JULY 5, 1992)

STATEMENTS THAT MIGHT BE USEFUL AS MORAL SUASION TO ENSURE THAT COUNTRIES ACT IN ACCORDANCE WITH THE COMMITMENTS MADE THROUGH GLOBAL CONSENSUS AT THE EARTH SUMMIT

Note: unless otherwise indicated all references are to Agenda 21

The following content analysis is primarily an attempt to get beyond the fragmentation of the global problem into distinct issues, to find fundamental principles that could be used as an indication of true global concern about the environment. It must be stressed that this content analysis is very preliminary and it was prepared as background material for a series of presentations, briefs, submissions to Constitutional debate and as background material for a university course on global issues. It is only circulated as a beginning attempt to find possible ways of using documents (Rio Declaration and particularly Agenda 21) that have been globally adopted by consensus. In this content analysis, statements are quoted verbatim because the delegates and eventually the state leaders agreed to specifically worded statements. If the principles enunciated from UNCED are to be used effectively, it would seem that the original wording and not a paraphrase of the principles would be necessary.

1. RECOGNITION OF NEED TO QUALIFY THE "SOVEREIGN RIGHT TO EXPLOIT RESOURCES

1.1. PROVIDING CONSERVATION OF BIODIVERSITY AND BIOLOGICALLY SUSTAINABLE USE

" At the same time, it is particularly important in this context to stress that States have the sovereign right to exploit their own biological resources pursuant to their environmental policies, as well as the responsibility to conserve their biodiversity and use their biological resources sustainably, and to ensure that activities within their jurisdiction or control do not cause damage to the biological diversity of other states or of areas beyond the limits of national jurisdiction. " (15.3 Biodiversity)

"Governments at the appropriate level, with the support of relevant international and regional organizations, should promote the following activities in conformity with international agreements or arrangements on biological diversity, as appropriate (Biotechnology, 16.7)

1.2. PROVIDING NO DAMAGE OR ENDANGER LOCAL ECOSYSTEMS

"Acceleration of technology acquisition, transfer and adaptation by developing countries to support national activities that promote food security, through the development of systems for substantial and sustainable productivity increases that do not damage or endanger local ecosystems. (CHECK)

2. RECOGNITION AND DELINEATION OF BASIC NEEDS.

" Governments should establish measures that will directly or indirectly set up an effective primary health care and maternal health care system accessible to all " (3.7.e Combating Poverty)

" undertake activities aimed at the promotion of food security and, where appropriate, food self-sufficiency within the context of sustainable agriculture (3.7.l Combating Poverty)

" Consider making available lines of credit and other facilities for the informal sector and improved access to land for the landless poor so that they can acquire the means of production and reliable access to natural resources. (3.7.o Combating Poverty)

" provide the poor with access to fresh water and sanitation (3.7.p Combating Poverty)

"provide the poor with access to primary education. (3.7.q Combating Poverty)

"... the provision of a safe water supply and sanitation and the promotion of a safe food supply and proper nutrition. Particular attention should be directed towards food safety, with priority placed on the elimination of food contamination; comprehensive and sustainable water policies to ensure safe drinking water and

sanitation to preclude both microbial and chemical contamination; and promotion of health education...education and appropriate services regarding responsible planning of family size... values... ." (6.3. Protecting and promoting health)

" Access to safe and healthy shelter is essential to a person's physical, psychological, social and economic well-being and should be a fundamental part of national and international action. The right to adequate housing as a basic human right is enshrined in the Universal Declaration of Human rights and the International Covenant on Economic, Social and Cultural rights." (7.6, Settlement)

"The improvement of human health is one of the most important objectives of development. The deterioration of environmental quality, notably air, water and soil pollution owing to toxic chemicals, hazardous wastes, radiation and other sources, is a matter of growing concern. . Malnutrition, poverty, poor human settlements, lack of good-quality potable water and inadequate sanitation facilities add to the problems of communicable and non-communicable diseases. As a consequence, the health and well-being of people are exposed to increasing pressures." (16.12 Biotechnology)

"Water is a finite resource, essential for the sustenance of life on earth" (18.2 Freshwater)

"water is needed in all aspects of life" (18.6 fresh water)

"freshwater resources are an essential component of the earth's hydrosphere and an indispensable part of all terrestrial ecosystems. "(18.7 Fresh water)

"Priority must be given to the sustenance of land/water ecosystems, with particular attentions to wetlands and biodiversity, and the satisfaction of basic human needs for drinking-water, health protection and food security. "(18.8. Fresh water)

"One in three people in the developing world still lacks these two (safe drinking-water and sanitation) more basic requirements for health and dignity." (18.58 Freshwater)

3. ACKNOWLEDGMENT AND ASSESSMENT OF GLOBAL URGENCY

- **Extent and scope of urgency**

"Humanity stands at a defining moment in history. We are confronted with a perpetuation of disparities between and within nations, a worsening of poverty, hunger, ill health and illiteracy,

and the continuing deterioration of the ecosystems on which we depend for our well-being. ..." (1.1 Preamble)

- **Poverty and inequity**

"The eradication of poverty and hunger, greater equity in income distribution and human resources development remain major challenges everywhere. The struggle against poverty is the shared responsibility of all countries" (3.1 combating poverty)

- **Extent of Unsustainable consumption**

"[one of the most serious problems now facing the planet is that associated with historical patterns of unsustainable consumption and production, leading to environmental degradation, aggravation of poverty and imbalances in the development of countries.]" (4.3 Changing consumption patterns)

- **Increase in global population**

"The growth of world population and production combined with unsustainable consumption patterns places increasingly severe stress on the life-supporting capacities of our planet. " (5.2, Demographic dynamics)

- **Linking of population and over-consumption**

"[Health and development are intimately interconnected. both insufficient developments leading to poverty and inappropriate development resulting in over-consumption, coupled with an expanding world population, can result in severe environmental health problems in both developing and developed nations".] 6.1 Health

- **Extent of air, water and land pollution**

" In many locations around the world the general environment (air, water, and land), workplaces and even individual dwellings are so badly polluted that the health of hundreds of millions of people is adversely affected. This is, inter alia, due to past and present developments in consumption and production patterns and lifestyles, in energy production and use, in industry, in transportation etc. with little or no regard for environmental protection." (6.40, Protection of health)

- **Nature stress on societies of consumption patterns**

" In industrialized countries, the consumption patterns of cities are severely stressing the global ecosystem, while settlements in the developing world need more raw material, energy, and economic development simply to overcome basic economic and social problems." (7.1. Settlement)

"...It is estimated that at the present time, at least 1 billion people do not have access to safe and healthy shelter and that if appropriate action is not taken, this number will increase

dramatically by the end of the century and beyond.” (7.6, Settlement)

" The rising costs of urban land prevent the poor from gaining access to suitable land. In rural areas, unsustainable practices, such as the exploitation of marginal lands and the encroachment on forests and ecologically fragile areas by commercial interests and landless rural populations, result in environmental degradation, as well as in diminishing returns for impoverished rural settlers.” (7.28, Settlement)

- **Extent of trans-boundary air pollution**

" trans-boundary air pollution has adverse health impacts on humans and other detrimental environmental impacts, such as tree and forest loss and the acidification of water bodies...” (9.22, Atmosphere)

- **Increased depletion of Earth's stratosphere**

" Analysis of recent scientific data has confirmed the growing concern about the continuing depletion of the Earth's stratospheric ozone layer by reactive chlorine and bromine from man-made CFC's, halons and related substances. While the 1985 Vienna Convention for the Protection of the Ozone Layer and the 1987 Montreal Protocol on Substances that Deplete the Ozone Layer (as amended in London in 1990) were important steps in international action, the total chlorine loading of the atmosphere of ozone-depleting substances has continued to rise. This can be changed through compliance with the control measures identified within the Protocol ”(9.19 Atmosphere)

- **Possible reduction of resilience of ecosystem to climatic variation because of loss of biological diversity**

" The loss of biological diversity may reduce the resilience of ecosystems to climatic variations and air pollution damage. Atmospheric changes can have important impacts on forests, biodiversity, and freshwater and marine ecosystems, as well as on economic activities, such as agriculture.” (9.16 Atmosphere)
cross link with clear cut

- **Increased deforestation and land degradation**

"Forests worldwide have been and are being threatened by uncontrolled degradation and conversion to other types of land uses, influenced by increasing human needs; agricultural; expansion, and environmentally harmful mismanagement, including, for example, lack of adequate forest-fire control and anti-poaching measures, unsustainable commercial logging, overgrazing and ... the impacts of loss and degradation of forests are in the form of soil erosion; loss of biological diversity, damage to wildlife habitats and degradation of watershed areas,

deterioration of the quality of life and reduction of the options for development.” (11.12. Deforestation)

- **Urgent need for conservation**

"The present situation calls for urgent and consistent action for conserving and sustaining forest resources. The greening of suitable areas, in all its component activities, is an effective way of increasing public awareness and participation in protecting and managing forest resources. It should include the consideration of land use and tenure patterns and local needs and should spell out and clarify the specific objectives of the different types of greening activities” (11. 13, Deforestation) see quote on original proposal for UNCED

- **Increased desertification**

“Desertification affects about one sixth of the world's population, 70% of all drylands, amounting to 3.6 billion hectares, and one quarter of the total land areas of the world. The most obvious impact of desertification, in addition to widespread poverty, is the degradation of 3.3 billion hectares of the total area of rangeland, constituting 73 per cent of the rangeland with a low potential for human and animal carrying capacity decline in soil fertility and soil structure on about 47 per cent of the dryland areas constituting marginal rainfed cropland; and the degradation of irrigated cropland, amounting to 30 % of the dryland areas with a high population density and agricultural potential.” (12.2. Desertification)

- **Increased loss and degradation of mountain ecosystems**

“Mountain ecosystems are, however, rapidly changing. They are susceptible to accelerated soil erosion, landslides and rapid loss of habitat and genetic diversity. On the human side, there is widespread poverty among mountain inhabitants and loss of indigenous knowledge. As a result, most global mountain areas are experiencing environmental degradation. ” (13.1. Fragile ecosystems)

- **Increased watershed deterioration**

"There are serious problems of ecological deterioration in these watershed areas. ... In many areas this is accompanied by excessive livestock grazing, deforestation and loss of biomass cover.” (13.13 Fragile ecosystems)

- **Increased ignoring of carrying capacity of land**

" Inappropriate and uncontrolled land uses are a major cause of degradation and depletion of land resources. Present land use often disregards the actual potentials, carrying capacities and limitations of land resources as well as their diversity in space.” (14.34 Agriculture)

- **Increased poverty and malnutrition**
 "Poverty and malnutrition are already endemic in many regions. The destruction and degradation of agricultural and environmental resources is a major issue" (14.35 Agriculture)
- **Acute land degradation**
 "Land degradation is the most important environmental problem affecting extensive areas of land in both developed and developing countries. The problem of soil erosion is particularly acute in developing countries, while problems of salinization, waterlogging, soil pollution and loss of soil fertility are increasing in all countries." (14.44 Agriculture)
- **Acute threat to genetic diversity**
 " Plant genetic resources for agriculture are an essential resource to meet future needs for food. Threats to the security of these resources are growing, and efforts to conserve, develop and use genetic diversity are underfunded and understaffed... "(14.54 Agriculture)
- **Overuse of chemicals**
 "Chemical control of agricultural pests has dominated the scene, but its overuse has adverse effects on farm budgets, human health and the environment..." (14.74 Agriculture)
- **Loss of biodiversity through ecologically unsound practices**
 " Despite mounting efforts over the past 20 years, the loss of the world' biological diversity, mainly from habitat destruction, over-harvesting, pollution and the inappropriate introduction of foreign plants and animals has continued. 15.3 Biodiversity
- **Increased deterioration of the environment through anthropogenic actions**
 "The improvement of human health is one of the most important objectives of development. The deterioration of environmental quality, notably air, water and soil pollution owing to toxic chemicals, hazardous wastes, radiation and other sources, is a matter of growing concern. . Malnutrition, poverty, poor human settlements, lack of good-quality potable water and inadequate sanitation facilities add to the problems of communicable and non-communicable diseases. As a consequence, the health and well-being of people are exposed to increasing pressures."
 (16.12 Biotechnology)
- **Extent of environmental damage from waste accumulation**
 " The environment is threatened in all its biotic and abiotic components: animals, plants, microbes and ecosystems comprising biological diversity; water, soil and air, which form the physical components of habitats and ecosystem; and all the interactions between the components of biodiversity and their

sustaining habitats and ecosystem. With the continued increase in the use of chemicals, energy and non-renewable resources by expanding global population, associated environmental problems will also increase. Despite increasing efforts to prevent waste accumulation and to promote recycling, the amount of environmental damage caused by over-consumption, the quantities of waste generated and the degree of unsustainable land use appear likely to continue growing." (16.22 Biotechnology)

- **Nature of marine environment degradation**

" Degradation of the marine environment can result from a wide range of sources. Land-based sources contribute 70% of marine pollution, while maritime transport and dumping-at-sea activities contribute 10 % each." (17.19. Marine)

- **increased vulnerability of marine environment**

" The marine environment is vulnerable and sensitive to climate and atmospheric changes. (17.101, marine)

"Small increases in sea-level have the potential of causing significant damage to small islands and low-lying coasts" (17.102 Marine)

- **increased erosion and soil loss in river basins**

" Poor land-use management, including deforestation and non-sustainable agriculture, mining and urbanization, could lead to a considerable increase in erosion problems and related soil loss in the river basins. The sedimentation in large reservoirs may have serious adverse effects downstream by reducing the quantity of natural nutrients available to agricultural land and coastal waters. Acidification of surface waters and groundwaters due to atmospheric deposition of air pollutants can lead to depletion of freshwater living resources and thereby contribute to the loss of biodiversity. "(18.3 Freshwater)

- **Increased impact of global climate changes**

"Global climate changes could also have an impact on freshwater resources and on the availability of those resources, and through sea-level rise and atmospheric pollution, threaten coastal aquifers and small island ecosystems." (18.7, Fresh water)

- **Increased loss of Freshwater quality through ecologically unsound products and practices**

" Freshwater is a unitary resource. Long-term development of global freshwater requires holistic management of resources and a recognition of the interconnectedness of the elements related to freshwater and freshwater quality. There are few regions of the world that are still exempt from the problems of

loss of potential sources of freshwater supply, degraded water quality and pollution of surface and groundwater sources. Major problems affecting the water quality of *rivers and lakes arise, in variable order of importance according to different situations, from inadequately treated domestic sewage, inadequate controls on the discharges of industrial waste waters, loss and destruction of catchment areas, ill-considered siting of agricultural practices. This gives rise to the leaching of nutrients and pesticides. Aquatic ecosystems are disturbed and living freshwater resources are threatened. ...Erosion, degradation, deforestation and desertification have led to increased land degradation, and the creation of reservoirs has, in some cases, resulted in adverse effects on ecosystems. Many of these problems have arisen from a development model that is environmental destructive and from a lack of protection. Ecological and human health effects are the measurable consequences... although the means to monitor them are inadequate or non-existent in many countries. There is a widespread lack of perception of the linkages between the development, management use and treatment of water resources and aquatic ecosystems. A preventive approach, where appropriate, is crucial to the avoiding of costly subsequent measures to rehabilitate, treat and develop new water supplies." (18.45 Fresh water)

- **Continued lack of basic requirements**

"One in three people in the developing world still lacks these two (safe drinking-water and sanitation) basic requirements for health and dignity. "(18.58 Fresh water)

- **Increased impact of population growth and industrialization**

" Rapid urban population growth and industrialization are putting severe strains on the water resources and environmental protection capabilities of many cities" (18.67, Fresh water)

- **Continued impact of mismanagement and overexploitation**

" Soil erosion, mismanagement and overexploitation of natural resources and acute competition for water have all influenced the extent of poverty, hunger and famine in the developing countries. Soil erosion cause by overgrazing of livestock...Most often, the development of irrigation schemes is supported neither by environmental impact assessments identifying hydrologic consequences within watersheds of interbasin transfer... "(18.76, Fresh water)

- **Potential outcome of climate change**

" There is uncertainty with respect to the prediction of climate change at the global level. Although the uncertainties increase greatly at the regional, national and local levels, it is at the national level that the most important decisions would need to

be made. Higher temperatures and decreased precipitation would lead to decreased water-supplies and increased water demands; they might cause deterioration in the quality of freshwater bodies, putting strains on the already fragile balance between supply and demand in many countries. Even where precipitation might increase, there is no guarantee that it would occur at the time of year when it could be used; in addition, there might be a likelihood of increased flooding. Any rise in sea-level will often cause the intrusion of salt water into estuaries, small islands and coastal aquifers and the flooding of low-lying coastal areas; this puts low-lying countries at great risk." (18.93 Fresh water)

- **Continuous degradation of human health and the environment**

"Human health and environmental quality are undergoing continuous degradation by the increasing amount of hazardous wastes being produced. There are increasing direct and indirect costs to society and to individual citizens in connection with the generation, handling and disposal of such wastes. (20.9 Hazardous waste)

- **Unprecedented Increase in environmentally persistent wastes**

"Unsustainable patterns of production and consumption are increasing the quantities and variety of environmentally persistent wastes at unprecedented rates. The trend could significantly increase the quantities of wastes produced by the end of the century and increase quantities four to fivefold by the year 2025." (21.7 Solid wastes)

- **Increased generation of nuclear wastes**

"Annually about 200,000 m³ of low-level and intermediate-level waste and 10,000 m³ of high-level waste (as well as spent nuclear fuel destined for final disposal) is generated worldwide from nuclear power production. These volumes are increasing as more nuclear power units are taken into operation, nuclear facilities are decommissioned and the use of radionuclides increases. The high-level waste contains about 99 percent of the radionuclides and thus represents the largest radiological risk". (22.1. Radioactive wastes)

- **Continued trafficking in toxic and dangerous products**

illegal traffic in toxic and dangerous products (toxic and dangerous products are those that are banned, severely restricted, withdrawn or not approved for use of sale by governments in order to protect public health and the environment). see resolutions 42/183 and uu/226 (19.67 Toxic chemicals)

"(21.28 Solid wastes)

- **Continued non-provision for basic sanitation**

" by the end of the century, over 2.0 billion people will be without access to basic sanitation, and an estimated half of the urban population in developing countries will be without adequate solid waste disposal services. As many as 5.2 million people, including 4 million children under five years of age, die each year from waste-related diseases. The health impacts are particularly severe for the urban poor."

4. CONDEMNATION OF ECOLOGICALLY UNSOUND PRACTICES OR OUTCOMES

4.1. PRODUCTS

- **radiation,**

"The improvement of human health is one of the most important objectives of development. The deterioration of environmental quality, notably air, water and soil pollution owing to toxic chemicals, hazardous wastes, radiation and other sources, is a matter of growing concern. . Malnutrition, poverty, poor human settlements, lack of good-quality potable water and inadequate sanitation facilities add to the problems of communicable and non-communicable diseases. As a consequence, the health and well-being of people are exposed to increasing pressures."
(16.12 Biotechnology)

- **Chemicals**

"To increase the use of integrated pest, disease and crop management techniques to eliminate overdependence on agrochemicals, thereby encouraging environmentally sustainable agricultural practices" (16.2 c Biotechnology)

"Examination of the implications of the withdrawal of subsidies and the possible use of other economic instruments to reflect the environmental costs associated with unsustainable use of agrochemicals " (16.6 b Biotechnology)

"Develop applications to minimize the requirement for unsustainable synthetic chemical input and to maximize the use of environmentally appropriate products, including natural products "(16.25, Biotechnology)

- **CFC's**

" Protection of the atmosphere can be enhanced ...replacing chlorofluorocarbons and other ozone-depleting substances with appropriate substitutes, as well as by reducing wastes and by-products." (9.13, Atmosphere)

- **Greenhouse gases**

" the objectives of this programme area are: reducing atmospheric pollution or limiting anthropogenic emissions of greenhouse gases"
(Atmosphere)

- **Loss of biodiversity**

" ...the uncontrolled introduction of exotic plant and animal species... "(11.15 G Deforestation)

" Despite mounting efforts over the past 20 years, the loss of the world' biological diversity, mainly from habitat destruction, over-harvesting, pollution and the inappropriate introduction of foreign plants and animals has continued." (15.3 Biodiversity)

4.2. PRACTICES

- **Development models**

"Many of these problems have arisen from a development model that is environmental destructive and from a lack of protection. Ecological and human health effects are the measurable consequences... although the means to monitor them are inadequate or non-existent in many countries. There is a widespread lack of perception of the linkages between the development, management use and treatment of water resources and aquatic ecosystems".
(18.45 Fresh water)

- **Consumptive patterns**

"Achieving the goals of environmental quality and sustainable development will require efficiency in production and changes in consumption patterns in order to emphasize optimization of resource use and minimization of waste. In many instances, this will require reorientation of existing production and consumption patterns that have developed in industrial societies and are in turn emulated in much of the world." (4.15 Changing consumption patterns)

["While poverty largely results in certain kinds of environmental stress one of the most serious problems now facing the planet is that associated with historical patterns of unsustainable consumption and production, leading to environmental degradation, aggravation of poverty and imbalances in the development of countries] (4.3.

"Measures to be undertaken at the international level for the protection and enhancement of the environment must take fully into account the current imbalances in the global patterns of consumption and production" (4.4 Changing consumption patterns)

[“Special attention should be paid to the demand for natural resources generated by unsustainable consumption and to the efficient use of those resources consistent with the goal of minimizing depletion and reduction pollution. Although consumption patterns are very high in certain parts of the world, the basic consumer needs of a large section of humanity are not being met. This inequitable distribution of income and wealth results in excessive demands and unsustainable lifestyles among the richer segments, which place immense stress on the environment. The poorer segments, meanwhile, are unable to meet food, health care, shelter and educational needs. Change consumption patterns will require a multi-pronged strategy focusing on demand, meeting the basic needs of the poor, and reduction wastage and the use of finite resources in the production process.} 4.5 note: section put in brackets by US. " States should pay special attention to efficient use of natural resources consistent with the goal of minimizing depletion and reducing pollution. This would help countries to meet their people’s food health care shelter and educational needs. The poor suffer from environmental degradation that can deepen the problem of development in particular as they struggle with agricultural problems and problems of health, hygiene which are endemic to the poor. At time environmental degradation caused by the consumptive patterns of others can intensify the environmental problem the poor face. Poverty is closely linked to environmental stress. "(US Suggestion for alternative to 4.5)

" Developing countries should seek to achieve sustainable consumption patterns in their development process, guaranteeing the provision of basic needs for the poor, while avoiding those unsustainable patterns, particularly in industrialized countries, generally recognized as unduly hazardous to the environment, inefficient and wasteful in their development processes. This requires enhanced technological and other assistance from industrialized countries. ..". (4.8 c Changing consumption patterns)

• **Inadequate sewage treatment (see marine 17.28)**

"promoting primary treatment of municipal sewage discharged to rivers, estuaries and the sea, or other solutions appropriate to specific sites" (17.28 e Marine)

5. PROPOSALS OF STRONG MEASURES TO PREVENT ECOLOGICALLY UNSOUND PRACTICES AND TO ADDRESS INEQUITY

ECOLOGICALLY UNSOUND PRACTICES

"...Considering the prohibition of those (harmful pesticides, fertilizers) found to be environmentally unsound." (17.28. i marine)

" eliminating the emission or discharge of organohalogen compounds that threaten to accumulate to dangerous levels in the marine environment." (17.28 Marine)

" the phasing out or banning of toxic chemicals that pose an unreasonable and otherwise unmanageable risk to the environment or human health and those that are toxic, persistent and bio-accumulative and whose use cannot be adequately controlled." (19.50 b Toxic chemicals)

"Governments should intensify research and development activities on cost-effective alternatives for processes and substances that currently result in the generation of hazardous wastes that pose particular problems for environmentally sound disposal or treatment, the possibility of ultimate phase-out of those substances that present and unreasonable or otherwise unmanageable risk and are toxic, persistent and bio-accumulative to be considered as soon as practicable. Emphasis should be given to alternatives that could be economically accessible to developing countries (20.13. c hazardous wastes)

" States, with the cooperation of international organizations where appropriate, should encourage industry to promote and undertake research into the phase-out of the processes that pose the greatest environmental risk based on hazardous wastes generated." (20.18 b Hazardous wastes)

INEQUITY

" The United Nations system, through its relevant organs, organizations and bodies, in cooperation with Member States and with appropriate international and non-governmental organizations, should make poverty alleviation a major priority and should promote international cooperation to address the root causes of poverty"
(3.10.e. Combating Poverty)

" to promote patterns of consumption and production that reduce environmental stress and will meet the basic needs of humanity"
(4.7.a Changing Consumption Patterns)

" to develop a better understanding of the role of consumption and how to bring about more sustainable consumption patterns."
(4.7.b Changing Consumption Patterns)

6. CALL FOR INTERNATIONAL STANDARDS PRINCIPLES

6.1. INTERNATIONAL STANDARDS

"To develop and apply pollution control and measurement technologies for stationary and mobile sources of air pollution

and to develop alternative environmentally [safe and] sound technologies;" (see trans-boundary) (9.24 a Atmosphere)

" As a first step towards the goal of providing adequate shelter for all, all countries should take immediate measures to provide shelter to their homeless poor, while the international community and financial institutions should undertake actions to support efforts of the developing countries to provide shelter to the poor." (7.9. Settlement)

" Not later than the year 2000, to improve and implement plant protection and animal health services, including mechanism to control the distribution and use of pesticides, and to implement the International Code of Conduct on the Distribution and Use of Pesticides" (14.75 a Agriculture)

)

" Promote cooperation between the parties to relevant international conventions and action plans with the aim of strengthening and coordinating efforts to conserve biological diversity and the sustainable use of biological resources." (15.8 e. biodiversity)

"Strengthen support for international and regional instruments, programmes and action plans concerned with the conservation of biological diversity and the sustainable use of biological resources." (15.8 f Biodiversity)

" The aim of this programme area is to ensure safety in biotechnology development, application, exchange and transfer through international agreement on principles to be applied on risk assessment and management," *** (16.33 Biotechnology)

" Compile update and develop compatible safety procedures into a framework of internationally agreed principles to be applied on safety in biotechnology [as a basis for the development of an international agreement..." (16.35 c Biotechnology)

" to produce guidelines for acceptable exposure for a greater number of toxic chemicals, based on peer review and scientific consensus distinguishing between health or environment-based exposure limits and those relating to socio-economic factors". (19.13 b. Toxic chemicals)

" Develop an internationally agreed upon code of principles for the management of trade in chemicals, recognizing in particular the responsibility for making available information on potential risks and environmentally sound disposal practices if those chemicals become wastes, in cooperation with governments and relevant international organizations and appropriate agencies of the United Nations system" (19.51 Toxic chemicals)

" A relevant and competent United Nations organization should take the lead, in cooperation with other organizations, to develop guidelines for estimating the costs and benefits of various approaches to the adoption of cleaner production and waste minimization and environmentally sound management of hazardous wastes, including rehabilitation of contaminated sites" (see 1991 Nairobi meeting and Basel Convention) (20.13. j, Hazardous wastes)

"To facilitate the assessment of impacts and risks of hazardous wastes on human health and the environment by establishing appropriate procedures, methodologies, criteria and / or effluent-related guidelines and standards (20.22 g Hazardous Wastes)
"International organizations should provide assistance to member states in assessing the health and environmental risks resulting from exposure to hazardous wastes, and in identifying their priorities for controlling the various categories or classes of wastes" (20.27 Hazardous wastes)

"There is a need to harmonize the procedures and criteria used in various international and legal instruments. There is also a need to develop or harmonize existing criteria for identifying wastes dangerous to the environment and to build monitoring capacities". (20.33 Hazardous wastes)

"To facilitate and strengthen international cooperation in the environmentally sound management of hazardous wastes, including control and monitoring of trans-boundary movements of such wastes, including wastes for recovery, by using internationally adopted criteria to identify and classify hazardous wastes and to harmonize relevant international legal instruments." (2034 a Hazardous wastes)

" Promote the development of clear criteria and guidelines, within the framework of the Basel Convention and regional conventions, as appropriate, for environmentally and economically sound operation in resource recovery, recycling reclamation, direct use of alternative uses and for determination of acceptable recovery practices, including recovery levels where feasible and appropriate, with a view to preventing abuses and false presentation in the above operations." (20.35 e Hazardous wastes)

"States, in cooperation with relevant international organizations, where appropriate, should ...b) support efforts within IAEA to develop and promulgate radioactive waste safety standards or guidelines and codes of practices as an internationally accepted basis for the safe and environmentally sound management and disposal of radioactive wastes;" (22.4 Radioactive wastes)

“Many of these problems have arisen from a development model that is environmental destructive and from a lack of protection. Ecological and human health effects are the measurable consequences... although the means to monitor them are inadequate or non-existent in many countries. There is a widespread lack of perception of the linkages between the development, management use and treatment of water resources and aquatic ecosystems.”
(18.45 Fresh water)

7. ECOLOGICAL SOUND ALTERNATIVE VISIONS, AND PRACTICES (SEE SECTION ON ACKNOWLEDGMENT AND ASSESSMENT OF GLOBAL URGENCY FOR SUPPORT FOR A NEW VISION)

7.1. GENERAL PRINCIPLES

- Governments should take the lead
"Governments themselves also play a role in consumption, particularly in countries where the public sector plays a large role in the economy and can have a considerable influence on both corporate decisions and public perception. They should therefore review the purchasing policies of their agencies and departments so that they may improve, where possible, the environmental content of government procurement policies, without prejudice to international trade principles." (4.23, Consumption)

- Ethics must be considered (also 16.16 a and b)
"Governments at the appropriate level, with the assistance of international and regional organizations, academic and scientific institutions and the pharmaceutical industry, should taking into account appropriate safety and ethical considerations (16.14, biotechnology)
Establish and enforce screening , systematic sampling and evaluation procedures for drugs and medical technologies, with a view to barring the use of those that are unsafe for the purposes of experimentation; ensure that drugs and technologies relating to reproductive health are safe and effective [and take account of ethical considerations]" (16.14 c, Biotechnology)

- self-sufficiency is essential (CHECK)
" Promote pilot plans and projects consisting of electrical, mechanical and thermal power (gasifiers, biomass, solar driers, wind-pumps and combustion systems) that are appropriate and likely to be adequately maintained." (14.95 a. Agriculture)

"to meet regional or national needs for comprehensively trained personnel capable of using advanced technology to reduce the

'brain drain' from developing to developed countries." (16.11 c, Biotechnology)

7.2. INSTRUMENTAL PRINCIPLES

7.2.1. PRECAUTIONARY PRINCIPLE

" Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation." (Rio Declaration, 1992).

7.2.2. VARIATIONS OF PRECAUTIONARY PRINCIPLE

"All energy sources will need to be used in ways that respect the atmosphere and the environment as a whole" (9.6. Atmosphere)

" ["Particularly relevant is the inclusion of prevention programmes rather than relying solely on remediation and treatment] (6.1, Protecting and promoting human health)

" It is necessary to, inter alia apply preventive and precautionary approaches in project planning and implementation including prior assessment and systematic observations of the impacts of major projects" (17.5 d Marine areas)

- **Environmental considerations at design stage**

"States should encourage industry to develop schemes to integrate the cleaner production approach into design of products and management practices" (20.18, Hazardous wastes)

- **Disposal at source**

By the year 2000 to establish, as appropriate integrate programmes for tackling pollution at the source and at the disposal site, with a focus on abatement actions in all countries (6.41 c Protection of health) (see sovereignty)

" Governments should encourage industry to treat, recycle, reuse and dispose of wastes at the source of generation, or as close as possible thereto, whenever hazardous waste generation is unavoidable and when it is both economically and environmentally efficient for industry to do so" (20.13 f Hazardous wastes)

" Encourage countries to seek waste disposal solutions within their sovereign territory and as close as possible to the sources of origin that are compatible with environmentally sound and efficient management." (21.31 Solid wastes)

equal or more stringent standards of origin country
(" Wherever they operate, transnational corporations and other large-scale enterprises should be encouraged to introduce

policies and make commitments to adopt standards of operation with reference to hazardous waste generation and disposal that are equivalent to or no less stringent than standards in the country of origin, and Governments are invited to make efforts to establish regulations requiring environmentally sound management of hazardous wastes.” (20.30 Hazardous wastes)

- **Precautionary, anticipatory and life-cycle approaches**

"consider adopting policies based on accepted producer liability principles, where appropriate, as well as precautionary, anticipatory and life-cycle approaches to chemical management, covering manufacturing, trade, transport, use and disposal (19.50 a Toxic chemicals)

" Undertake concerted activities to reduce risks for toxic chemicals, taking into account the entire life cycle of the chemicals. These activities could encompass both regulatory and non-regulatory measures, such ... and the phasing out or banning of toxic chemicals that pose an unreasonable and otherwise unmanageable risk to the environment or human health and those that are toxic, persistent and bio-accumulative and whose use cannot be adequately controlled” (19.50 b toxic chemicals)

- **Need for foresight**

"Each country should develop the knowledge and practical skills to foresee and identify environmental health hazards, and the capacity to reduce the risks. Basic capacity requirements must include knowledge about environmental health problems and awareness on the part of leaders, citizens and specialists..." (6.46 d Protection of health)

- **Preventive approach**

A preventive approach, where appropriate, is crucial to the avoiding of costly subsequent measures to rehabilitate, treat and develop new water supplies. (18.45 Fresh water)

" undertake measures to prevent soil erosion and promote erosion-control activities in all sectors. (13.16 Fragile ecosystem)

" other areas of risk reduction encompass the prevention of chemical accidents, prevention of poisoning by chemicals and the undertaking of toxicovigilance and coordination of clean-up and rehabilitation of areas damaged by toxic chemicals.” (19,47, Toxic chemicals)

' Governments should include in national planning and legislation an integrated approach to environmental protection, driven by prevention and source reduction criteria, taking into account the 'polluter pays' principle, and adopt programmes for hazardous waste reduction, including targets and adequate environmental control” (20.20 b Hazardous Wastes)

" A preventive waste management approach focused on changes in lifestyles and in production and consumption

patterns offers the best change for reversing current trends”
(21.7 Solid wastes)

- **Polluter pay principle**

“Governments should include in national planning and legislation an integrated approach to environmental protection, driven by prevention and source reduction criteria, taking into account the 'polluter pays' principle, and adopt programmes for hazardous waste reduction, including targets and adequate environmental control” (20.20 b Hazardous Wastes)

" Governments should ...(b) apply the 'polluter pays' principle, where appropriate, by setting waste management charges at rates that reflect the costs of providing the service and ensure that those who generate the wastes pay the full cost of disposal in an environmentally safe way” (21.42 b Solid wastes)

- **Environmental costs**

“Adopt policies that minimize if not altogether avoid environmental damage, whenever possible (7.42 a Settlement)
social costs of environmental

[Continue research and other work aimed at developing methodologies and criteria for incorporating the social costs of the environmental and other impacts caused by industrial production, as well as the treatment and disposal of wastes generated, into the prices of the final products;]”(9.15 d)

" a lack of awareness of the environmental costs incurred by sectoral and macroeconomic policies and hence their threat to sustainability” (14.7 a. agriculture)

(It is necessary to (17.5 Marine) " promote the development and application of methods, such as national resources and environmental accounting, that reflect changes in value resulting from uses of coastal and marine areas, including pollution, marine erosion, loss of resources and habitat destruction

Governments, in collaboration with industry and appropriate international organizations, should develop procedures for monitoring the application of the cradle to grave approach, including environmental audits” (20.20 e Hazardous wastes)

- **Environmental assessment review**

" develop appropriate pollution control technology on the basis of risk assessment and epidemiological research for the introduction of environmentally sound production processes and suitable safe mass transport” (6.42. a) i. Protection of health)

“Ensure that relevant decisions are preceded by environmental impact assessments and also take into account the costs of any ecological consequences” (7.42 Settlement)

" Develop improve and apply environmental impact assessments to foster sustainable industrial development" (9.15 b. Atmosphere)

" Introduce appropriate environmental impact assessment procedures for proposed projects likely to have significant impacts upon biological diversity... and encourage the assessment of the impacts of relevant policies and programmes on biological diversity" (15.5 k Biological diversity)

" Development of public education programmes directed at decision makers and the general public to encourage awareness and understanding of the relative benefits and risks of modern biotechnology, according to ethical and cultural considerations." (16.16 b, Biotechnology)

" There is a need for further development of internationally agreed principles on risk assessment and management of all aspects of biotechnology which should build upon those developed at the national level". (16.32 Biotechnology)

" The aim of this programme area is to ensure safety in biotechnology development, application, exchange and transfer through international agreement on principles to be applied on risk assessment and management, *** (16.33 Biotechnology)
" develop processes to reduce waste generation, treat waste before disposal and make use of biodegradable materials "(16.25 Biotechnology)

" a precautionary and anticipatory rather than a reactive approach is necessary to prevent the degradation of the marine environment. This requires inter alia, the adoption of precautionary measures, environmental impact assessments, clean production techniques, recycling, waste audits and minimization, construction and/or improvements of sewage treatment facilities, quality management criteria for the proper handling of hazardous substances, and a comprehensive approach to damaging impacts from air, land and water" (17.22. Marine)

States, in accordance with the provisions of the United Nations convention on the Law of the Sea on protection and preservation of the marine environment, commit themselves, in accordance with their policies, priorities and resources, to prevent, reduce and control degradations of the marine environmental so as to maintain and improve its life-support and productive capacities." (17.23 Marine)

To this end, it is necessary to

" apply preventive, precautionary and anticipatory approaches so as to avoid degradation of the main environment, as well as to reduce the risk of long-term or irreversible adverse effects upon it; (17.23 a Marine)

" Ensure prior assessment of activities that may have significant adverse impacts upon the marine environment; "(17.23 b Marine)

" as concerns other sources of pollution, priority actions to be considered by States may include "(17.29 Marine)

" promoting risk and environmental impact assessments to help ensure an acceptable level of environmental quality" (17.29 b Marine)

"could provide for prior environmental impact assessment, systematic observation and follow-up of major projects, including the systematic incorporation of results in decision-making" (17.6 d marine)

"could provide for periodic assessment of the impacts of external factors and phenomena to ensure that the objectives of integrated management and sustainable development of coastal areas and the marine environment are met "(17.6 g Marine)

"it is necessary to conduct regular environmental assessment of the state of the environment of coastal and marine areas" (17.8 c Marine)

"A preventive approach, where appropriate, is crucial to the avoiding of costly subsequent measures to rehabilitate treat and develop new water supplies." (18.45 Freshwater)

Governments, in collaboration with industry and appropriate international organizations, should develop procedures for monitoring the application of the cradle to grave approach, including environmental audits "(20.20 e Hazardous wastes)

' In order to promote and strengthen international cooperation in the management, including control and monitoring, of trans-boundary movements of hazardous wastes, a precautionary approach should be applied". (20.33 Hazardous wastes)

"States, in cooperation with relevant international organizations, where appropriate, should ...b) encourage the London Dumping convention to expedite work to complete studies on replacing the current voluntary moratorium on disposal of low-level radioactive wastes at sea by a ban, taking into account the precautionary approach, with a view to taking a well informed and time decision on the issue" (22.5 Radioactive wastes)

" Governments should take the lead in establishing and strengthening, as appropriate, national procedures for environmental impact assessment, taking into account the cradle-to-grave approach to the management of hazardous wastes, in order to identify options for minimizing the generation of hazardous wastes, through safer handling, storage, disposal and destruction" (20.20 e Hazardous wastes)

" Governments, according to their capacities and available resources and with the cooperation of the United Nations and other relevant organizations, as appropriate, should promote and support the integration and operation, at the regional and local levels as appropriate, of institutional and interdisciplinary groups that collaborate, according to their capabilities, in activities oriented towards strengthening risk assessment, risk management and risk reduction with respect to hazardous wastes" (20.25 a Hazardous wastes)

- **Cradle-to-grave approach**

"...taking into account the cradle-to-grave approach to the management of hazardous wastes, in order to identify options for minimizing the generation of hazardous wastes, through safer handling, storage, disposal and destruction" (20.20 e Hazardous wastes)

- **Monitoring cradle to grave approach**

"Governments, in collaboration with industry and appropriate international organizations, should develop procedures for monitoring the application of the cradle to grave approach, including environmental audits" (20.20 e Hazardous wastes)

- **Full life cycle care**

"[promote efficient use of materials and resources, taking into account all aspects related to life cycles of products.]" 9.15 e

"risk reduction involves broad-based approaches to reducing the risks of toxic chemicals, taking into account the entire life cycle of the chemicals." (19.45, Toxic chemicals)

- **Culture of safety**

"to promote a 'culture of safety' in all countries, especially those that are disaster-prone, the following activities should be carried out "(7.60, Disasters)

- **Responsible care**

"Industry should be encouraged to "develop application of a 'responsible care' approach by producers and manufacturers towards chemical products, taking into account the total life cycle of such products" (19.51 b. Toxic chemicals))

"States should encourage industry to exercise environmentally responsible care through hazardous waste reduction and by ensuring the environmentally sound reuse, recycling and recovery of hazardous wastes, as well as their final disposal" (20.18 d Hazardous wastes)

- **Unacceptability of insufficient or outdated criteria of acceptance**

"Governments, in cooperation with relevant international organizations and programmes, should carry out national reviews, as appropriate, of previously accepted pesticides whose acceptance was based on criteria now recognized as insufficient or outdated and of their possible replacement with other pest control methods, particularly in the case of pesticides that are toxic, persistent and/or bio-accumulative." (19.55 b Toxic chemicals))

- **Substitution of less harmful**

"...there are often alternatives to toxic chemicals currently in use. Thus, risk reduction can sometimes be achieved by using other chemicals or even non-chemical technologies. The classic example of risk reduction is the substitution of harmless or less harmful substances for harmful ones. establishment of pollution prevention procedures and setting standards for chemicals in each environmental medium, including food and water, and in consumer goods, constitute another example of risk reduction" (19.45 Toxic chemicals)

" Reduce over-dependence on the use of agricultural chemicals through alternative farming practices, integrated pest management and other appropriate means" (19.50, Toxic chemicals)

- **Reduction**

" to reduce the generation of hazardous wastes, to the extent feasible, as part of an integrated cleaner production approach" (20.11 a Hazardous waste)

" Establishment of long-term programmes and policies including targets where appropriate for reducing the amount of hazardous waste produced per unit of manufacture" (20.12 d. Hazardous wastes)

- **Minimization**

" Integration of cleaner production approaches and hazardous waste minimizations in all planning and the adoption of specific goals;" (20.11a hazardous wastes)

Economics of prevention?? (20.11c Hazardous wastes)

" Promoting waste prevention and minimization as the principal objective of national waste management programmes "(21.14 Solid wastes)

"States, in cooperation with relevant international organizations, where appropriate, should a) promote policies and practical measures to minimize and limit, where appropriate, the generation of radioactive wastes and provide for their safe processing, conditioning, transportation and disposal" (22.4 a Radioactive wastes)

- **Stabilization**

Establishment of an intermediate goal for the stabilization of the quantity of hazardous waste generated "(20.12. c Hazardous wastes)

7.2.3. REORIENTATION OF PRACTICES

" training will be required to reorient current waste management practices to include waste reuse and recycling" (21.26 Solid waste)

- **Polluter pay principle**

" Governments, according to their capacities and available resources and with the cooperation of the UN and other relevant organization, as appropriate should make recommendations to the appropriate forums or establish or adapt norms, including the equitable implementation of the polluter pays principle "(20.39 b Hazardous wastes)

- **tax rebates**

" Applying economic and regulatory instruments, including tax incentives, to support the principle that generators of wastes pay for their disposal" (21.25 Solid wastes)

- **Penalties**

Effective prevention requires action through effective monitoring and the enforcement and imposition of appropriate penalties" (20.40 Hazardous wastes)

" Develop appropriate national enforcement programmes to monitor compliance with such legislation, detect and deter violations through appropriate penalties and give special attention to those who are known to have conducted illegal traffic in hazardous wastes and to hazardous wastes that are particularly susceptible to illegal traffic" (20.43 b Hazardous wastes)

7.2.4. MANDATE TO CHANGE CONSUMPTIVE PATTERNS OF DEVELOPMENT AND TO ADDRESS INEQUALITY

" Programs should: Contain a long-term strategy aimed at establishing the best possible conditions for sustainable local, regional and national development that would eliminate poverty and reduce the inequalities between various population groups. It should assist the most disadvantaged groups -- in particular, women, children and youth within those groups - refugees and people under occupation. The groups will include poor

smallholders, pastoralists, artisans, fishing communities, landless people, indigenous communities, migrants and the urban informal sector.”(3.5. c Combating Poverty)

" The focus here is on specific cross-cutting measures - in particular, in the areas of basic education, primary/maternal health care, and the advancement of women. ”(3.6. Combating poverty)

" governments [at the appropriate level] ... should "implement policies and programmes that will discourage inappropriate and polluting land-use practices and promote sustainable utilization of terrestrial and marine resources and environmentally sound land-use practices" (9.18 a Atmosphere)

" Environmentally sound waste management must go beyond the mere safe disposal or recovery of wastes that are generated and seek to address the root cause of the problem by attempting to change unsustainable patterns of production and consumption.” (21.4 Solid wastes)

7.2.5. MANDATE TO CONSERVE

" the conservation, sustainable management and enhancement, where appropriate, of all sinks for greenhouse gases;” (9.17 ii Atmosphere) re: forests

"the conservation and sustainable use of natural and environmental resources [in particular in agriculture and forestry sectors] ”(9.17 iii now 9.20 iii but substantially changed Atmosphere)

"to ensure sustainable management and, where appropriate conservation of existing and future forest resources; ”(11.14 c Deforestation)

" Establishing, expanding and managing, as appropriate to each national context, protected area systems, which includes systems of conservation units for their environmental, social and spiritual functions and values, including conservation of forests in representative ecological systems and landscapes, primary old-growth forests, conservation and management of wildlife, nomination of world Heritage Sites under the World Heritage Conventions, as appropriate, conservation of genetic resources, involving in situ and ex situ measures and undertaking supportive measures to ensure sustainable utilization of biological resources and conservation of biological diversity and the traditional forest habitats of indigenous people, forest dwellers and local communities;” (11.15 b., Deforestation)

An integrated approach is needed for conserving, upgrading and using the nature resource base of land, water, plant, animal and human resources. ... (13.13 Fragile ecosystems)

" The priority must be on maintaining and improving the capacity of higher potential agricultural lands to support an expanding population However, conserving and rehabilitating the natural resources on lower potential lands in order to maintain sustainable man/land rations is also necessary." (14.3 Agriculture)

" Objectives are... to prepare and implement comprehensive policies and programmes leading to the reclamation of degraded lands and the conservation of areas at risk, as well as improve the general planning, management and utilization of land resources and preserve soil fertility for sustainable agricultural development." (14.45 b. Agriculture)

"Governments... should strengthen and establish national land-resources data banks, including identification of the location, extent and severity of existing land degradation, as well as areas at risk, and relate the progress of the conservation and rehabilitation programmes launched in this regard; "(14.47 b Agriculture)

" Develop priority conservation and rehabilitation programmes with advisory services to Governments and regional organizations." (14.48 a Agriculture)

" The primary objective is to safeguard the world's genetic resources while preserving them to use sustainably. This includes the development of measures to facilitate the conservation and use of plant genetic resources networks of in situ conservation areas and use of tools such as collections and germ plasma banks." (14.55 Agriculture)

" The objectives and activities in this chapter of Agenda 21 are intended to improve the conservation of biological diversity and the sustainable use of biological resources. "(15.1 Biodiversity)

" take effective economic, social and other appropriate incentive measures to encourage the conservation of biological diversity and the sustainable use of biological resources, including the promotion of sustainable production systems such as traditional methods of agriculture, agroforestry, forestry, range and wildlife management, which use, maintain or increase biodiversity" (15.5 Biodiversity)

" Governments... and consistent with the requirements of international law should, as appropriate

Identify and evaluate the potential economic and social implications and benefits of the conservation and sustainable use of terrestrial and aquatic species in each country, building upon the results of country studies” (15.6. Biodiversity)

" Promote the use of biotechnologies relevant to the conservation and scientific study of biological diversity and the sustainable use of biological resources” (16.25 j Biotechnology)

" conservation and restoration of altered critical habitats” (17.6 h. Marine)

"taking action to ensure respect of areas designated by coastal states, within their exclusive economic zones, consistent with international law, in order to protect and preserve rare or fragile ecosystems, such as coral reefs and mangroves; ”(17.31 v Marine)

" [Adequate new and additional financial resources are indispensable for the effective utilization and protection of freshwater resources...} ”(18.13 Fresh water)

"Fisheries of inland waters should be so managed as to maximize the yield of aquatic food organisms in an environmentally sound manner. This requires the conservation of water-quality and quantity, as well as of the functional morphology of the aquatic environment. ”(1878 Freshwater)

7.2.6. ACTIVITIES ADJACENT TO PROTECTED, PRESERVED OR CONSERVED AREAS

" Promote environmentally sound and sustainable development in areas adjacent to protected areas with a view to furthering protection of these areas” (15.5. Biological diversity)

7.2.7. RESTORATION REHABILITATION AND RECOVERY

" Promote the rehabilitation and restoration of damaged ecosystems and the recovery of threatened and endangered species” (15.5 h Biological diversity)

8. PROMOTING OF ECOLOGICAL ALTERNATIVES

• Ecotourism

" the implications of the harvesting of forest resources for the other values of the forest should be taken fully into consideration in the development of forest policies. It is also possible to increase the value of forests through non-damaging uses such as eco-tourism and the managed supply of genetic materials. Concerted action is needed in order to increase people's perception of the value of forests and of the benefits they provide.” (11.22. Deforestation)

"to promote more comprehensive use and economic contribution of forest areas by incorporating eco-tourism into forest management and planning. "(11.23 d Deforestation)

"Promote the formulation of environmentally sound and culturally sensitive tourism programmes as a strategy for sustainable development of urban and rural settlements and as a way of decentralizing urban development and reduction discrepancies among regions; "(7.21 e Settlement)

" to promote income-generating activities, such as sustainable tourism, in particular to protect the livelihood of local communities and indigenous people" (13.15. b, fragile ecosystems)

" consider undertaking pilot projects that combine environmental protection and development functions with particular emphasis on some of the traditional environmental management practices or systems that have a good impact on the environment "(13.21.a Fragile ecosystem)

• **Energy**

"cooperate to increase the availability of capacity, capabilities and relevant technologies--recognizing that technology includes biotechnology--in developing countries for utilizing and producing environmentally [safe and] sound renewable energy resources, such as solar, wind, geothermal, hydropower and biomass, including wood fuel resource. Each resource should be utilized in a manner that fosters sustainable development and minimizes environmental stress and health impacts, emphasizing the need for easily available, cleaner burning, smoke-free household fuel. "(9.9 g Atmosphere)

"objectives are ... Not later than the year 2000, to initiate and encourage a process of environmentally sound energy transition in rural communities, from unsustainable energy sources, to structures and diversified energy sources by making available alternative new and renewable sources of energy" (14.94 a Agriculture)

" Promote pilot plans and projects consisting of electrical, mechanical and thermal power (gasifiers, biomass, solar dryers, wind-pumps and combustion systems) that are appropriate and likely to adequately maintained." (14.95 a. Agriculture)

• **transportation**

"to plan and develop [safe and] more efficient and less polluting transportation systems, especially mass transit to support economic development efforts in an environmentally [safe and]

sound way, giving special attention to urban and metropolitan areas.” (9.11.b Atmosphere)

- **biodegradable materials**

" develop processes to reduce waste generation, treat waste before disposal and make use of biodegradable materials ”(16.25 Biotechnology)

- **minimization of use of hazardous chemicals including pesticides**

" Integrated pest management, which combines biological control, host plant resistance and appropriate far practices and minimizes the use of pesticides, is the best option for the future as it guarantees yields, reduces costs, is environmentally friendly and contributes to the sustainability of agriculture.” (14.74 Agriculture)

"Promoting the use of environmentally less harmful pesticides and fertilizers and alternative methods for pest control, and considering the prohibition of those found to be environmentally unsound” (17.28 i)

*** "In the agricultural area, integrated pest management, including the use of biological control agents as alternatives to toxic pesticides, is one approach to risk reduction” (19.46 Toxic Chemicals)

9. ESTABLISHMENT OF DATA BASE AND CRITERIA FOR RESEARCH AND RECOGNITION OF NEED FOR ECOLOGICALLY SOUND RESEARCH PROPOSALS

The objective of this programme area is to undertake research to determine the effects of increased ultraviolet radiation resulting from stratospheric ozone layer depletion on the Earth's surface, and on plant and animal life in affected regions, as well as its impact on agriculture and to develop, as appropriate, strategies aimed at mitigating its adverse effects.” (14.103 Agriculture)

" Long-term research into the importance of biodiversity for the functioning of ecosystems and the role of ecosystems in producing good, environmental services and other values supporting sustainable development with particular reference to the biology and reproductive capacities of key terrestrial and aquatic species, including native, cultivated and cultured species; ? observation and inventory techniques; ecological conditions necessary for biodiversity conservation and continued evolution; and social behaviour and nutrition habits dependent on natural ecosystems, where women play key roles. The work should be undertaken with the widest possible participation, especially of indigenous people and their communities, including women. ”(15.5 f, Biological diversity)

" Governments, according to their capacities and available resources and with the cooperation of the United nations and other relevant organizations, and industries, as appropriate, should significantly increase financial support for cleaner technology research and development programmes including the use of biotechnologies. "(20.18 a Hazardous wastes)

"Governments, municipalities and local authorities, with appropriate international cooperation, should undertake research on critical subjects such as low-cost, low-maintenance waste-eater treatment systems; safe sludge disposal options, industrial waste treatment; and low-technology, ecologically safe waste disposal options" (21.37 Solid wastes)

LAND TENURE

14.46

RESEARCH INTO ENVIRONMENTALLY SOUND TECHNOLOGIES

"promoting research and development in environmentally sound technologies "(4.18 b Changing consumption patterns)
- "encouraging the environmentally sound and sustainable use of renewable natural resources." (4.18 e Changing consumption patterns)

" in rural areas, unsustainable practices, such as the exploitation of marginal lands and the encroachment on forests and ecologically fragile areas by commercial interests and landless rural populations, result in environmental degradation, as well as in diminishing returns for impoverished rural settlers." (7.28 2. Settlement)

" "strengthen the role of appropriate international research and training institutes such as the Consultative Group on International Agricultural Research Centers (CGIAR) and the International Board for Soil Research and Management, as well as regional research centres, such as the Woodland Mountain institutes and International Centre for Integrated Mountain Development, is undertaking applied research relevant to watershed development;" (13.18 a Fragile ecosystems)

" strengthen and establish research in the public domain on PGRFA evaluation and utilization, with the objectives of sustainable agriculture and rural development in view;" (14.58 b, Agriculture)

9.2. SUPPORT FOR ARMS LENGTH RESEARCH

Governments and institutions, in collaboration where necessary with appropriate international agencies and organizations, Universities and non-governmental organizations should undertake assessments and systematic observations of forests

and related programmes and processes with a view to their continuous improvement.” (11.34 Deforestation)

9.3. NEED FOR INDEPENDENT BODIES

"Institutional reforms and capacity-building will be indispensable if countries are to be able to quantify and mitigate waste-related pollution activities to achieve this objective should include; creating and strengthening independent environmental control bodies at the national and local levels. International organizations and donors should support needed upgrading of manpower skills and provision of equipment.” (21.39 Solid wastes)

10 RECOGNITION OF NEED FOR PARTICIPATION IN DECISION MAKING (needs to be examined)

10.1. DECENTRALIZATION OF RESPONSIBILITY PARTICIPATION OF COMMUNITY GROUPS ...

" Empower community groups, non-governmental organizations and individuals to assume the authority and responsibility for managing and enhancing their immediate environment through participatory tools, techniques and approaches embodied in the concept of environmental care.” (7.21. g Settlement)

" The aim of this programme area is to ensure safety in biotechnology development...including the widest possible public participation and taking account of ethical considerations”. (16.33. Biotechnology)

It is necessary to ... (17.5. marine) "provide access, as far as possible, for concerned individuals, groups and organizations to relevant information and opportunities for consultation and participation in planning and decision -making at appropriate levels” (17.5 f)

11. PROPOSALS FOR ACCESS TO INFORMATION (needs to be examined)

RIGHT TO KNOW

"Industry should be encouraged to: (19.51, toxic chemicals) " adopt, on a voluntary basis, community right-to-know programmes based on international guidelines, including sharing of information on causes of accidental and potential releases and means of preventing them and reporting on annual routine emissions of toxic chemicals to the environment in the absence of host county requirements.” (19.51 c Toxic chemicals)

" Governments should encourage industries to be transparent in their operations and provide relevant information to the

communities that might be affected by the generation, management and disposal of hazardous wastes” (20.14 f Hazardous wastes)

ACCESS TO INFORMATION

It is necessary to ... (17.5. marine) "provide access, as far as possible, for concerned individuals, groups and organizations to relevant information and opportunities for consultation and participation in planning and decision -making at appropriate levels” (17.5 f)

" Governments, international and regional organizations and industry should facilitate and expand the dissemination of technical and scientific information dealing with the various health aspects of hazardous wastes, and promote its application;” (20.24, a Hazardous wastes)

NOTIFICATION PROCEDURES

“ Incorporate the notification procedure called for in the Basel Convention and relevant regional conventions, as well as in their annexes, into national legislation” (20.35 a Hazardous wastes)

12. PROPOSALS FOR ENVIRONMENTAL EDUCATION

" encourage education and awareness-raising programmes at the local, national, subregional and regional levels concerning energy efficiency and environmentally [safe and] sound energy system”;(9.9 j)

" Development of public education programmes directed at decision makers and the general public to encourage awareness and understanding of the relative benefits and risks of modern biotechnology, according to ethical and cultural considerations. ”(16.16 b, Biotechnology)

" Promote the introduction of marine environmental protection topics into the curriculum of marine studies programmes;” (17.41 b)

" educate communities about the pollution-related impacts of the use of fertilizers and chemicals on water-quality, food safety and human health;”(18.87 d vi Fresh water)

" to make information available to governments and to the general public on the effects of hazardous wastes, including infectious wastes, on human health and the environment” (20.22 i Hazardous wastes)

“Governments, according to their capacities and available resources and with the cooperation of the United Nations, other organizations and non-governmental organizations, should collaborate in developing and disseminating educational materials concerning hazardous wastes and their effects on

environment and human health, for use in schools, by women's groups and by the general public (20.29 a Hazardous wastes)
Countries should incorporate within school curricula, where appropriate, the principles and practices of preventing and minimizing wastes and material on the environmental impacts of waste" (21.15 Solid wastes)

In chapter 36 of Agenda 21, a very important distinction is made between promoting "education," promoting "public awareness," and promoting 'training." It appears to be clear in Agenda 21 that non-governmental organizations, community-based groups, women's groups and aboriginal groups are called upon to assist educational authorities in reorienting education. The role of industry is ascertained to be limited to specific areas of business and industrial and training programs.

" Educational authorities, with appropriate assistance of non-governmental organizations, including women's and indigenous peoples' organizations should promote all kinds of adult education programmes for continuing education in environment and development, basing activities around elementary/secondary schools and local problems. The authorities and industry should encourage business, industrial and agricultural schools to include such topics in their curricula. The corporate sector could include sustainable development in their education and training programmes." Agenda 21, Chapter 36.5 I

In the section of Agenda 21 that addresses the " promoting of public awareness " industry is included not as the dispenser of "education" but as the recipient of needed education.

" Countries and regional organizations should be encouraged, as appropriate, to provide public environmental and development information services for raising the awareness of all groups, the private sector and particularly decision makers." (Agenda 21, section 36.10 c)

In the section of Agenda 21, that addresses the "promoting of training, an important role for industry is envisioned.

"To strengthen national capacities, in training, to enable governments, employers and workers to meet their environmental and development objectives and to facilitate the transfer and assimilation of new environmentally sound, socially acceptable and appropriate technology and know -how" (Agenda 21, 36.13 c)

13. RIGHTS OF INDIGENOUS PEOPLES

UNCED Documents Sections from Agenda 21

Indigenous people and their communities have an historical relationship with their lands and are generally descendants of the original inhabitants of such lands. In the context of this chapter the term "lands" is understood to include the environment of the areas which the people concerned traditionally occupy. Indigenous people and their communities represent a significant percentage of the global population. They have developed over many generations a holistic traditional scientific knowledge of their lands, natural resources and environment. Indigenous people and their communities shall enjoy the full measure of human rights and fundamental freedoms without hindrance or discrimination. Their ability to participate fully in sustainable development practices on their lands has tended to be limited as a result of factors of an economic, social and historical nature. In view of the interrelationship between the natural environment and its sustainable development and the cultural, social, economic and physical well-being of indigenous people, national and international efforts to implement environmentally sound and sustainable development should recognize, accommodate, promote and strengthen the role of indigenous people and their communities. (Agenda 21, 16.1)

“In full partnership with indigenous people and their communities, Governments and, where appropriate, intergovernmental organizations should aim at fulfilling the following objectives” (Agenda 21, 16.3)

(a) Establishment of a process to empower indigenous people and their communities through measures that include:

- (i) Adoption or strengthening of appropriate policies and/or legal instruments at the national level;
- (ii) Recognition that the lands of indigenous people and their communities should be protected from activities that are environmentally unsound or that the indigenous people concerned consider to be socially and culturally inappropriate;
- (iii) Recognition of their values, traditional knowledge and resource management practices with a view to promoting environmentally sound and sustainable development;

UNCED Documents: Rio Declaration

“Indigenous people and their communities, and other local communities, have a vital role in environmental management and development because of their knowledge and traditional practices. States should recognize and duly support their identity, culture and interests and enable their effective participation in the achievement of sustainable development.” (Rio Declaration, Principle 22)

“States should effectively cooperate to discourage or prevent the relocation and transfer to other States of any activities and substances that cause severe environmental degradation or are found to be harmful to human health.” (Rio Declaration, Principle 14)

“In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.” (Rio Declaration, Principle 15)

“National authorities should endeavour to promote the internalization of environmental costs and the use of economic instruments, taking into account the approach that the polluter should, in principle, bear the cost of pollution, with due regard to the public interest and without distorting international trade and investment.” (Rio Declaration, Principle 16)

14.RESPECT FOR CULTURAL INTEGRITY AND INDIGENOUS PRACTICES

14.1. RESPECT FOR CULTURAL INTEGRITY AND RIGHTS OF INDIGENOUS PEOPLE

" respecting the cultural integrity and the rights of indigenous people [PEOPLES, EDITORIAL ADDITION] and their communities (3.7. b)

14.2. RESPECTS FOR TRADITIONAL AND INDIGENOUS PRACTICES

"Promote development in accordance with indigenous practices and adopt technologies appropriate to local conditions (7.42 c)

“...the promotion of sustainable production systems such as traditional methods of agriculture, agroforestry, forestry, range and wildlife management, which use, maintain or increase biodiversity” (15.5 Biodiversity)

" consider undertaking pilot projects that combine environmental protection and development functions with particular emphasis on some of the traditional environmental management practices or systems that have a good impact on the environment "(13.21.a Fragile ecosystem)

" Collect and record information on indigenous conservation and rehabilitation practices and farming systems as a basis for research and extension programmes." (14.47 c, Agriculture)

" Governmentsshould ... Recognize and foster the traditional methods and the knowledge of indigenous people and their communities, emphasizing the particular role of women, relevant to the conservation of biological diversity and the sustainable use of biological resources, and ensure the opportunity for the participation of those groups in the economic and commercial benefits derived from the use of such traditional methods and knowledge" (15.4, g Biodiversity)

" Take effective economic, social and other appropriate incentive measures to encourage the conservation of biological diversity and the sustainable use of biological resources, including the promotion of sustainable production systems, such as traditional methods of agriculture, agroforestry, forestry, range and wildlife management, which use, maintain or increase biodiversity" (15.5 d Biodiversity)

" Take effective economic, social and other appropriate incentive measures to encourage the conservation of biological diversity and the sustainable use of biological resources, including the promotion of sustainable production systems, such as traditional methods of agriculture, agroforestry, forestry, range and wildlife management, which use, maintain or increase biodiversity" (15.5 d Biodiversity)

" Take action where necessary for the conservation of biological diversity through the in-situ conservation of ecosystems and natural habitats, as well as primitive cultivars and their wild relatives, and the maintenance and recover of viable populations of species in their natural surrounding ..." (15.6 g. Biodiversity)

Governments... consistent with the requirements of international law should, as appropriate collect, assess and make available relevant and reliable information in a timely manner and in a form suitable for decision-making at all levels, with the full support and participation of local and indigenous people and their communities." (15.6 f Biodiversity)

"promotion of collaborative research programmes... fostering of traditional methods and knowledge of such groups (local and

indigenous) in connection with these activities.” (16.7 b Biotechnology)

States shall cooperate with a view to the conservation of marine mammals and, in the case of cetaceans, shall in particular work through the appropriate international organizations for their conservation, management and study” (17.50 Marine)

15. CONDEMNATION OF TRANSFER OF ECOLOGICALLY UNSOUND PRACTICES AND PRODUCTS (CONDEMNATION OF THIRD WORLD DUMPING- INCLUDING PRODUCTS DEEMED TO BE UNSAFE IN COUNTRY OF ORIGIN)

"States should effectively cooperate to discourage or prevent the relocation and transfer to other States of any activities and substances that cause severe environmental degradation or are found to be harmful to human health."(Principle 14 Rio Declaration)

PHOTO CESTA- JAPANESE GOVERNMENT ASPHALT PANT.
THE JAPANESE ARE SUSPECTED OF SENDING TOXIC
WASTE TO BE MIXED WITH ASPHALT

Establish and enforce screening , systematic sampling and evaluation procedures for drugs and medical technologies, with a view to barring the use of those that are unsafe for the purposes of experimentation; ensure that drugs and

technologies relating to reproductive health are safe and effective [and take account of ethical considerations]" (16.14 c, Biotechnology)

" [Governments of developed countries should provide a range of incentives to encourage industry to transfer environmentally sound technologies and know-how on clean technologies and low-waste production to developing countries on preferential and non-commercial terms, which would bring about changes to sustain innovation. Governments should cooperate with industry to develop guidelines and codes of conduct, leading to cleaner production through sectoral trade and industry association] (20.13 Hazardous wastes)

" to adopt a ban on or prohibit, as appropriate, the export of hazardous wastes to countries that do not have the capacity to deal with those wastes in an environmentally sound way or that have banned the import of such wastes" (20.34. b. hazardous wastes)

"Implement policies for the implementation of a ban or prohibition, as appropriate, of exports of hazardous wastes to countries that do not have the capacity to deal with those wastes in an environmentally sound way or than have banned the import of such wastes" (20.39 c Hazardous wastes)

DANGEROUS LOOPHOLE IN THIRD WORLD DUMPING

" Develop regulatory and non-regulatory measures and procedures aimed at preventing the export of chemicals that are banned, severely restricted, withdrawn or not approved for health or environmental reasons, except when such export has received prior written consent from the importing country or is otherwise in accordance with the PIC procedure; "(19.53 f Toxic chemicals)

TO BE COMPLETED

3.7. b. combating poverty 6.19 health

SPECIFIC REFERENCE TO WOMEN

11.4.b ,14.17` , 14.18 b.

GENDER6.19 health

" governments recognize that there is a new global effort to relate the elements of the international economic system and mankind's need for a safe and stable natural environment... "(2.4. Social and economic dimensions)

"However, conserving and rehabilitating the natural resources on lower potential lands in order to maintain sustainable man/land rations is also necessary." (14.3 Agriculture)

COMMUNITY CONTROL

" Governments, in cooperation with appropriate international and non-governmental organization, should support a community-driven approach to sustainability, which would include, inter alia:

E3.7 d
14.16

SPECIFIC REFERENCE TO NGO
13.16 d; CHAPTER 27

INTERDISCIPLINARY
13.22 a

PARTICIPATION
14.4.b

" Long-term research into the importance of biodiversity for the functioning of ecosystems and the role of ecosystems in producing good, environmental services and other values supporting sustainable development with particular reference to the biology and reproductive capacities of key terrestrial and aquatic species, including native, cultivated and cultured species; ? observation and inventory techniques; ecological conditions necessary for biodiversity conservation and continued evolution; and social behaviour and nutrition habits dependent on natural ecosystems, where women play key roles. The work should be undertaken with the widest possible participation, especially of indigenous people and their communities, including women." (15.5 f, Biological diversity)

LAND TENURE

CONDITIONS

"Additional financial resources in favour of developing countries are essential. U. S. changed this " the availability of additional external resources will increase as foreign entities are convinced that such resources will generate a positive result and efficient utilization of such resources can be demonstrated." (2.24 Social and economic)

RESPONSIBILITY

(" Governments should establish regulations that lay down the ultimate responsibility of industries for environmentally sound disposal of the hazardous wastes their activities generate. 20.13 k." (Hazardous wastes 14.46)

MILITARY

" [Governments should ascertain whether their military establishments conform to strict environmental norms in the treatment and disposal of hazardous wastes.]" (20.23 Hazardous wastes)

(h) "Governments should ascertain that their military establishments conform to their nationally applicable environmental norms in the treatment and disposal of hazardous wastes." (20.22)

In-house library. Royal Society of Canada. *Global Change and Canadians*
Canadian Global Change Program
Knelman, F. (1978) *Anti-Nation: Transition to Sustainability*

4.2.1. Forest Principle Document available on disk

4.2.2. Re-examination of "Forest Principle" Document in light of other obligations (1992)

RE-EXAMINATION OF "FOREST PRINCIPLES" DOCUMENT ("NON-LEGALLY BINDING AUTHORITATIVE STATEMENT OF PRINCIPLES FOR A GLOBAL CONSENSUS ON THE MANAGEMENT, CONSERVATION, AND SUSTAINABLE DEVELOPMENT OF ALL TYPES OF FORESTS")" IN THE LIGHT OF COMMITMENTS MADE IN AGENDA 21, RIO DECLARATION, BIODIVERSITY CONVENTION, CLIMATE CHANGE CONVENTION AND OTHER INTERNATIONAL DOCUMENTS; AS WELL AS IN THE LIGHT OF RECOMMENDATIONS MADE BY ERA ECOLOGICAL RIGHTS ASSOCIATION. WITH THE ASSISTANCE OF OTHER ENVIRONMENTAL GROUPS (1992)

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STYLE LEGEND:

10 point plain text drawn from Land Resources: Deforestation. the unofficial final text dated June 16, 1992 from UNCED

10-point italics; suggested deletions from final text

10 point plain underlined drawn from various sections of Agenda 21(1982) and the Rio Declaration, (1992) World Charter of Nature (1982) and Preservation of cultural and Natural Heritage (1972)

10-point underlined italics: sections that should be eliminated from Agenda 21 or Rio Declaration

10 bold drawn from various recommendations made by environmental groups

12 CAPITALS COMMENTS AND TITLES

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1.THE NEED FOR HARMONIZATION OF THE "LAND RESOURCES: DEFORESTATION" DOCUMENT WITH RELEVANT SECTIONS IN AGENDA 21 (1992), IN THE RIO DECLARATION (1992), THE BIODIVERSITY CONVENTION, THE CLIMATE CHANGE CONVENTION, THE WORLD CHARTER OF NATURE (1982), AND THE PRESERVATION OF CULTURAL AND NATURAL HERITAGE (1972). TO HARMONIZE WITH AGENDA 21, THE "LAND RESOURCES; DEFORESTATION" DOCUMENT MUST ADDRESS THE FOLLOWING SECTIONS ADOPTED BY THE GLOBAL COMMUNITY THROUGH AGENDA 21, AND THE RIO DECLARATION:

- THREAT OF UNCONTROLLED DEGRADATION
- THREAT OF CONVERSION TO OTHER TYPES OF USE
- HARMFUL MISMANAGEMENT SUCH AS UNSUSTAINABLE COMMERCIAL LOGGING

"Forests world-wide have been and are being threatened by uncontrolled degradation and conversion to other types of land uses, influenced by increasing human needs; agricultural; expansion, and environmentally harmful mismanagement, including, for example, lack of adequate forest-fire control and anti-poaching measures, unsustainable commercial logging, overgrazing and ... the impacts of loss and degradation of forests are in the form of soil erosion; loss of biological diversity, damage to wildlife habitats and degradation of watershed areas, deterioration of the quality of life and reduction of the options for development. (Agenda 21, 11.12. Deforestation)

- ECOLOGICAL DETERIORATION OF WATERSHEDS
- EXCESSIVE DEFORESTATION

"There are serious problems of ecological deterioration in these watershed areas. ... In many areas this is accompanied by excessive livestock grazing, deforestation and loss of biomass cover. (Agenda 21 -13.13 Fragile ecosystems)

- INAPPROPRIATE AND UNCONTROLLED LAND USE

" Inappropriate and uncontrolled land uses are a major cause of degradation and depletion of land *resources*. Present land use often disregards the actual potentials, carrying capacities and limitations of land *resources* as well as their diversity in space. (Agenda 21 - 14.34 Agriculture)

- LOSS OF BIODIVERSITY FROM OVER-HARVESTING
- LOSS OF BIODIVERSITY FROM HABITAT DESTRUCTION
- LOSS OF BIODIVERSITY FROM POLLUTION

" Despite mounting efforts over the past 20 years, the loss of the world biological diversity, mainly from habitat destruction, over-harvesting, pollution and the inappropriate introduction of foreign plants and animals has continued. (Agenda 21, 15.3 Biodiversity)

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- WATER QUALITY AFFECTED BY DEFORESTATION
- WATER QUALITY AFFECTED BY LOSS AND DESTRUCTION OF CATCHMENT AREAS
- LAND DEGRADATION FROM DEFORESTATION
- PROBLEMS ARISE BECAUSE OF DEVELOPMENT MODEL IS ENVIRONMENTALLY DESTRUCTIVE
- INADEQUATE MONITORING
- NEED FOR PREVENTIVE APPROACH

"Major problems affecting the water quality of rivers and lakes arise, in variable order of importance according to different situations, from inadequately treated domestic sewage, inadequate controls on the discharges of industrial waste waters, loss and destruction of catchment areas, ill-considered siting of agricultural practices. This gives rise to the leaching of nutrients and pesticides. Aquatic ecosystems are disturbed and living freshwater resources are threatened. ...Erosion, degradation, deforestation and desertification have led to increased land degradation, and the creation of reservoirs have, in some cases, resulted in adverse effects on ecosystems. Many of these problems have arisen from a development model that is environmental destructive and from a lack of protection. Ecological and human health effects are the measurable consequences... although the means to monitor them are inadequate or non-existent in many countries. There is a widespread lack of perception of the linkages between the development, management, use and treatment of water resources and aquatic ecosystems. A preventive approach, where appropriate, is crucial to the avoiding of costly subsequent measures to rehabilitate, treat and develop new water supplies. (Agenda 21, 18.45 Fresh water)

- CONSERVATION OF BIODIVERSITY

" Promote cooperation between the parties to relevant international conventions and action plans with the aim of strengthening and coordinating efforts to conserve biological diversity and the sustainable use of biological resources. (Agenda 21, 15.8 e. biodiversity)

" Strengthen support for international and regional instruments, programmes and action plans concerned with the conservation of biological diversity and the sustainable use of biological resources. (15.8 f, Biodiversity)

- NEED TO REORIENT EXISTING PRODUCTION AND CONSUMPTION PATTERNS

"Achieving the goals of environmental quality and sustainable development will require efficiency in production and changes in consumption patterns in order to emphasize optimization of resource use and minimization of waste. In many instances, this will require reorientation of existing production and consumption patterns that have developed in industrial societies and are in

turn emulated in much of the world. (4.15 Changing Consumption Patterns, Agenda 21).

- PROMOTION OF PATTERNS OF CONSUMPTION TO MEET BASIC NEEDS

" to promote patterns of consumption and production that reduce environmental stress and will meet the basic needs of humanity (4.7.a Changing Consumption Patterns, Agenda 21)

- PRECAUTIONARY PRINCIPLE

" Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation." (Rio Declaration, 1992).

Noting also that where there is a threat of significant reduction or loss of biological diversity, lack of full scientific certainty should not be used as a reason for postponing measures to avoid or minimize such a threat, (Biodiversity Convention)

- PROVISION FOR NOMINATION OF WORLD HERITAGE SITES FOR OLD GROWTH

" Establishing, expanding and managing, as appropriate to each national context, protected area systems, which includes systems of conservation units for their environmental, social and spiritual functions and values, including conservation of forests in representative ecological systems and landscapes, primary old-growth forests, conservation and management of wildlife, nomination of world Heritage Sites under the World Heritage Conventions, as appropriate, conservation of genetic resources, involving in situ and ex situ measures and undertaking supportive measures to ensure sustainable utilization of biological resources and conservation of biological diversity and the traditional forest habitats of indigenous people, forest dwellers and local communities; (11.15 b., Deforestation, Agenda 21)

- VALUE OF FORESTS THROUGH NON-DAMAGING USES

It is also possible to increase the value of forests through non-damaging uses such as eco-tourism and the *managed* supply of genetic materials. Concerted action is needed in order to increase people's perception of the value of forests and of the benefits they provide. (11.22. Deforestation, Agenda 21)

- VALUE OF ECOTOURISM

"to promote more comprehensive use and economic contribution of forest areas by incorporating eco-tourism into forest management and planning. (11.23 d Deforestation, Agenda 21)

- SUPPORT OF ARMS-LENGTH RESEARCH

Governments and institutions, in collaboration where necessary with appropriate international agencies and organizations, Universities and non-governmental organizations should undertake assessments and systematic observations of forests and related programmes and processes with a view to their continuous improvement. (11.34 Deforestation) the promotion of sustainable production systems such as traditional methods of agriculture, agroforestry, forestry, range and wildlife *management*, which use, maintain or increase biodiversity (15.5 Biodiversity, Agenda 21)

• PROMOTION OF TRADITIONAL METHODS OF FORESTRY THAT MAINTAIN OR INCREASE BIODIVERSITY
" Take effective economic, social and other appropriate incentive measures to encourage the conservation of biological diversity and the sustainable use of biological *resources*, including the promotion of sustainable production systems, such as traditional methods of agriculture, agroforestry, forestry, range and wildlife *management*, which use, maintain or increase biodiversity (15.5 d Biodiversity, Agenda 21)

• LIMITATION OF THE SOVEREIGN RIGHT TO EXPLOIT
States have the sovereign right to exploit their own biological *resources* pursuant to their environmental policies, as well as the responsibility to conserve their biodiversity and use their biological resources sustainably, (15.3 Biodiversity, Agenda 21)

• PRESERVATION OF 12% REPRESENTATIVE ECOSYSTEM
• ENVIRONMENTAL ASSESSMENT OF ALL ACTIVITIES THAT COULD HAVE SIGNIFICANT IMPACTS (INCLUDE FOREST ACTIVITIES)
Ensure that relevant decisions are preceded by environmental impact assessments and also take into account the costs of any ecological consequences (7.42 Settlement, Agenda 21)

(a) Introduce appropriate procedures requiring environmental impact assessment of its proposed projects that are likely to have significant adverse effects on biological diversity with a view to avoiding or minimizing such effects and, where appropriate, allow for public participation in such procedures; (Biodiversity Convention) From the Climate Change Convention

• RECOGNITION OF THE IMPORTANCE OF FORESTS AS SINKS FOR GREEN HOUSE GASES
Aware of the role and importance in terrestrial and marine ecosystems of sinks and reservoirs of greenhouse gases, Promote sustainable management, and promote and cooperate in the conservation and enhancement, as appropriate, of sinks and reservoirs of all greenhouse gases not controlled by the

(d)

Montreal Protocol, including biomass, forests and oceans as well as other terrestrial, coastal and marine ecosystems;

• NEED TO DISCOURAGE OR PREVENT TRANSFER OF ACTIVITIES AND SUBSTANCES THAT CAUSE ENVIRONMENTAL DEGRADATION

"States should effectively cooperate to discourage or prevent the relocation and transfer to other States of any activities and substances that cause severe environmental degradation or are found to be harmful to human health."(Principle 14 Rio Declaration)

2. BACKGROUND DISCUSSION RELATED TO A "DECLARATION OF FOREST PRINCIPLES"

Agenda 21, which was adopted by the global community, was all-inclusive of its examination of "sustainable development," the "Land Resources - Deforestation" document, however, is a narrow sectoral document. Principles related to the inherent worth of forest ecosystem, the sustainability of forest use, and the necessity of international ecologically sound standards must reflect the complexity and all-inclusiveness of many of the enunciated principles in Agenda 21, the Rio declaration as well as the fundamental ecologically sound approach to forests.

Given that " We have come to realize that threats to the biosphere, which sustains all life on earth, have changed in rate, magnitude and scale, to such an extent that inaction would be negligent. (Alternate Earth Charter, Global Forum, 1992), we propose the following:

Rather than a "Land resources: Deforestation" document which deals with forests in a narrow sectoral way, a broad "Declaration of Forest Principles" is proposed. The following declaration is based on the "unofficial Land Resources: Deforestation", text from June 16, 1992). The complete text is printed here in 10 point plain. This text, however, has been expanded and altered: sections that are recommended for deletion are in *10-point italics*. Sections drawn from various sections of Agenda 21 (1992), the Rio Declaration (1992), World Charter of Nature (1982) and Preservation of cultural and Natural Heritage (1972) are in 10 point plain underlined. Recommendations made by environmental groups are in **10 bold drawn from various recommendations, and comments and titles are in **12-point CAPITALS****

3. SECTION BY SECTION ANALYSIS OF "LAND RESOURCES: DEFORESTATION" DOCUMENT WITH SUGGESTED DELETIONS AND ALTERATIONS IN ORDER TO ACHIEVE A PROPOSED "DECLARATION OF FOREST PRINCIPLES" DOCUMENT
COPY OF TEXT WITH ADDITIONS FROM ENVIRONMENTAL GROUPS AND FROM AGENDA 21 AND THE RIO DECLARATION.

TEXT

LAND RESOURCES: DEFORESTATION

Non-legally binding [legally binding] authoritative statement of principles for a global consensus on the *management* conservation and sustainable development of all types of forests.

PREAMBLE

(a) The subject of forests is related to the entire range of environmental and development issues and opportunities including **the right to conservation of representative ecosystems, right to non-consumptive enjoyment of forests and the right to ecologically sound employment** *the right to socio-economic development on a sustainable basis.*

b) The guiding objective of these principles is to contribute to the **conservation of forest ecosystems, and to the establishment of ecologically sound forest practices** *of the management, conservation and sustainable development of forests, and to provide for the setting aside of wilderness, for the preservation of significant unfragmented old growth systems, and for the establishment of international ecologically sound standards of true sustainability.* *their multiple and complementary function and uses.*

c) Forestry issues and opportunities should be examined in an holistic and balanced manner within the overall context of environment and development, taking into consideration **the mandate to set aside untouched wilderness areas, to preserve significant unfragmented old-growth forest ecosystems, as well as the non-consumptive and ecologically sound uses** *multiple functions and uses of forests, including traditional uses, and the likely economic and social stress when these uses are constrained or restricted, as well as the potential for development that sustainable forest management can offer. It is also possible to increase the value of forests through non-damaging uses such as eco-tourism and the managed supply of genetic materials. Concerted action is needed in order to increase people's perception of the value of forests and of the benefits they provide. (11.22. Deforestation)*

d) These principles reflect a first global consensus on forests. In committing themselves to the prompt implementation of these principles, countries also decide to keep them under assessment for their adequacy with regard to further international cooperation on forest issues **and for the establishment of international enforceable ecologically sound standards. These standards must give primacy to the understanding of the forest as a complex interacting ecosystem, including the "cradle to grave approach" assessment of all intrusions into the ecosystem.**

Governments, in collaboration with *industry and* appropriate international organizations, should develop procedures for monitoring the application of the cradle to grave approach, including environmental audits (20.20 e Hazardous wastes)

e) These principles should apply to all types of forests, both natural and planted, in all geographic regions and climatic zones, including austral, boreal, sub-temperate, temperate, sub-tropical and tropical.

f) All types of forests embody complex and unique ecological processes **which are of intrinsic value in themselves (World Charter of Nature)** and which are the basis for their present and potential capacity to provide resources to satisfy human needs as well as environmental values and as such **their ecologically sound use sound management and their** conservation is of concern to the Governments of the countries to which they belong [**and to the world community**] and are of value to local communities and to the environment as a whole.

g) *Forests are essential to economic development and the maintenance of all forms of life.* **have intrinsic value and are essential to all forms of life**

h) **Even though** *Recognizing that* the responsibility for forest *management, conservation and sustainable development* is in many States allocated among federal/national, state/provincial and local levels of government, each State, in accordance with its constitution and/or national legislation should pursue **international ecologically-sound standards these principles** at the appropriate level of government

Principles/elements

1. a) *States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction and* States have the sovereign right to exploit their own biological resources pursuant to their environmental policies, as well as the responsibility to conserve their biodiversity and use their biological resources sustainably, (15.3 Biodiversity, Agenda 21) **and the responsibility to ensure that activities within their jurisdiction do not cause damage to the environment both within and beyond their own state, and providing that they do not violate internationally ecologically sound standards, and the responsibility to recognize the inherent worth of the forest ecosystem itself (World Charter of Nature), to promote the setting aside of undisturbed wilderness, and to allow the forest ecosystem to renew itself**

(b) **Recognizing the importance of preservation of forest ecosystem and the setting aside of undisturbed wilderness.** The agreed full incremental cost of achieving benefits associated with forest conservation and sustainable development requires increased international cooperation and should be equitably shared by the international community. **Due consideration should be given to the designating of an increased number of unfragmented**

forest ecosystems under the UN Convention for the Preservation of Cultural and Natural Heritage.

2. (a) States have the sovereign *and inalienable* right as well as the responsibility to conserve their biodiversity and use their biological resources sustainably, (15.3 Biodiversity) **and the responsibility to ensure that activities within their jurisdiction do not cause damage to the environment both within and beyond their own state, and providing that they do not violate internationally ecologically sound standards** , *to utilize, manage and develop their forests in accordance with their development needs and level of socio-economic development and on the basis of national policies consistent with sustainable development and legislation, including the conversion of such areas for other uses within the overall socio-economic development plan based on rational land-use policies."* Inappropriate and uncontrolled land uses are a major cause of degradation and depletion of land resources. Present land use often disregards the actual potentials, carrying capacities and limitations of land resources as well as their diversity in space. (14.34 Agriculture). **Recognizing that since the term 'management' implies that we are in fact capable of truly managing forests in a sustainable way, and since we must recognize that the forest ecosystem is complex and indeterminate, and that many of our intrusion have unexpected consequences, that we should proceed with caution by observing and drawing upon the expertise evidenced in the few existing unfragmented original growth ecosystems.**

(b) **The precautionary principle is followed in all proposed logging activity because of the potential for logging activity to cause 'serious and irreversible' damage. Forest resources and forest lands should be preserved for their inherent value (World Charter of Nature) so as to leave open a full range of non-consumptive options.**

Other Forests should be used as resources providing that ecologically sound practices are used for harvesting and restoring the forest resources should sustainably managed to meet the social, economic, ecological, cultural and spiritual human needs of present and future generations. These needs are for forest products and services, such as wood and wood products, water, food, fodder, medicine, fuel, shelter, employment, recreation, habitats for wildlife, landscape diversity, carbon sinks and reservoirs, and for other forest products. Appropriate measures should be taken to protect forests against harmful effects of pollution, including air-borne pollution, fires, pests and diseases, **and from harmful logging practices and from harmful chemicals that are used for forest "management" in order to maintain their full multiple value. to leave open options for non-consumptive use.**

(c) The provision of timely, **arms-length** reliable and accurate information on forests and forest ecosystems is essential for public understanding and informed decision-making and should be ensured.

(d) Governments should promote and provide opportunities for the participation **in the establishing of terms of reference and throughout the decision making process** of interested parties, including local communities and indigenous people, industries, labour, non-governmental organizations and individuals, forest dwellers and women, in the development, implementation and planning of national forest policies. **taking fully into consideration adherence to international ecologically sound standards. A distinction should be made between input from vested short-term economic interest for economic gain and long-term concern about the ecological commons.**

3. (a) **International ecological standards shall provide a framework for development and strengthening of conservation and sustainable development.** National policies and strategies should provide a framework for increased efforts, including the development and strengthening of institutions and programmes for the *management, conservation and sustainable development of forests and forest lands*. **implementation of international ecologically sound standards. These standards shall apply to all forests on public and private lands, and should draw upon ecologically sound indigenous and traditional practice that have been demonstrated to preserve biodiversity.**

b) International institutional arrangements, building on those organizations and mechanisms already in existence, as appropriate, should facilitate international cooperation in the field of forests.

c) All aspects of environmental protection and social and economic development as they relate to forests and forest lands should be integrated and comprehensive.

4. the vital role of all types of forests in maintaining the ecological processes and balance at the local, national, regional and global levels through, inter alia, their role in protecting fragile ecosystems, watersheds and freshwater *resources sources* and as rich storehouses of biodiversity ... **and International ecological sound guidelines shall be in place to ensure this vital role.**

and the vital role of biological resources and sources of genetic material for biotechnology products, as well as photosynthesis, should be recognized, and international standards shall be in place as guidelines to ensure this vital role.

5 (a) **Developed states and companies shall be responsible in their own country and in their country of operation for restoring the land that had previously been destroyed through ecologically unsound logging practices and through ecologically unsound silviculture practices. In developing countries, international assistance shall be given to restore land destroyed through subsistence forestry.** National forest policies should recognize and duly support the identity, culture and the rights of indigenous people, their communities and other communities, and forest

dwellers. Appropriate conditions should be promoted for these groups for them **to have a representative ecosystem preserved, access to independent arms-length research, as well as** an economic stake in forest use, perform economic activities, and achieve and maintain cultural identity and social organization, as well as adequate levels of livelihood and well-being, through, inter alia, those land tenure arrangements which serve as incentives for **the sustainability the sustainable management** of forests. **A distinction should be made between "forest dwellers" and forest exploiters (those who go into the forest primarily to exploit the forest as a resource). The practice of destroying forest lands for the growing of cash crops for external markets as part of the current model of development should be halted.**

b) The full participation of women in all aspects of *management*, conservation and sustainable development of forests should be actively promoted.

6. (a) All types of forests play an important role in meeting energy requirements through the provision of a renewable source of bio-energy, particularly in developing countries, and the demands for fuelwood for household and industrial needs should be met through sustainable forestry *management*, afforestation and reforestation. *To this end, the potential contribution of plantations of both indigenous and introduced species care should be taken to resist the introducing of off-site planting for the provision of both fuel and industrial wood should be recognized.* **"Despite mounting efforts over the past 20 years, the loss of the world biological diversity, mainly from habitat destruction, over-harvesting, pollution and the inappropriate introduction of foreign plants and animals has continued. (15.3 Biodiversity, Agenda 21)**

b) national policies and programmes **in accordance with international ecologically sound standards** should take into account the relationship, where it exists, between the conservation, *management* and sustainable development of forests and all aspects related to the production, consumption, recycling and/or final disposal of forest products, **and that international trade agreement shall not require states to relax high environmental standards.**

(c) Decisions taken on the *management*, conservation and sustainable development of *forest resources* **forests** should benefit to the extent practicable from a comprehensive assessment of economic and non-economic values of forest goods and services and of the environmental costs and benefits. The development and improvement of methodologies for such evaluations should be promoted.

d) The role of planted forests and permanent agricultural crops as sustainable and environmentally sound sources of renewable energy and industrial raw material should be recognized, enhanced and promoted. The contribution to the maintenance of ecological processes, to offsetting pressure on primary/old-growth forest and to providing regional employment and development with the adequate involvement of local inhabitants should be recognized and enhanced.

(e) Natural forests also constitute a source of goods and services and their conservation; sustainable *management* development and use should be promoted.

7. a Efforts should be made to promote a supportive international economic climate conducive to sustained and environmentally sound development of forests in all countries, which include, inter alia, the promotion of sustainable patterns of production and consumption, the eradication of poverty, and the promotion of food security.

8. (a) Efforts should be undertaken towards the greening of the world. All countries, notably developed countries **in accordance with international ecologically-sound standards**, should take positive and transparent action towards reforestation, afforestation and forest conservation, as appropriate. (b) Efforts to maintain and increase forest cover and forest productivity should be undertaken in ecologically, economically and socially sound ways through the rehabilitation, reforestation and re-establishment of trees and forests on unproductive, degraded and deforested lands, as well as through **allowing previously destroyed forests to regenerate themselves** *the management of existing forest resources*.

(c) The implementation of national policies and programmes aimed at forest *management*, conservation and sustainable development, particularly in developing countries, should be supported by international financial and technical cooperation, **in accordance with International ecologically sound standards**, including through the private sector, *where appropriate*, **and should not violate principle 14 of the Rio Declaration., or the principles in the Biodiversity Convention.**

(d) Sustainable forest *management and use* should be carried out in accordance with national development policies **that do not violate international conventions such as Biodiversity as well as international ecologically-sound standards**, *and priorities and on the basis of environmentally sound national guidelines. In the formulation of such guidelines account should be taken, as appropriate, and if applicable, of relevant internationally agreed methodologies and criteria.*

(e) Forest *management conservation and use* should be integrated with *management of adjacent areas* so as to maintain ecological balance and **sustainability sustainable productivity**.

(f) National policies and/or legislation aimed *at management*, conservation and sustainable development of forests, should include the protection of ecologically viable representative or unique examples of forests, including primary/old-growth forests, cultural, spiritual, historical, religious and other unique valued forests of national importance; **these forests should be distributed widely throughout each state and throughout the world,**

(g) Access, **shall be required to comply with international ecologically sound standards**, to biological resources - including genetic material, shall be with due regard to the sovereign rights of the countries where the forests are located and to the sharing on mutually agreed terms of technology and profits from biotechnology products that are derived from these resources.

(h) National policies should ensure that environmental impact assessments should be carried out where actions are likely to have significant adverse impacts on important forest resources, and where such actions are subject to a decision of a competent national authority. **Conversely it must also be recognized that forest practices have and continue to have significant adverse impacts on the land and water base, and that the impact of forest practices must also be under the purview of environmental impact assessment. To determine the environmental impact, states shall apply international ecologically sound standards, established by an independent, arms-length research body, and** Ensure that relevant decisions are preceded by environmental impact assessments and also take into account the costs of any ecological consequences (7.42 Settlement, Agenda 21)

9 (a) The efforts of developing countries, to strengthen the *management*, conservation and sustainable development of their forests resources should be supported by the international community taking into account the importance of redressing external indebtedness, particularly where aggravated by the net transfer of resources to developed countries, as well as the problem of achieving at least the replacement value of forests through improved market access for forest products, especially processed products. In this respect, special attention should also be given to countries undergoing the process of transition to market economies. **No state shall be required to log a forest to service international debt or to comply with international trade regulations. Debt remission for preservation of significant forest areas should be instituted.** "States should effectively cooperate to discourage or prevent the relocation and transfer to other States of any activities and substances that cause severe environmental degradation or are found to be harmful to human health."(Principle 14, Rio Declaration)

(b) The problems that hinder efforts to attain the conservation and sustainable use of forests *resources* and stem from the lack of alternative options available to local communities, in particular the urban poor and poor rural populations who are economically and socially dependent on forests *and forest resources*, should be addressed by Governments and the international community.

(c) National policy formulation with respect to all types of forests **shall give primacy to the fulfillment of high international ecological standards and not compromise those long-term ecological principles for the sake of short-term economic gain, but rather attempt to convert ecologically unsound practices to ecologically sound practices.** *should take account of the pressures and demands imposed on forest ecosystems and resources from influencing factors outside the forest sector and intersectoral means of dealing with those pressures and demands should be sought.*

11. New and additional financial resources should be provided to developing countries to enable them to sustainably *manage*, conserve and develop their **forests forest resources**, including afforestation, reforestation and combating deforestation, forest and land degradation **through the use of ecologically**

sound practices and substances such as selective logging, safe alternative pest control method.

12. In order to enable in particular developing countries to enhance their endogenous capacity and to better *manage*, conserve and develop their **forests forest resources**, the access to and transfer of environmentally sound technologies and corresponding know-how on favourable terms, including on concessional and preferential terms, as mutually agreed, in accordance with the relevant provisions of Agenda 21, should be promoted, facilitated, and financed, as appropriate, **and in accordance with principle 14 (anti-dumping principle) of the Rio Declaration, and in accordance with the precautionary principle.**

13 a Scientific **arms-length** research, forest inventories and assessment, carried out by national institutions, **in accordance with international ecologically-sound standards**, which take into account, where relevant, **wilderness**, biological, physical, social and economic variables, as well as the technological development and its application in the field of *sustainable forest management*, conservation and development, should be strengthened through effective modalities, including international cooperation. In this context, attention should also be given to research and development of sustainably harvested non-wood products. (WHAT WOULD THIS INCLUDE? HUNTING, MEDICINES)

(b) National and where appropriate, regional and international institutional capabilities in, education, training, science, technology, economics, anthropology and social aspects of forests, **wilderness** and forest **sustainability management** are essential to the conservation and sustainable development of forests and should be strengthened.

(c) International exchange of information **on the results of the intrinsic worth of forest ecosystems, on significance of wilderness and on ecologically sound forest practices forest and forest management** research and development should be enhanced and broadened, as appropriate, making full use of education and training institutions, including those in the private sector. **The international community shall set up an independent body to determine the accuracy of the claims made by multinational forest companies, and to establish a set of international standards of ecologically sound forest practices.**

(d) Appropriate indigenous capacity and local knowledge regarding the conservation and sustainable development of forests should, through institutional financial support and in collaboration with the people in local communities concerned, be recognized, respected, recorded, developed and, as appropriate, introduced in the implementation of programmes, **and their input sought in the establishment of international standards of ecologically sound forest practices.** Benefits arising from the utilization of indigenous knowledge should therefore be equitably shared with such people.

14. (a) **Given the urgency of deforestation and soil degradation that was recognized by the global community in Agenda 21, fundamental**

environmentally sound principles must be given primacy in any trade negotiations. *the Trade in forest products should be based on non-discriminatory and multilaterally agreed rules and procedures consistent with international trade law and practices. In this context, open and free international trade in forest products should be facilitated.*

(b) *reduction or removal of tariff barriers and impediments to the provision of market access and better prices for higher value-added forest products and their local processing should be encouraged to enable producer countries to better conserve and manage , **sustain and allow for the renewal of their forests** their renewable forest resources, and the export of resources, such as raw logs, cants and wood chips, that detract from value-added forest production, must be discontinued.*

(c) **Since true environmental costs, assessed by an independent environmental audit, have been ignored in the process of decision making about forest use, environment costs and benefits must be assessed.** Incorporation of environmental costs and benefits into market forces and mechanisms. In order to achieve forest conservation and sustainable development, should be encouraged both domestically and internationally, and

(d) **Forest conservation and sustainable development policies shall be given primacy and should not be compromised by economic policies** *should be integrated with economic, trade and other relevant policies.*

(e) Fiscal, trade, industrial, transportation, and other policies and practices that may lead to forest degradation should **shall** be avoided. Adequate policies, aimed at *management*, conservation and sustainable development of forests, including *where appropriate incentives for the conversion from ecologically unsound practices* should be encouraged.

15(a) Unilateral measures, obligations or agreements, to restrict and /or ban international trade in timber of other forest products should be removed or avoided, in order to attain long-term sustainable forest management

16. Pollutants, particularly air borne pollutants, including those responsible for acidic deposition, that are harmful to the health of forest ecosystems at the local, national regional and global levels should be controlled, **and the use of harmful pesticides in forestry should be reduced and eventually eliminated.**

Governments, in cooperation with relevant international organizations and programmes, should carry out national reviews, as appropriate, of previously accepted pesticides whose acceptance was based on criteria now recognized as insufficient or outdated and of their possible replacement with other pest control methods, particularly in the case of pesticides that are toxic, persistent and/or bio-accumulative. (19.55 b Toxic chemicals))

" Integrated pest *management*, which combines biological control, host plant resistance and appropriate far practices and minimizes the use of pesticides, is the best option for the future

as it guarantees yields, reduces costs, is environmentally friendly and contributes to the sustainability of agriculture. (14.74 Agriculture)

"Promoting the use of environmentally less harmful pesticides and fertilizers and alternative methods for pest control, and considering the prohibition of those found to be environmentally unsound (17.28 i)

4.2.3. Composite Charter building on the Rio Declaration

Composite Earth Charter

compiled from sections of the Rio Declaration; the Earth Charter (NGO); The Charter of Interdependence by David Suzuki and the alternative Earth Charter prepared by the ERA Ecological Rights Association by Joan Russow and David White.

Type legend

Rio Declaration. plain and underlined

NGO Earth Charter plain and not underlined

Charter of interdependence: Italics

Alternate Earth Charter: bold

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COMPOSITE EARTH CHARTER

EARTH CHARTER (NGO) AND RIO DECLARATION and **Alternate Earth Charter**

Preamble

We are the Earth, the people, plants and animals; the rains and the oceans; the breath of the forests and the life of the sea (NGO Charter)

All life is interconnected and interdependent in ways that will never be fully understood through science

In our quest to see ourselves as separate and even above the web of life we have imperiled the delicate balance

We have contaminated the air, water and soil and driven wild things to extinction, dammed rivers, torn down ancient forests, poisoned the rains and ripped holes in the sky (charter of Interdependence, Suzuki)

We have come to realize that the traditional consumptive patterns of development have contributed to poverty, to the inequitable distribution

of resources, to over-consumption, to the violation of human rights and to the potentially irreversible degradation of the ecosystem

We have come to realize that the threats to the biosphere which sustains all life on this planet have increased in rate, magnitude and scale that inaction is negligent. The international community has enough information about the pending state of ecological irreversibility that it must act immediately.

Principles

1.

The Earth's ecosystem shall be conserved, protected and restored [We agree to respect, encourage, protect and restore Earth's ecosystems to ensure biological and cultural diversity]

States shall cooperate in a spirit of global partnership to conserve, protect and restore the health and integrity of the Earth's ecosystem. (Principle 6)

The ecosystem of which we are a part shall be protected and preserved; ecologically unsound patterns of development shall be condemned and the inequity of development must be addressed and rectified. The mandate to limit growth must prevail

the right to expect that the government will foster and encourage the moral and ethical responsibilities concomitant with the protection of the right to a safe ecosystem and to an ecological heritage

- **the right to require the disallowing of acts that could contribute to ecological irreversibility**
- **the right to demand that the government take immediate actions to address the urgent potentially irreversible environmental situation even though the action may interfere with the pursuit of short-term economic privileges**
- **the right to require governments to approach the ecosystem as the interdependence of principles that need to be in place if there is to be a solution (unacceptability of "short term" solutions based on fragmentation of the problem)**
- **the right to demand the preservation of significant ecosystems and that significant is not dependent on the notion of "collectibles" i.e. that if there is already an ecosystem preserved in one district would prevent a similar ecosystem from being protected in another district.**
- **the right to demand the reduction and elimination of destruction of the habitat by ecologically unsound economic practices**

2.

We recognize our diversity and our common partnership. We respect all cultures and

[affirm the rights of all people to basic environmental needs]

The rights of all to a safe environment shall be enshrined and enforced internationally, nationally, and locally in legislation, and

3.

Poverty affects us all.

All states and all people shall cooperate in the essential task of eradicating poverty as an indispensable requirement for [sustainable development], in order to decrease the disparities in standards of living and better meet the needs of the majority of the people of the world.

[We agree to alter [unsustainable] patterns of production and consumption to ensure the eradication of poverty and to end the abuse of Earth.] **The fundamental principle which calls for limiting growth shall be internationally adhered to. Current patterns of overconsumption shall be reduced and eventually eliminated, and efforts shall be made to stabilize population**

To achieve sustainable development and a higher quality of life for all people, states should shall reduce and eliminate unsustainable patterns of production and consumption (Principle 8)

Development activities that benefit the few while compromising the biological inheritance, and quality of life of the many must be condemned as being inherently and ethically wrong

This must include a recognition of the role of debt and financial flows from the South to the North

The third world debt shall be forgiven and these additional funds shall be transferred to ecologically sound, humanitarian project.

and opulence and corruption as primary causes. We shall emphasize and improve the endogenous capacity for technology creation and development. States should cooperate to strengthen endogenous capacity-building for sustainable development by improving scientific understanding through exchanges of scientific and technological knowledge, and by enhancing the development, adaptation, diffusion and transfer of [ecologically sound non obsolete] technologies, including new and innovative technologies. (principle 9)

Attempts to eradicate poverty should not be a mandate to abuse the environment and attempts to protect or restore the environment should not ignore basic human needs

4.

States shall not have the sovereign right to exploit resources within their territories. All actions within states must comply with high international ecological standards

We recognize that national barriers do not generally conform to Earth's ecological realities. National sovereignty does not mean sanctuary from our collective responsibility to protect and restore Earth's ecosystems.

States have ...the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other states or of areas beyond the limits of national jurisdiction (principle 1)

Trade practices and transnational corporations must not cause environmental degradation and should **[shall]** be controlled in order to achieve social justice, equitable trade and [solidarity] with ecological principles.

International ecological standards shall be in place so that no short-term individual pursuit of self-interest, or short sighted national or international regulations (GATT) could jeopardize the environment. The purpose of these standards is to address the individual and multinational pursuit of self-interest and to prevent the consumption and exploitative use of the environment and not to penalize local communities that wish to function in an interdependent way with the ecosystem. The economic development necessary to eliminate poverty shall not be a mandate to abuse the environment for either short-term gain or economic growth.

the right to prevent the government or industry from satisfying short term economic wishes that would compromise the satisfaction of long-term ecological needs of future generations

•the right to expect the government not to abandon high national environmental standards to comply with international economic agreements

• the right to have the government give the environment, primacy in decision making

5

we [reject] **Governments must cease the buildup of military force** [the buildup] and use of military force and the use of economic pressure as means of resolving conflict.

the right to require the government to prohibit the production of weapons of mass destruction and work towards the control over other weapons and towards eventual disarmament.

States shall resolve all their environmental disputes peacefully and by appropriate means in accordance with the Charter of the United Nations. (Principle 26)

We commit ourselves to pursue genuine peace, which is not merely the absence of war but includes the eradication of poverty, the promotion of social justice, **human and social rights** and [economic], spiritual, cultural and ecological well-being.

Peace, development and environmental protection are interdependent and indivisible (principle 25)

Warfare is inherently destructive of sustainable development. States shall therefore respect international law providing protection for the environment in times of armed conflict and cooperate in its further development, as necessary. (principle 24)

The continued build-up of the military complex must cease, and the use of military forces as a means of resolving conflict must be rejected. A radical reduction of the military budgets of the world must occur, and the funds released for ecological and humanitarian purposes.

6.

We agree to ensure that decision-making processes and their criteria are clearly defined, transparent, explicit, accessible and equitable.

the right of the public to have input into the decision making process at the time of meaningful alternatives: a) at the time of formulation of the terms of reference and at the time when a decision is made about an environmental assessment review is to be made; b) continually throughout the proposed project; c) at any time where there is significant public concern about the environmental impact of the project

Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. (principle 10)
Effective access to judicial and administrative proceedings, including redress and remedy shall be provided. (Principle 10)

In order to achieve sustainable development, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it (Principle 4)

• Those whose decisions or activities may affect the environment must first prove the absence of harm.

the right to have the onus of proof shifted from those opposing the intervention "having to demonstrate that the intervention will cause harm" to those advocating the intervention "having to demonstrate that their intervention will not cause harm.

the right to demand that "caution should be exercised when there is doubt about the impact of development

In order to protect the environment, the precautionary approach shall be widely applied by States [according to their capabilities]. Where there are threats of serious or irreversible damage [where there may be adverse environmental effects), lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation. (Principle 15) **The precautionary principles shall be extended to require those who wish to intervene in the ecological commons to have to justify their intervention and demonstrate the safety of their intervention. The full environmental costs shall be considered in any proposed development project that may cause ecological harm**

Environmental impact assessment, as a national instrument, shall be undertaken for proposed activities [that may] that are likely to have a significant adverse impact on the environment [and are subject to a decision of a competent national authority]. Significant adverse impact shall be determined by reference to international ecological standards (principle 17)

• Those likely to be affected, particularly populations in the South and those in subjugation within existing States, should have free access to information and effectively participate in the decision-making processes.

The special situation and needs of developing countries, particularly the least developed and those most environmentally vulnerable, shall be given special priority. International actions in the field of environment and development should also address the interests and needs of all countries (Principle 6)

7

States, institutions, corporations and peoples are unequal in their contribution to environmental harm, experience of ecological degradation and ability to respond to environmental destruction. While all are responsible for improving environmental quality, those who have expropriated or consumed the majority of Earth's resources or who continue to do so must cease such expropriation or reduce such consumption and must bear the costs of ecological restoration and protection by providing the majority of financial and technological resources.

The developed countries acknowledge the responsibility that they bear in the international pursuit of sustainable development in view of the pressures their societies place on the global environmental and of the technologies and financial resources they command (principle 7)

8.

Women constitute over half of Earth's human population. They are a powerful source for change. They contribute more than half the effort to human welfare. Men and women agree that women's status in decision-making and social processes must equitably reflect their contribution. We must shift from a society dominated by men to one which more accurately reflects the valued contributions of men and women to human and ecological welfare.

Women have a vital role in environmental management and development. Their full participation is therefore essential to achieve sustainable development (Principle 20)

22

Indigenous people and their communities, and other local communities, have a vital role in environmental management and development because of their knowledge and traditional practices. States should recognize and duly support their identify, culture and interests and enable their effective participation in the achievement of sustainable development. (Principle 22)

We recognize the special place of Earth's Indigenous Peoples, their territories, their customs and their unique relationship to Earth. (Preamble). **Indigenous peoples shall be given the right to self-government, and all states shall settle indigenous peoples land rights**

• the right to demand that restrictions be placed on aesthetic or medicinal uses of fauna that could lead to species impoverishment

- the right to demand the government to suspend any activity by Multinational Corporations that could cause environmental degradation through ecologically unsound practices. •

11

the right to demand national control over the safety of products and over national standards related to ecologically sound practices in accordance with proposed international standards.

States shall enact effective environmental legislation. Environmental standards, and priorities should reflect the environmental and developmental context to which they apply. (Principle 11) **International ecological standards shall be established as a basis for national and local standards.**

• 13

States shall develop national law regarding liability and compensation for the victims of pollution and other environmental damage. States shall also cooperate in an expeditious and more determined manner to develop further international law regarding liability and compensation for adverse effects of environmental damage caused by activities within their jurisdiction or control to areas beyond their jurisdiction (Principle 13)

• 14

States should (shall) effectively cooperate to discourage or prevent the relocation and transfer to other states of any activities and substances that cause severe environmental degradation or are found to be harmful to human health

the right to demand the government to condemn and disallow the exporting of products or services that are deemed to be unsafe in a country where there may be high restrictions or regulations to other countries with more relaxed regulations (because of their inability to test these products and because of their economic need prevents them from paying for more expensive and safer substitutes)

the right to demand that if a product or an activity is engaged in as a result of the falsification of data, or inadequate non-arm's length research that product should be immediately taken off the market and the activity should be suspended

• 16

national authorities should [shall] endeavour to promote the internalization of environmental costs and the use of economic instruments, taking into account the approach that the polluter should[shall] in principle, bear the cost of pollution, with due regard to the public interest [and without distorting international trade and investment] (Principle 16)

• 18

States shall immediately notify other States of any natural disasters or other emergencies that are likely to produce sudden harmful effects on the environment of those States. Every effort shall be made by the international community to help States so afflicted (principle 18)

States shall be obliged to refrain from any activity that could potentially cause environmental harm

States shall provide prior and timely notification and relevant information to potentially affected States on activities that may have a significant adverse trans-boundary environmental effect and shall consult with those States at an early stage and in good faith. (Principle 19)

• 21

The creativity, ideals and courage of the youth of the world should be mobilized to forge a global partnership in order to achieve sustainable development and ensure a better future for all. Principle 21)

Principle 23

The environmental and natural resources of people under oppression, domination and occupation shall be protected

• **the right to demand that ecologically sound principles drive industry not industry driving principles**

Behaviour and attitudes rather than countries should be categorized as "developed," "developing," or "underdeveloped." The contribution of those people who have been "truly developed" in that they have succeeded in living in interdependence with the ecosystem shall be recognized and their advice sought

• **the right to demand the government to reduce and eliminate use of harmful pesticides**

• **the right to require the government to disallow acts contributing to ecological irreversibility in all lands including those of private ownership and those whose ownership is under dispute**

4.3. GLOBAL FORUM (NGO FORUM) 1992

4.3.1. Collection of Treaties from the Global Forum (available in in-house library)

4.3.1.1. FORESTS TREATY FROM GLOBAL FORUM

Note: This Forest treaty was negotiated between representatives from Non-Governmental Organizations of many nations from the South and the North, at the Global Forum in Rio de Janeiro, Brazil, during June 1992. The Global Forum was a conference held parallel to the United Nations Conference on Environment and Development (UNCED). The Treaty was negotiated over a period of six days of intense discussions using three working languages: Portuguese, Spanish and English. All decisions were arrived at by consensus and the participants in this Treaty-making process experienced deep feelings of community with each other. This Treaty is not being distributed throughout the world by various organizations. Those who are in general agreement with the Treaty, and are prepared to put it into practices, can formally endorse it and seek the endorsement of other individuals and organizations. The Green Web had two representatives in the NGO Forest Treaty negotiations. We estimate there was a core group of at least 30 people in the negotiations, with intermittent participation by many others.)

the following definitions are provided for the purpose of this Treaty:
Natural forests are ecosystems dominated by trees or shrubs [growing] in an original or nearly original fashion through natural regeneration. This definition includes mangroves.

"restore forests are forests planted, seeded, or otherwise restored in such a manner as to emulate the original natural forests of an area.

"Plantations" are crops of trees artificially established, primarily for specific commercial purposes.

Sustainable forest management means securing benefits for human needs while maintaining the structure, function, and integrity of ecosystems on a bioregional basis, incorporating in perpetuity complete forest successions in each bioregion.

"Colonists" are non-aboriginal and traditional people who have recently moved into an area

Native, indigenous and aboriginal peoples are those who have lived in relative harmony with the environment for many generations, and whose origins, as people, are in that area.

Traditional peoples are non-native populations who have established non-destructive relationships with their environment and have lived there for generations

Preamble:

The undersigned Non-governmental Organizations
Recognizing the vital role of all types of forests in maintaining the ecological processes of the Earth; in protecting ecosystems, watersheds, freshwater resources, coastal areas, estuaries, and adjacent seas; as a rich storehouse of biodiversity; and in carbon fixation:

Recognizing also that all types of forests embody complex and unique ecological processes which are the basis of their present and potential capacity to provide resources to satisfy the biological needs of all forest dependent species, as well as environmental, cultural, historical, and spiritual values:

Believing that forestry issues and opportunities should be examined in a holistic manner, taking into consideration the multiple functions and uses of forest, including living space and cultural survival of the indigenous forest people

Recognizing that many traditional forest dwelling people have had their territories and their ability to pursue their historic cultural activities encroached upon or destroyed:

Noting that the world's forest ecosystems have been dangerously reduced and degraded during more than a century, and that in recent decades the rate of reduction and degradation has been accelerating due to many kinds of exploitation:

Noting also that the consumption of wood products commercially and for fuel wood is at a non-sustainable level; and is being met from natural forests rather than from plantations, recycled materials, and other sources

Noting further the leading part that national and transnational corporations play in degrading forest ecosystems during exploitation and in trading forest products, with minimum benefit to the people in the locality of origin, often displacing them in the process, and often causing social/economic environmental and cultural damage;

Observing that indigenous forest land-tenure systems are highly structured and defined, and are commonly overridden by law, political, and market interests, which reshape access to and control over forest resources:

Observing also that the concentration of power and control over natural resources has resulted in an increase of poverty and deprivation putting increased pressures on forest ecosystems;

Emphasizing that the concentration of property and usufruct of forest land and resources in the hands of a few owners and national and multinational corporations, is a major factor responsible for the deforestation and degradation of forests in many countries; and that this limits the ability of local people to influence the uses of the land:

Acknowledging that responsibility for forest management must be accepted by governments, local NGOs, business, and individuals, without prejudice to the rights of indigenous peoples:

Acknowledging also that indigenous territories including forests must be exclusively managed by indigenous and local people in cooperation with other interested sections of society s may be decided by those indigenous and local people:

Declaring that all types of forest and especially wilderness forest have intrinsic values of their own and are essential for the conservation of biodiversity; and are a source of knowledge, inspiration, and spiritual renewal for humanity:

Assert that this treaty applies to all types of forests, restored forests, and plantations in all geographical and climatic zones:

And further assert that the purpose of this treaty is to ensure the conservation, rehabilitation, enhancement, enlargement, national regeneration, planting, protection and sustainable use of the world's forests, as in each case is appropriate to the particular ecosystem

Principles:

1.1. Forests are essential to life on Earth. The structure, function and integrity of ecosystems must be seen to have infinite value. Every form of forest life is unique and requires adequate habitat and protection

2. Forests must be protected to supply the social, economic, ecological, cultural and spiritual needs of present and future generations, subject to maintenance of the integrity of soil, water, air and the conservation of biodiversity

3. Policies in forest conservation shall include the full permanent protection of all forest ecosystem types, the restoration and/or recuperation of degraded or fragmented forests, and the sustainable management of areas under human use.

4. Forest policy must be developed with maximum public consultation and participation especially with local forest people and community groups, and the public must have the right to appear and enforce decisions made in the forestry sector

5. Forests are the very life of many indigenous people, and therefore their traditional territories must be legally recognized, demarcated, and guaranteed.

6. Traditional forest knowledge and practices of indigenous people must be guaranteed.

7. The struggle for forest conservation cannot be separated from the struggle for agrarian reform in some countries, and the general principles of democratization, social justice and respect for the environment.

8. the rights of indigenous and traditional people who make a living from the non-destructive extraction of forest products (such as rubber tapping and nut picking) should be legally guaranteed in areas they have traditionally occupied. These extractive processes should be recognized, protected, and promoted as a form of sustainable forest management, to alleviate pressure on the forests, to benefit local economies, and to help the global environment

9 Existing monocultural and exotic plantations which have been planted for timber production should be preferentially harvested in order to take the pressure off the cutting of natural forests. These

plantations should generally be converted to mixed plantations of native species.

10 a. In order to maximize biological diversity, natural regeneration of trees should be employed wherever possible.

10b. The role of plantations, restored forests and tree crops (such as fruits and nuts) as sustainable and environmentally sound sources of renewable energy should be recognized, enhanced, and promoted. Plantations and rehabilitated forests can be a means of relieving commercial pressure on primary or old-growth forests. No land presently under natural or restored forest should be converted to plantations.

10c Plantation forestry should only occur on non-forested areas, degraded areas, and areas no longer able to support natural regeneration of the native forests, and that are not suitable for food crops. Plantations should not be subject to chemical or biological control or non-organic fertilizers.

10 d restoring forests and establishing plantations on degraded land can play an important role in providing regional employment and development for the benefit of local people, national economies, and the global environment. Before any plantation project is undertaken, environmental impact studies should be done to ensure there are no adverse effects on local economies or the environment.

11. Logging practices that *do not take into account* cause habitat destruction, soil erosion, loss of biomass, **loss of biodiversity**, [adverse cultural and economic effects,] or **that the securing of do not allow for** ecologically appropriate regeneration, must be internationally condemned.

12. Environmental costs and benefits *including economic, social, cultural and political values*, [**Environmental and social costs**] *should* be incorporated through green accounting into values put on forest resources by market forces and mechanisms and national accounting, and reflected in real prices, permit costs, and fiscal charges, in order to achieve sustainable uses of forests.

13. Government forest agencies should not sell, allocate, or otherwise dispose of forest products unless those transactions show a profit based on the real value of all assets used including trees, land, soil, water, in each forest area involved.

14. Recycling of wood products, especially paper, along with less wasteful logging and processing practices should play a significant part in protecting environmental values and in relieving pressure of demand for new wood.

4.3.1.2 YOUTH CHARTER

WORLD YOUTH FORUM (WYF)

YOUTH STRESS HARMONY BETWEEN NORTH AND SOUTH

From 22-29 March, 1992, 300 young people from 97 countries gathered in San Jose, Costa Rica, to discuss issues related to environment and development. The World Youth Forum in preparation for UNCED was unique in that three out of four delegates came from the south; almost half the participants were women — and indigenous people accounted for 10 % of the total number of delegates. Participants were between 15 and 30 years old and represented over 300 youth groups around the world. The conference was organized by Costa Rican and Canadian youth groups, both entirely managed by youth. They made the point of holding the event in the Southern country, since the majority of the world population lives in third World. (WYF) (Summary in Network)

YOUTH TREATY (YT)

PREAMBLE

We, as the undersigned youth (NGOs, social and political movements) gathered in Rio de Janeiro so as to participate in the International forum of NGOs and Social Movements, the Global Forum, and the United Nations Conference on Environment and Development (UNCED), assert our position in protest of the festival of the powerful in RIO 92, which was not interested in offering concrete responses to global problems. We recognize the explicit need to collaborate amongst ourselves so as to realize our visionary work and to participate within our societies to foment global, social, and environmental change. Uniting our creative and intellectual resources and consolidating the principles elaborated in preparatory process documents, we commit ourselves to the following principles and actions: (YT)

COMMITMENTS

1. We consider that as youth of the world we are a strong force that can be channeled through unity in diversity. This implies economic and social justice, equal participation in decision-making, peace and collective security, equal rights and education.

We commit ourselves through this unity to ensure for all people a lifestyle directed toward development which is responsible to future generations. (YT)

2. The inequitable relations between North and South (and between power elites and peoples) is a result of the politics of domination and discrimination, applied through the policy of the great powers, which affect the quality of life of the other countries, along with the enormous burden of the external debt. (YT)

It is necessary to alleviate the vast extremes of wealth and poverty, and to eliminate all prejudices, be they racial, nationalist, cultural, religious, gender-based or class-based, as these are causes of social violence. (YT)

We commit ourselves to the sincere respect of each person as an integrated part of humanity. We adhere to the Universal Declaration of Human Rights. (YT)

3. The economy can no longer be a discipline independent of ecology. We reject the current economic system based on the free market, the maximization of profits, and over-consumption, which are the principal roots of human and environmental degradation. We also consider it necessary to satisfy the basic human necessities. To this end, we accept the responsibility of supporting local sustainable development alternatives in all nations, taking into account respect for the environment and the needs of a culturally diverse society. (YT)

4. We recognize that grassroots organizations are fundamental to the achievement of sustainable development local, regional, and global levels. In order to enhance the power of grassroots organizations we encourage international support groups and networks. We commit ourselves to assuring free and democratic access to information, sharing with those groups that have more difficult access. We accept the responsibility to influence and cooperate with governmental institutions so long as the actions are approved in a democratic manner by the community (YT)

5. We recognize education as an inherent right of each human being. We defend the principle of free and public education so as to guarantee the accessibility of education to all in order to impede the privatization of knowledge, which is amply defended by new-liberal ideas. we commit ourselves to promoting an integrated education — scientific, cultural and spiritual with a non-competitive aspect as the basis of a change in consciousness that would manifest itself in action. WE accept traditional cultures that have lived in a sustainable manner throughout history.

6. We condemn the open and covert destabilization of national sovereignty and self-determination, including all violations of the most elementary norms of international law, such as blockades, invasions, and any kind of aggressions, whether it be military, economic, or through the media

ACTION

1. Education and Diffusion

2. Consumption Patterns: we commit ourselves to;

a) consciously reduce our personal consumption of products that invade the market and/or harm the environment, as well as adopt strategies to save energy;

b) favor campaigns that promote moderate consumption which is environmentally sustainable and supports regional economies, for example international boycotts of large polluting enterprise.

CAMPAIGNS

We commit ourselves to jointly promote international campaigns related to the issues that were not addressed adequately at UNCED, for example

- i) the rejection of the domination of the global economy by an elite based on the external debt of developing countries, transnational enterprises and their institutional accomplices, the World Bank, IMF, GATT, etc.
- ii) against militarism, demanding that military spending be re-directed towards social and environmental ends
- iii) against the use of nuclear power and the abuse of fossil fuels
- iv) against hunger and unchecked over-consumption
- v) against the unnecessary use of pesticides
- vi) against nuclear testing and in favor of the dismantlement of nuclear plants
- vii) to demand the democratization of the organizations of the United Nations

Mechanisms

1. working in Networks
2. Create regional information centers
3. Resources

this treaty was consolidated on the basis of the following documents;

Youth 92 (the International Youth Preparatory Conference for UNCED) Costa Rica, March 1992

Worldwide Women's Congress for a Health Planet, Miami, November 1991

Declaration of the Third World and the Human Environment, June 1972

Declaration of Japanese Youth on the Environment and Development.

March 1992

4.3.1.3. NGO TREATY ON MILITARISM, ENVIRONMENT AND DEVELOPMENT PREAMBLE (NGO MED)

In recognition of links between militarism, debt, environmental degradation and maldevelopment, and in view of the fact that the UNCED process has thus far excluded these connections, we demand that the impact of militarism on the earth, its people, and the global economy be put on the post-Rio agenda (NGO MED)

PRINCIPLES

1. Military activity destroys life, wreaks havoc on the environment and depletes resources. A complete, general and environmentally sound demilitarization, free from nuclear weapons and nuclear waste, and free from regional conflicts and military dictatorships is imperative (NGO MED)
2. As long as 20% of the world's population devours 80% of the world's resources and energy, military force will be used to maintain this inequitable situation. Poverty and hunger generate tensions and pressures which can only be perpetuated by military oppression. Militarization, originating in economic exploitation and in all forms of domination including patriarchal systems, destroys the Earth and the various forms of life on it. Militarism, during periods of war and peace, has an immensely negative impact on the environment, as it uses up the natural and human resources needed for economic and social development. (NGO MED)

3. There is an urgent need for demilitarization, for the abolition of war and for a lasting world peace. For the sake of present and future generations, equitable social and economic security is essential (NGO MED)
4. Security must no longer be defined in exclusively military terms but in a comprehensive way, encompassing personal security, free from violence and sexual abuse; local security where all basic needs are met; and common, global security where the rights of people and other species to live in a healthy environment are respected.(NGO MED)
5. This type of security cannot be achieved unless justice prevails, and unless economic, political, legal, and social systems are radically transformed. Huge military expenditures that burden nations with external debt, siphon off precious resources and often impede the fulfillment of societal needs must be stopped immediately (NGO MED)
- 6 .A new world order demands that no country police the world, intervene militarily and extend its vital space to foreign bases and outer space. Military forces and bases must be eliminated from the territory of other countries since they violate the principle of the right to self-determination of peoples (NGO MED)
- 7 The threat or use of force as well as all forms of violence are unacceptable, including rape and torture, summary executions and disappearances, and loss of life through warfare and intelligence work. Conflicts must be resolved by non-violent means; negotiation, mediation and sanctions decided upon multilaterally must replace military action. Any type of unilateral sanctions must be repudiated. (NGO MED)
8. Environmental destruction and the depletion of resources both lead and result from armed conflict. furthermore, these and the use of space for military purposes endanger the biosphere. (NGO MED)

ACTIONS

1. We demand that our government negotiate and ratify a comprehensive test ban treaty. Principle 26 of the 1972 Stockholm Declaration calling for the elimination of weapons of mass destruction should be reaffirmed and extended to include all weapons. [note additional reference to nuclear in the 1972 Declaration] (NGO MED)
2. We will work against imbalances of class, culture, colour and gender in power relationships. We seek to promote balanced participation on decision-making bodies at all levels. WE will work for an end to the exploitation of women, children and other peoples marginalized by dominant military systems. (NGO MED)
3. We will support all those facing military or police repression because of their opposition to war, their promotion of human rights, or their opposition to projects with negative environmental or developmental consequences. (NGO MED)
4. We hold governments and their military-industrial-academic complexes accountable for any direct or indirect damage they cause to the environment. We insist on the registrations and reciprocal inspections of all weapons of mass destruction, which must be dismantled without replacement, and organize boycotts of those companies which produce environmentally damaging products for military purposes. (NGO MED)

5. We will campaign for the simultaneous reduction of military spending in all countries as quickly as possible, and for the transfer of these resources to meet human and environmental needs. Going beyond monitoring and control, we will work to abolish the international weapons trade, which is morally as unacceptable as the slave trade and drug trade. (NGO MED)
6. We will educate ourselves and others in conflict resolution and we will promote peaceful solutions to all disputes. (NGO MED)
7. We will strengthen relationships between NGOs worldwide. Our goal is to facilitate the sharing of information and the sharing of solidarity about the environmental impacts of militarism and the interconnection between development, environment, debt, domination and militarization. (NGO MED)
8. We will declare our territories and localities free of nuclear, chemical and biological weapons as well as weapon systems and nuclear power and we will work to eliminate their development, production, transportation and storage (NGO MED)
9. We will join indigenous peoples in opposing the use of their lands or territories, and of their airspace, for military purposes, including uranium mining, the testing of weapons, or the dumping, storage and incineration of hazardous and radioactive wastes. (NGO MED)
- 10 We will campaign against the conditioning of society, particularly children, through the media and through war games and war toys. We will promote education for peace. (NGO MED)
11. Because of the chemical toxicity and radioactivity of depleted uranium (U238), we will work for the immediate prohibition of its use and the use of similar materials in the manufacturing of military and civilian equipment. (NGO MED)
12. We condemn the use of any pretext, including narco-traffic, as a justification to invade, to militarize or to destroy regions. (NGO MED)
13. We oppose the use of land, sea, air and outer space in nuclear experiments and nuclear waste disposal, or other military actions which harm the environment. (NGO MED)
14. We insist that all military related activity be subject to all the judicial, legislative and regulatory processes of civil society. (NGO MED)
15. We will support the development of a permanent Environmental Crisis Response Centre such as the proposed Green Cross, to coordinate international responses to ecological disasters, including war. (NGO MED)

4.3.1.4. NGO TREATY ON POPULATION, ENVIRONMENT AND DEVELOPMENT (PED)

Preamble

Women's empowerment to control their own lives is the foundation for all action linking population, environment and development (PED)

We reject and denounce the concept of control of women's bodies by governments and international institutions. We reject and denounce forced sterilization, the misuse of women as subjects for experimental contraceptives and the denial of women's free choice (PED)

We affirm and support women's health and reproductive rights and their freedom to control their own bodies. We demand the empowerment of women, half of the World's population, to exercise free choice and the right to control their fertility and to plan their families (PED)

The international community must address problems arising from the relationship between population, environment of the fact that one-quarter of the world's population — predominantly in the industrialized nations — consumes over 70% of Earth's resources and is responsible for most of the global environmental degradation

Demands and Commitments

Birth rates decline when women's social, economic mechanism operating within the prevailing world order and within each country which create and perpetuate poverty, inequality and marginalization of people in the South — and increasingly in the North — must be transformed.

Militarism, debt and structural adjustment and trade policies being promoted by corporations and international financial and trade institutions such as the IMF, the World Bank and GATT are degrading the environment, impoverishing the majority of the World's people and perpetuating the inequality of the existing world order. WE condemn these policies and call for the immediate adoption of alternative policies and call for the immediate adoption of alternative policies based on principles of justice, equity and sustainability. (PED)

Nuclear testing and toxic waste dumping are poisoning the environment, threatening food security and causing sterility, births defects and disease. WE demand an end to environmental hazards that deprive women and men of their right to health and healthy children. (PED)

Patterns of consumption and production in the North and among the privileged of the South which are the main threat to the survival of life on Earth, must be changed in order to halt the squandering of natural resources and the exploitation of human beings. (PED)

We condemn and call for an immediate end to policies and programs, whether by governments, institutions, organizations or employers, that attempt to deprive women of their freedom of choice or the full knowledge or means to exercise their reproductive rights, including the right to interrupt

unwanted pregnancies. WE denounce and reject the violence against women, who are victims of racial and class discrimination and suffer from extreme poverty, who are subjected to coercion, sterilization abuse, experimental drugs, and lack of proper medical care and information about health risks and alternatives. (PED)

We pledge to expose and oppose any coercive population control programs support or conducted by governments, funding agencies, multilateral institutions, corporations and NGOs, and to hold them accountable (PED)

We demand women-centered, women-managed and women-controlled comprehensive reproductive health care, including pre- and post-natal care, safe and legal voluntary contraceptive and abortion facilities, sex education and information for girls and boys, and programs that also educate men on male methods of contraception and their parental responsibilities (PED)

...

We demand that scientific experimentation related to reproduction, particularly in the field of genetic engineering and contraception, be transparent as well as accountable to women's concerns and ethical criteria rooted in the defence of the human species and human rights. (PED)

We demand that governments honor international law and commitments on reproductive rights, and fulfill their responsibilities in implementing the Nairobi Forward Looking Strategies, the report of the 1984 Conference on Population and the UNCED agreements. We also demand the urgent and full ratification and implementation of the United Nations Convention on the Elimination of all forms of Discrimination Against Women. (PED)

We demand that national and international communities act now to support community-based responses to the AIDs epidemic, and other sexually transmitted diseases, respecting the human rights of those affected. (PED)

These demands embody our commitments, and we pledge to integrate them into our lives and our organizations' practices and policies. WE further pledge to see that these demands are met at all levels, locally, nationally and internationally. And we pledge to work together on this treaty, affirming our solidarity and our cultural diversity (PED)

4.3.1.5. NGO TREATY ON WASTE (NGO TOW)

PREAMBLE

Considering that:

01 The Earth's natural resources are finite and must be utilized in a responsible, socially just and environmentally sustainable manner; (NGO TOW)

02 The active cooperation between peoples, the respect of human rights, and participatory democracy, including access to education and unbiased information, are fundamental prerequisites for an equitable, peaceful, and just society; (NGO TOW)

03 Society as a whole, and the poor in particular, suffers from the health impact and the socioeconomic costs of soil, water, and food contamination, as

well as air pollution, caused by the existing dominant model of economic development; (NGO TOW)

04 The indiscriminate production of waste causes a severe environmental disequilibrium that threaten the integrity of ecological systems and increase the harm to the social, economic and cultural well-being of the world's inhabitants; (NGO TOW)

05 National and international legislations and regulations about different categories of waste, such as urban, industrial, hazardous and nuclear, are highly ambiguous and heterogeneous from country to country, thus representing a great obstacle to effect and environmentally sound global action; (NGO TOW)

06 Communities do not have control over the production, transportation, import, and export, treatment, releases and final destination of wastes, while those communities are the most threatened by the waste management activities; (NGO TOW)

07. Considering also the proposals contained in the Agenda Ya Wannanchi-Citizen's Action Plan for the 1990"s, which was adopted at the Global NGO conference "ROOTS OF THE FUTURE", held in Paris in December 1991, therefore, Citizens representing NGO's and social movements from around the globe gathered at the international Forum of NGOs and Social Movements "Compromises for the Future<" held in Rio de Janeiro, June 1992, and committed to make responsible choices now for the good of future generations, have adopted the following principles and commitments as a basic platform for future actions. (NGO TOW)

PRINCIPLES

08. Social forces in all countries have to work to reach the goal of zero production of hazardous and nuclear waste (NGO TOW)

09. the adoption of any new technology or industrial process must include a precautionary principle towards waste production before commencing operation. It is wiser to prevent wastes than clean their negative impacts on human health and the environment (NGO TOW)

10. all major programs of waste environmental education would stress the importance of a pluralistic culture, respect for local cultural traditions about the use of natural resources, and the local lifestyle of a population (NGO TOW)

11. Society as a whole has the right of access to full and unbiased information about all steps of waste production and management, including the different modes of waste storage and transportation, and the final destination of waste materials. Society also has the right to unrestricted access and to dissemination of information about quantities of all kinds of wastes produced and the risks involved in any part of the world, without any control, restrictions, or censorship (NGO TOW)

X 12. The primary impact of urban waste is local, and the solution of this problem should therefore be initiated on a local level with the introduction of environmentally sound alternatives. Decision-making must include public participation and must not be under exclusive control of authorities (NGO TOW)

13. The problems induced by industrial, hazardous and existing nuclear wastes must be prevented and solutions must be funded by the producers themselves. These solutions must be licensed and monitored by the

authorities as well as by elected citizens bodies. All of these management or clean-up costs, direct or indirect, must be assumed by the producers themselves. The security and health of the workers must be assured. (NGO TOW)

14. In order to substitute nuclear power production, governments and industries must increase funding for research into renewable energy technology (NGO TOW)

15. The adoption of national and international regulations aimed at implementing clean production technologies, minimizing waste at source and at eliminating packaging materials that are non-biodegradable, non-reusable or non-recyclable, is an essential step towards the creation of new social attitudes and to prevent the negative impacts of unlimited consumerism (NGO TOW)

16. The informal recycling methods that exist today in a great number of cities must provide the basis for development of public schemes to promote the recovery of primary materials in urban waste. However, it is of utmost importance to consider the necessities of the poorest sector of society, which finds itself dependent on income obtained from recycled materials. (NGO TOW)

17. The more strict and comprehensive environmental regulations in practice in any country should be extended to the global community as an emergency measure. In the longer term, new global regulations of the production and control of wastes and codes of practice must be implemented based on independent and realistic assessment of the impacts of wastes on the Biosphere and on the health and reproductive integrity of all species (NGO TOW)

18. Industrial, hazardous and nuclear wastes must be contained and maintained in the country where they are produced, even if they are designated as an economic good. Transnationals must be prohibited from making the decisions on where to put nuclear and other wastes. (NGO TOW)

19. All military wastes must comply with the rules and regulations as any other wastes (NGO TOW)

20. Countries must not affect neighbours with its waste final disposals (NGO TOW)

21. The commitments which pertain to organizational actions between NGOs should be achieved worldwide in one year. ... (NGO TOW)

In Regard to Hazardous Wastes

47. To pressure local, regional, and national governments to establish legal, financial and monitoring mechanism that guarantee:

a) the reduction in the production of hazardous waste by making industry introduce preventive and substitutive technologies to those that generate such wastes either as industrial waste or as consumer products; (NGO TOW)

b) the regular publication and a rigorous control of the transportation routes of dangerous chemical substances, to and from their production sites. In the case of regular transportation through inhabited areas there must be a previous public risk evaluation in which the potentially affected population would approve or deny the use of such routes (NGO TOW)

- c) a ban on imports of hazardous waste-producing technology repudiated in the countries of origin, including the systematic denouncement of the practice of linking financial loans to the acceptance of such technologies. (NGO TOW)
- 48 To form pressure groups for a tax on the use of chemicals and their emissions by industry as a disincentive for chemical abuse. Funds generated by such tax will be set aside for communities so that they can hire their own technicians and scientists for conducting environmental studies and assessments, for enabling citizens inspection and permanent oversight of industrial facilities, for computerizing information about chemical substances that corporations use, store and their final disposition. This information will be available free of charge to all citizens. (NGO TOW)
- 49 To claim for an immediate revision on the policies and legislation regarding the use and commercialization of all agrochemicals and ban the export and traffic of agrochemicals that have been prohibited in their country of origin. (NGO TOW)

In Regard to Nuclear Wastes

50. To provide that the Universal Declaration of Human Rights will be supplemented with an article to widen the spectrum of Human Rights to include ecological security, "radiation security" in particular (NGO TOW)
- 51 To mobilize society to create national and international legislation with the following elements:
- a) Permanent ban on the construction of nuclear installations; (NGO TOW)
 - b) to deactivate and substitute existing nuclear reactors, and publish the methods, criteria, and timetables employed in the process; (NGO TOW)
 - c) Ban on the burning of plutonium; (NGO TOW)
 - d) Nuclear waste must be stored in a monitored retrievable way so that future generations can repackage it and keep it secured; (NGO TOW)
 - e) General prohibition of the use of sealed sources for food irradiation and oil exploration and of proper disposal of those previously used; (NGO TOW)
 - f) To guarantee that the treatment and depositing of nuclear waste is done in the countries of origin on the basis of unlimited liability on part of the producers of such waste. The liability includes the obligation to restore, decontaminate, and revitalize any location that has been affected by radioactive leaks; (NGO TOW)
 - g) To start to control effectively the management and isolation of medical nuclear wastes; (NGO TOW)
 - h) There must be public health surveillance and medical assistance for workers and other persons exposed through nuclear accidents. Information on such accidents must be shared by computer systems (NGO TOW)
- 52 To demand workers protection in nuclear installations from hazards of radiation. (NGO TOW)
- 53 To promote and reinforce bans on the mining of uranium and the transportation of plutonium both inside and between countries (NGO TOW)
- 54 To fight for nuclear-free zones in all countries. (NGO TOW)

UNCED

Castro's speech

An important biological species is at risk of disappearing due to the fast and progressive removal of its natural habitat: humankind. (CA)

We are becoming aware of this only now when it is almost too late to prevent it. (CA)

The main responsibility for the atrocious destruction of the environment lies with the consumer societies. They are the offspring of the old colonial metropolises and of imperialist policies that also engendered the poverty and backwardness which are today the scourge of the overwhelming majority of humankind. (CA)

Although they comprise only 20 % of the World's population, they consume two thirds of the metals and three fourths of the energy produced the world over. (CA)

They have poisoned oceans and rivers and contaminated the air; they have weakened and opened holes in the ozone layer and saturated the atmosphere with gases that impair climatic conditions with catastrophic effects that we are beginning to suffer. (CA)

Forests disappear, deserts grow, thousands of millions of tons of fertile soil end up in the oceans every year. Numerous species face extinction. Overpopulation and poverty lead to desperate efforts for survival, even at the expense of nature. (CA)

It is not possible to blame this on Third World nations - which yesterday were colonies and today are despoiled and plundered by an unjust world economic order. (CA)

The solution cannot be to prevent the development of those who need it most. Everything that today contributes to underdevelopment and poverty constitutes a flagrant violation of the environment. As a consequence, tens of millions of men, women and children die every year in the Third World, far more than in each of the two world wars. (CA)

Unequal exchange, protectionism and the foreign debt are also an assault on the environment and facilitate the destruction of the environment. (CA)

If humanity is to be saved from destroying itself, better distribution of the wealth and technologies available in the world is necessary. Less luxury and less waste in a few countries would mean less poverty and hunger in a large part of this Earth. The transfer to the Third World of life styles and consumption habits which ruin the environment has to be avoided. (CA)

Let human life be more rational. Let a just international economic order be implemented. All the scientific effort necessary should be devoted to achieving sustainable development without contamination. The ecological debt should be paid and not the foreign debt. It is hunger which should be done away with, not humankind. (CA)

Now that the supposed threats of communism no longer exist and no pretexts remain for cold wars, arms- races and military expenditures, what prevents the immediate use of those resources to foster development in the Third World and to avert the threat of the planet's ecological destruction? (CA)

Let this be the end of selfishness and hegemonism; the end of insensitiveness, irresponsibility and deceit. Tomorrow, it will be too late to do what should have been done a long time ago. (Castro, Earth Summit, 1992) (CA)

4.4. APPLICATION OF INTERNATIONAL DOCUMENTS TO LOCAL DOCUMENTS AND ISSUES

4.4.1. LOCAL DOCUMENTS

4.4.1.1. USE OF INTERNATIONAL LAW IN THE ANALYSIS OF A PROPOSED LAND USE CHARTER

A Charter of Ecological Preservation and Ecologically Safe and Sound Employment

A charter of ecological preservation and ecologically safe and sound employment

prepared by Joan Russow

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For

the meeting of Environmental Groups

for participation in CORE

October 17, 1992 at Qualicum

ANALYSIS OF THE PROPOSED DRAFT OF THE LAND USE CHARTER

LEGEND OF TYPE

PLAIN TYPE IS FOR THE ORIGINAL CORE CHARTER

ITALICS ARE FOR SECTIONS THAT ARE SUGGESTED FOR DELETION

**BOLD FOR SECTIONS THAT ARE DEEMED NECESSARY TO ADD
[BOLD] IN BRACKETS STATEMENT OF REASONS FOR CHANGING
SECTIONS**

A Land Use Charter

[inappropriate name because the Charter must address land air and water.]

A charter of ecological preservation and ecologically safe and sound employment

- Recognizing the urgency of the current environmental situation and for the need to address the destruction of the environment, the violation of human rights the disregard for social justice and the perpetuation of inequity.

- Concurring with the assessment of the current urgency as expressed in Agenda 21

Erosion, degradation, deforestation and desertification have led to increased land degradation, and the creation of reservoirs has, in some cases, resulted in adverse effects on ecosystems. Many of these problems have arisen from a development model that is environmental destructive and from a lack of protection.
(Agenda 21, 18.45)

- Concurring with the recognition in Agenda 21 on the importance of fresh water

freshwater resources are an essential component of the earth's hydrosphere and an indispensable part of all terrestrial ecosystems. (Agenda 21, 18.7 Fresh water)

" Freshwater is a unitary resource. Long-term development of global freshwater requires holistic management of resources and a recognition of the inter-connectedness of the elements related to freshwater and freshwater quality. There are few regions of the world that are still exempt from the problems of loss of potential sources of freshwater supply, degraded water quality and pollution of surface and groundwater sources. Major problems affecting the water quality of rivers and lakes arise, in variable order of importance according to different situations, from inadequately treated domestic sewage, inadequate controls on the discharges of industrial waste waters, loss and destruction of catchment areas, ill-considered siting of agricultural practices. This gives rise to the leaching of nutrients and pesticides. Aquatic ecosystems are disturbed and living freshwater resources are threatened. ...Erosion, degradation, deforestation and desertification have led to increased land degradation, and the creation of reservoirs has, in some cases, resulted in adverse effects on ecosystems. Many of these problems have arisen from a development model that is environmental destructive and from a lack of protection. Ecological and human health effects are the measurable consequences... although the means to monitor them are inadequate or non-existent in many countries. There is a

widespread lack of perception of the linkages between the development, management use and treatment of water resources and aquatic ecosystems. A preventive approach, where appropriate, is crucial to the avoiding of costly subsequent measures to rehabilitate, treat and develop new water supplies. (Agenda 21, 18.45 Fresh water)

- Concurring with the concern expressed in the Convention of Climate Change

that human activities have been substantially increasing the atmospheric concentrations of greenhouse gases, that these increases enhance the natural greenhouse effect, and that this will result on average in an additional warming of the Earth's surface and atmosphere and may adversely affect natural ecosystems and humankind,
Aware of the role and importance in terrestrial and marine ecosystems of sinks and reservoirs of greenhouse gases,
(Convention of Climate Change)

- Concurring with the recognition in the Convention of Climate Change

that there are many uncertainties in predictions of climate change, particularly with regard to the timing, magnitude and regional patterns thereof, (Convention of Climate Change)

- **Convinced** that it is time in British Columbia to redress the imbalance that has been caused by unsustainable land use practices, and to immediately cease resource use in areas that could be lost for preservation, and be committed to redress the balance by preserving the little remaining examples of significant old growth

Establishing, expanding and managing, as appropriate to each national context, protected area systems, which includes systems of conservation units for their environmental, social and spiritual functions and values, including conservation of forests in representative ecological systems and landscapes, primary old-growth forests, conservation and management of wildlife, nomination of world Heritage Sites under the World Heritage Conventions, as appropriate, conservation of genetic resources. (11.15 b., Deforestation)

- **Confirming** the recognition in Agenda 21

that the lands of indigenous people and their communities should be protected from activities that are environmentally unsound or that the indigenous people concerned consider to be socially and culturally inappropriate; (Agenda 21, 26.3, a ii)

- **Convinced** of the inherent worth of nature

“...every form of life is unique, warranting respect regardless of its worth to [humans], and to accord other organisms such recognition [humans] must be guided by a moral code of action.” (a, World Charter of Nature)

- **Concurring** with the enshrinement of the precautionary principle as enunciated in the Rio Declaration:
 - " Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation." (Rio Declaration, 1992).

- **Concurring** with the enshrinement of the principle of prior environmental impact assessment
 - "Ensure that relevant decisions are preceded by environmental impact assessments and also take into account the costs of any ecological consequences" 7.42 b
 - " Ensure prior assessment of activities that may have significant adverse impacts upon the marine environment"; (17.23 b Marine)

- **Concurring** with the global condemnation of the transfer or relocation of harmful activities or substances
 - "States should effectively cooperate to discourage or prevent the relocation and transfer to other States of any activities and substances that cause severe environmental degradation or are found to be harmful to human health."(Principle 14 Rio Declaration)

- **Concurring** with the global commitment to examine the cradle to grave approach to industry entailing the complete analysis of Industry's intervention into the ecosystem
 - "should develop procedures for monitoring the application of the cradle to grave approach, including environmental audits" (20.20 e Hazardous wastes)

- **Concurring** with the global commitment under the "Convention for the Protection of Cultural and Natural Heritage" (1972) to fulfill its international duty to protect natural heritage for future generations
 - "Each State Party to this convention recognizes that the duty of ensuring the identifications, protection, conservation, presentation and transmission to future generations of the cultural and natural heritage..."(Convention for the Protection of the World cultural and Natural heritage)

- **Concurring** with the global commitment under the World Charter of Nature (1982) to avoid activities which are likely to cause irreversible damage to nature

“Activities which are likely to cause irreversible damage to nature shall be avoided; and activities which are likely to pose a significant risk to nature shall be preceded by an exhaustive examination; their proponent shall demonstrate that expected benefits outweigh potential damage to nature, and where potential aversive effects are not fully understood, the activities should not proceed” (Agenda 21, section 11b)

THE PROVINCIAL COMMITMENT

The government of British Columbia is committed to:

- preserving significant representative ecosystems, protecting and restoring the quality and integrity of the environment, and
- ensuring *securing* ecologically safe and sound employment *securing a sound and prosperous economy*

This commitment is made to the people of British Columbia and to the global community. A healthy environment and ecologically safe and sound economy *healthy economy. are essential British Columbia. to the social, cultural, material, physical and spiritual well-being of British Columbians.* Furthermore, the Province recognizes its obligations under various international declarations, conventions and charters, to preserve representative ecosystems, and to protect, and manage *and use its resources and environment to fulfill its responsibility to global well-being.* in an ecologically safe and sound way its land, air and water resources. Finally, the Province shall ensure that present-day decisions do not compromise the integrity and inherent worth of preserved ecosystems and the ability of future generations to meet their own environmental and economic needs.

- recognizing the current change in global situation, the province will make a request to the Federal Government to transfer a substantial segment of the military budget to be used for the preservation of significant areas of land and water bodies, for allowing for the regeneration of areas that have been destroyed, for providing for the restoration of areas that have suffered environmental degradation, for the creation of ecologically safe and sound employment through value added jobs [it is estimated that 1 trillion dollars is spent on the global military budget, and that 150 billion would be necessary to address global concerns]
- recognizing that human understanding of nature is incomplete. The province will undertake to preserve significant ecosystems
- recognizing that injunctions are usually granted to prevent irreparable harm, the issuing of injunction against those who are attempting to prevent irreversible harm is untenable

PRINCIPLES

Sustainable Environment

[preservation of ecosystems, and then the engaging in ecologically safe and sound practices and the entrenchment of social programs are not separated here}

A healthy environment is the foundation upon which a sound economy and society depend. [Ecosystems do not only have a role to support society]. The essential role that ecosystems play in supporting our society establishes an environmental imperative that must be respected in all land, resource and economic decisions. Our priority must be to maintain natural systems for present and future generations.

1. To redress the imbalance resulting from years of non-compliance to the spirit of international Conventions such as the Convention for the protection and preservation of cultural and natural heritage, and Charters such the World Charter of Nature (1972)The Province shall immediately preserve the little remaining significant areas for ecological heritage and to maintain natural systems.

The Province shall **preserve**, maintain and enhance the life-supporting capacity of air, water, land and ecosystems. The Province shall respect and **preserve** the integrity of **intact** natural systems and **will allow for regeneration** will seek to restore previously degraded environments. **The Province will concurrently transfer funds into the creation of ecologically safe and sound employment.**

- **to redress the imbalance resulting from years of addressing the errors of previously ecologically unsound practices, the province shall support and fund research not into technological fixes for rectifying the harm caused by ecologically unsafe and unsound practices, but into new and viable ecologically safe and sound practices.**
- **to redress the imbalance resulting from years of non-arm's length research reflecting conflict of interest, the province shall support independent non vested interest, arm's length research.**
- **to redress the imbalance resulting from the misplaced onus of proof, the province shall shift the burden of proof from those opposing the intervention having to demonstrate harm to those proposing the intervention having to demonstrate the ecological safety and soundness of the intervention**

2. The Province shall preserve significant areas that contain biodiversity and shall conserve biological diversity in genes, species and ecosystem and shall condemn, ban disallow any practices that contribute to loss of biodiversity. including current practices of clear-cut logging. The province will not permit the redefining of the term Biodiversity to accommodate ecologically unsound practices such as clear-cut logging.

3. The province shall *attempt to* anticipate and prevent adverse environmental impacts. When making land and resource decisions, the province shall exercise caution and special concern for natural values, recognizing that human understanding of nature is incomplete.

4. the Province shall ensure that the **true** environmental and social costs are accounted for **prior to making a decision for a project or an activity will affect air, water or land.** in land resource use and economic **to proceed.** **The true environmental social costs will have to consider the costs required by society not only to repair the harm but also to do research into repairing the harm, the enforcement of regulation, and the monitoring.**

3.The province shall also establish high provincial standards for ecologically safe and sound practices and products taking into consideration fundamental international principles of preservation and ecologically safe and sound employment.

The province shall establish a series of independent panels reflecting community concern, not vested interests to attempt to establish province wide guidelines for ecologically safe and sound practices

The province shall establish a list of industries or industrial practices that have not been able to satisfy the ecologically sound conditions of the life cycle approach to be disallowed in the province the province shall subject all interventions that could have a potential adverse effect to environmental assessment review

The province will disallow any practice that has been deemed ecologically unsound by a panel of independent, non-vested concerned body taking into consideration the full life cycle approach of any industry.

5. The province shall recognize its responsibility **to preserve significant representative ecosystems,** to protect, and restore the global environment

The province shall reduce consumption to sustainable levels, **engage in alternative practices that reduce consumption** , and avoid importing or exporting *ecological stresses activities or substances that could cause harm to human health or to the environment [statement in harmony with wording in the Rio Declaration]* and to help meet the global challenge of sustainably supporting the human population

The province shall establish ecologically safe and sound working environments for all employees. No employee shall ever be dismissed from work for demanding to have ecologically safe and sound environment

The province shall not be required to pay compensation for the transferring of resource use into non-use or preservation reverting to the ecological commons.

The province shall undertake to assist with funds transferred from the military budget to convert ecologically unsound employment to ecologically safe and sound employment.

6. the Province shall preserve and protect the environment for its inherent value and for the use and enjoyment of humans

Sustainable Economy

[preservation of ecosystems, and then the engaging in ecologically safe and sound practices and the entrenchment of strong social programs are not separated here]

Our ability to sustain a quality environment depends upon our ability to foster a strong and sustainable economy. Such an economy is more efficient, and derives greater social benefits from the use of fewer environmental assets. In addition, a sustainable economy can provide the means of increased environmental protection and conservation, while offering society alternatives to undue exploitation of natural resources.

[Our ability to foster a strong and sustainable economy depends upon our ability to sustain a quality environment; this change is essential to be compatible with the Sustainable environment section]

[This section perpetuates the trickle-down myth that the sustaining of a quality environment is dependent upon a sustainable economy. This myth is often used to justify ecologically unsound practices. If, instead primacy is given to ecological preservation and to the creation of ecologically sound employment, then "a quality environment" would no longer be perceived as being dependent on potentially ecologically unsound practices.]

The province shall recognize that the preservation of significant areas as a global requirement and is conditional not on economic development but on political will. Similarly, the willingness to ensure ecologically safe and sound employment in an ecologically safe and sound environment is all dependent on political will. The establishment of the commitment to preservation and to ecologically safe and sound employment will drive the community to fulfill these requirements.

Given the urgency of the current global situation, the province undertakes to ensure that employment shall be ecologically safe and sound.

The Province shall ensure that ecologically sound practices prevail, and will fund only appropriate technology beyond simply allowing for the prevailing of currently unsound practices.

The province shall ensure that ecologically unsound practices will be phased out and eventually eliminated

the province shall recognize that it is impossible to balance two values when the fulfillment of one is the denial of the other.

1. The Province shall promote a dynamic and competitive **ecologically safe and sound** economy that maintains options for **land air and water preservation and ecologically safe and sound use** future land and resources uses.

The Province shall advocate international ecologically safe and sound standards so that the province in advocating the highest tenable standards will not be at a global disadvantage
The Province shall make a representation to GATT to insist that high international standards be established for preservation of nature, conservation of resources, and ecologically safe and sound practices so that no action in the Province taken to address the need for ecologically safe and sound employment will be overturned as being a subsidy. For example, the decision by the province to stop the export of raw logs (as per section 135 in the Forest Act) so as to create ecologically sound employment shall not be construed as a subsidy.

2. the Province shall encourage diversified economic development **in an ecologically safe and sound way** that increases the employment and other benefits derived from a given stock of resources.

3. The Province shall *encourage* **insist that pollution is controlled at the source and that there will be eventually zero harmful emissions into the ecosystem encourage** , and shall **insist on proposal for development that make ecologically safe and sound and efficient use of resources**
development that reduces waste and makes efficient use of resources

4. *The Province shall encourage optimum use of natural systems and resources, consistent with their inherent capability to support our economic, social and environmental needs. [vacuous statement which is unclear what that would entail]*

5. The province shall ensure that renewable resources are used in an **ecologically safe and sound** manner **so** that they will be sustainable over the long term. **and the Province will not jeopardize long term ecological rights to natural heritage and to ecologically safe and sound employment for short-term economic gain**

6. The Province shall ensure that the use of non-renewable resources is **phased out and that funding be placed immediately into discovering ecologically safe and sound alternatives (Agenda 21, Energy section)** avoids **avoiding** their exhaustion and addresses the needs of future generations

7. *The Province shall stimulate environmentally sound economic activity and innovation through a system of economic instruments [environmental sound economic activity should not be introduced only in this section it should be a precondition for all future activity.*

By having it in this section it suggests that the reference to economic activity in other sections does not mean environmentally sound]

8. The Province shall provide a regulatory framework which promotes stability and predictability for business and investment. **The Province, through the development of standards of ecologically safe and sound practices will minimize the need to monitor as the engaging in ecologically safe and sound practices will entail a different type of monitoring; a monitoring to determine if industry is engaging in these practices rather than a monitoring to determine whether the practices are having a significant adverse impact on the environment.**

Social Sustainability

[preservation of ecosystems, and then the engaging in ecologically safe and sound practices, and the entrenchment of strong social programs are not separated here}

Social equity requires that the concerns of individuals and communities are respected **as ecological preservation and ecologically safe and sound employment are established.** *environmental and economic needs are balanced.*

1 The Province shall aim for a fair distribution of the costs and benefits of *land use decisions about land, air and water.* **and undertake to propose measures that will bring about a more equitable distribution of resources. This could entail the giving of a guaranteed annual income to anyone who is displaced as a result of conversion to ecologically sound employment, and ensure that the person will be appropriately retrained. In this way those whose jobs have been converted will not be required to move from the community.**

2. The Province is committed to social stability, and will support economic and social measures to address the economic effects of land use decisions

These measures could entail the giving of a guaranteed annual income to anyone who is displaced as a result of conversion to ecologically sound employment, and ensure that the person will be appropriately retrained. In this way those whose jobs have been converted will not be required to move from the community.

3. The Province shall promote a good quality of life by fostering opportunities to;

* earn a living **in an ecologically safe and sound way**

*obtain education and training **by putting additional funding into the creation of post-secondary institutions**

* access social, cultural and recreation services and

* enjoy a quality environment **through the preservation of significant ecosystem, the creation of ecologically safe and sound employment, and the entrenching of social equity programs**

3. In addition, equity requires that land use and related resources and environmental decisions be made in a fair and open manner **without the**

participation of those who have a vested economic interest in not adhering to ecologically safe and sound practice

RE-EXAMINATION OF THE TERMS OF REFERENCE OF CORE AND THE "LAND USE CHARTER" IN THE LIGHT OF THE TWO FOLLOWING EXTENUATING CIRCUMSTANCES;

1. THE REQUESTED INVESTIGATION BY THE OMBUDSMAN'S OFFICE INTO THE ENVIRONMENTAL DEGRADATION CAUSED BY THE MINISTRY OF FOREST'S NON-COMPLIANCE WITH THE FOREST ACT SECTION 60. OF INTERNATIONAL AGREEMENTS.

In September 1991, we submitted a complaint the Ombudsman office, while Steven Owen was still the ombudsman, calling for the investigation into forest practices that were causing damage to the natural environment To support the claim we submitted a document from the Ministry of Fisheries indicating the destruction of fish habitat (a violation of section 33 of the Fisheries Act, caused by current logging practices We were notified that the complaint would be addressed.

While Steven Owen was the ombudsman little was done to investigate this complaint.

In January 1992, CORE was established, and Stephen Owen was named as the Commissioner,

in June forestry Minister, Miller, suddenly became cognizant of the degradation that had occurred through logging practices.

One of the implications of this complaint is that if the complaint is deemed justified, and if the Ministry of Forests, and industry through non-compliance with the Forest Act caused damage to the natural environment, the whole discussion of 'compensation" for areas that will be taken out of TFL and put into wilderness areas will be reassessed.

2. THE COMMITMENTS BY CANADA TO PRINCIPLES ENUNCIATED IN INTERNATIONAL AGREEMENTS.

practices. and calling for the enforcing of section 60 of the Forest Act was initiated prior to the completion by the Ombudsman's office

CORE was initiated at a time prior to the deliberations of UNCED. As a result of many of the deliberations of UNCED, a few key principles emerged that need to reassess the terms of reference of CORE

Given the recognition of the urgency of the global situation

" Establishing, expanding and managing, as appropriate to each national context, protected area systems, which includes systems of conservation units for their environmental, social and spiritual functions and values, including conservation of forests in representative ecological systems and landscapes, primary old-growth forests, conservation and management of wildlife, nomination of world Heritage Sites under the World Heritage

Conventions, as appropriate, conservation of genetic resources, involving in situ and ex situ measures and undertaking supportive measures to ensure sustainable utilization of biological resources and conservation of biological diversity and the traditional forest habitats of indigenous people, forest dwellers and local communities; (11.15 b., Deforestation)

Many of these problems have arisen from a development model that is environmentally destructive and from a lack of protection. Ecological and human health effects are the measurable consequences... although the means to monitor them are inadequate or non-existent in many countries. There is a widespread lack of perception of the linkages between the development, management use and treatment of water resources and aquatic ecosystems.

(18.45 Fresh water)

There are few regions of the world that are still exempt from the problems of loss of potential sources of freshwater supply, degraded water quality and pollution of surface and groundwater sources. Major problems affecting the water quality of rivers and lakes arise, in variable order of importance according to different situations, from inadequately treated domestic sewage, inadequate controls on the discharges of industrial waste waters, loss and destruction of catchment areas, ill-considered siting of agricultural practices. This gives rise to the leaching of nutrients and pesticides. Aquatic ecosystems are disturbed and living freshwater resources are threatened. ...Erosion, degradation, deforestation and desertification have led to increased land degradation, and the creation of reservoirs has, in some cases, resulted in adverse effects on ecosystems. Many of these problems have arisen from a development model that is environmentally destructive and from a lack of protection. Ecological and human health effects are the measurable consequences... although the means to monitor them are inadequate or non-existent in many countries. There is a widespread lack of perception of the linkages between the development, management use and treatment of water resources and aquatic ecosystems. A preventive approach, where appropriate, is crucial to the avoiding of costly subsequent measures to rehabilitate, treat and develop new water supplies. (18.45 Fresh water)

" to promote patterns of consumption and production that reduce environmental stress and will meet the basic needs of humanity (4.7.a Changing Consumption Patterns)

Decision making process

a distinction must be made between vested interests and public concern.

4.4.2.1. APPLICABILITY OF INTERNATIONAL OBLIGATIONS TO ARRESTS IN CLAYOQUOT

ARRESTS IN B.C. FORESTS: WHO ARE THE REAL CRIMINALS

Since 1972, Canada has made significant international commitments to human rights, equity, social justice, ecological preservation, and ecologically sound practices, (Universal Declaration of Human Rights, 1948; International Covenant of Social, Cultural Rights; Environmental Conference in Stockholm, 1972; UN Conservation of Natural Heritage, 1972; the World Charter of Nature, 1982; Global Biodiversity Strategy, 1992; the Caracas Declaration 1992; Biodiversity Convention, Climate Change Convention and Agenda 21, 1992) The action to condemn and in some cases imprison individuals who call for Canada's compliance to these international, national and provincial commitments has been in direct violation of principles of equity, social justice and human rights.

For years, through its forest practices, Canada as well as the forest Industry has been in violation of international law., and even in violation of its own federal and provincial law. Through non-compliance with its international commitments, and with national and provincial Acts, the government has permitted devastation of its forests; this devastation is now recognized widely and condemned by the international community

The practice of clearcutting, followed by [broadcast burn] artificial reforestation has undoubtedly many technical and organizational advantages. In the course of time, however, soil scientists and ecologists found out that the practice of clearcutting automatically leads to considerable drawbacks:

- wounding of the soil surface through logging operations. risk of erosion
- high irradiation and higher climatic extremes alter the microclimate, the flora and the microflora and deteriorate the growing conditions for a number of valuable tree species. Soil compression and a reduction of species richness occur
- An accelerated decomposition of organic matter occurs, combined with a wash out of nutrients, and the eutrophication of ground water, rivers and lakes (Dr Schutt, Biological Department, University of Munich, Environmental Ethics Conference, 1992, Vancouver)

Section 60 of the Forest Act calls for suspension of tree farm licensees if industry, through non-compliance to the Forest Act, has caused harm to the natural environment. Throughout B.C. environmentalists have been documenting evidence of non-compliance to the Forest Act. The Fisheries Department has documented evidence of violation by the forest industry of section 33 of the Fisheries Act. The Forest Act has not been enforced because most of the sections in the act are discretionary. One of the only recourses for environmentalists has been to call upon the Ombudsman to investigate whether government has fairly complied with its own legislation. In September of 1991, a complaint was filed with the Ombudsman's office to investigate whether governments have fairly complied with the Forest Act. This complaint has only now begun to be seriously investigated. The

Ombudsman's office has not, however, been given the mandate to investigate whether or not the government of Canada is fairly complying with its international commitments.

The protesters, like the government and industry have not complied with the law. Governments and industry in Canada continue to violate international agreements, ignore the enforcement of federal and provincial Acts, and allow irreparable harm to befall the environment. Over 200 Vancouver Island protesters from environmental groups and from the Native community have been arrested, condemned as criminals and in some cases imprisoned because they call for compliance to commitments, attempt to prevent irreparable harm, and demand that environmental law be enforced in a less discretionary manner.

In the latest case, the protesters in Clayoquot Sound have been condemned as criminals because of their non-compliance with an injunction to prevent them from preventing irreparable harm. On the other hand, McMillan Bloedel has been fined in Clayoquot Sound for causing irreparable harm. Traditionally, the equitable remedy of injunctions is deemed necessary to prevent irreparable harm. In 1985, the court concurred with this conception in *MacMillan Bloedel vs. Mullin* where it was decided that

Indians, ...will be deprived of valuable ecological rights, and in further light of the fact that irreparable harm will not result to the Logging Company if timber harvest is delayed pending an expedited adjudication of issue [1985, BCD Civ 1892-08]

Now, the courts have appeared to misconstrue the concept of irreparable harm: those who cause irreparable harm (industry) through non-compliance with international, national and provincial commitments are granted injunctions to facilitate their continuing to cause irreparable harm , while those, (environmentalist and native leaders) are condemned as criminals for not complying with the injunctions granted to facilitate irreparable harm. The most that has happened to industry when it has been found in fault is a fine not criminal condemnation; thus, the causing of irreparable damage is deemed to be compensable through fines, whereas attempting to prevent irreparable damage by ignoring an injunction is deemed to be rectified through criminal proceedings.

If governments do not comply with their commitments, if the courts misconstrue equitable law, and if the ombudsman has a limited scope of jurisdiction, where can the public turn for justice?

Joan Russow
for VINE Vancouver Island Network of Environmentalists
Tuesday, December 23, 1992

Copies of this letter was sent on Tuesday December 23, 1992, to the Vancouver Sun, the Globe and Mail, Web international network, and to UNEP (United Nations Environmental Programme)

4.4.2.1. APPLICABILITY OF INTERNATIONAL OBLIGATIONS TO “INTEREST STATEMENT” OF THE CONSERVATION SECTOR AT THE CORE TABLE

SUBMISSION TO CONSERVATION SECTOR OF CORE TABLE, OCTOBER, 1993

OBLIGATION STATEMENT CONSERVATION AND ECOLOGICALLY SOUND PRACTICES

"Maxim of Equity: Equity imputes an intention to fulfill an obligation."
Canada has made international commitments, and the public can impute an intention to fulfill these obligations

recognition of urgency

- *Biological diversity is being significantly reduced by certain human activities, (preamble, Convention of Biological Diversity)*
- *Importance of biological diversity for evolution and for maintaining life sustaining systems of the biosphere, (preamble, Convention of Biological Diversity)*
- *Conservation of biological diversity is a common concern of humankind, (preamble, Convention of Biological Diversity)*

Intention: Compliance with international agreements

Canada continually indicates its professed concern for the environment in a way that should entitle Canadians to expect actions that reflect this concern. For example, in the preface of Canada's National Report, which was submitted to the Earth Summit in Rio, the Canadian government gave the impression that Canadians were "stewards" observing their "environmental responsibility."

as stewards of a vast and beautiful land, and as a people intimately connected to the environment, Canadians are aware of their environmental responsibilities. (Canada's National Report, Preface)

And further in the section on the "quality of life", the Canadian government stated

As a small population with a large land mass, Canadians have access to relatively unspoiled wilderness areas rich in wildlife ... Canada has an international reputation as a beautiful, safe and mostly unspoiled country. (Canada's National Report, p.49)

If the government of Canada continues to give the impression to the global community that Canadians are concerned about being "stewards" of a "relatively unspoiled wilderness", then the citizens of Canada have the equitable right to expect that Canada will fulfill this expectation. (Doctrine of expectation)

Citizens of Canada can justifiably expect that Canada will adhere to international principles that are part of international agreements signed by Canada, and citizens of Canada can justifiably expect that the courts of Canada will abide by international commitments made by Canada.

Similarly, at the Provincial level if the provincial government imputes that it intends to fulfill an obligation, the citizens should be justified in having the obligation fulfilled.

- a letter from the Ombudsman's office indicating the findings of the Ombudsman's office (1993) related to the Russow/Gage inquiry into the way the B.C. government will be fulfilling international commitments.

2 Compliance with International Agreements.

Direct personal discussions were held with Mr. Cheston, Assistant Deputy Minister of Operations Division, Ministry of Forests, and Mr. Owen, Commissioner on Resources and Environment. Both Mr. Cheston's and Mr. Owen's responsibilities reflect the government's priority for those issues of concern to you...

From these meetings, as well as from additional discussions with senior staff from the Ministry of Forests and the Ministry of Environment, Lands and Parks, we have determined that BC intends to comply with the agreements signed at the UNCED in June 1992.

Through this statement the Provincial government has demonstrated the intention to adhere to principles from Agenda 21, the Rio Declaration and the Biodiversity Convention.

- a letter from both the Provincial Ministry of Forests and the Provincial Ministry of Environment (March, 1992) in which the following intention is imputed:

As we, in BC Parks and BC Forest Service begin to work on implementing our components of B.C.'s protected areas under the aegis of the Commission on Resources and Environment, we will be mindful of this Declaration [the Caracas Declaration: Parks Protected Areas and the Human Future] and its implications. Our objective will be to have a system of protected areas which we are proud to present to the world.

In the Caracas Declaration; Parks Protected Areas and the Human future is the recognition of the following international documents:

bearing in mind the message of *Caring for the Earth: A strategy for Sustainable Living, The Global Biodiversity Strategy*. launched at this Congress, and the earlier messages of the

World Conservation Strategy, the World Charter for Nature and the World Commission on Environment and Development, CD

Through this intention to be "mindful of this Declaration" the Provincial government through its Ministry of Environment and Forests has recognized the CARACAS Declaration and the UN Resolution 37/7 (1982) World Charter for Nature.

- this natural wealth is being eroded at an unprecedented rate, because of the rapid growth in human numbers, the uneven and often excessive consumption of natural resources, mistaken and socially harmful styles of development, global pollution and defective economic regimes, so that the future of humanity is now threatened; Caracas declaration
- many people must modify their styles of living and the world community must adopt new and equitable styles of development, based on the care and sustainable use of the environment, and the safeguarding of global life-supporting systems Caracas declaration

From the Commitment in the Caracas Declaration, it would appear that the Provincial government has also reaffirmed Canada's commitment to UN Resolution 37/7 (1982), the World Charter of Nature.

Principles that demonstrate this intention Obligation to fulfill these principles

Principle that international law shall be reflected in the law and practice of the state

14. The principles set forth in the present Charter shall be reflected in the law and practice of each State, as well as at that international level.

Principle of moral code of action regarding every form of life

(a) Every form of life is unique, warranting respect regardless of its worth to man, and to accord other organisms such recognition's, man must be guided by a moral code of action, (World Charter of Nature (a)

Persuaded that:

Principle of maintenance of essential ecological processes

(a) Lasting benefits from nature depend upon the maintenance of essential ecological processes and life support systems, and upon the diversity of life forms, which are jeopardized through excessive exploitation and habitat destruction by man

Persuaded that:

(a) Lasting benefits from nature depend upon the maintenance of essential ecological processes and life support systems, and upon the diversity of life

forms, which are jeopardized through excessive exploitation and habitat destruction by man

Principle of limit of natural capacity for regeneration

Living resources shall not be utilized in excess of their natural capacity for regeneration; (World Charter of Nature, 3 a)

Principle of burden of proof of benefit being placed on the proponent of intervention into the ecosystem

Activities which are likely to pose a significant risk to nature shall be preceded by an exhaustive examination; their proponents shall demonstrate that expected benefits outweigh potential damage to nature, and where potential adverse effects are not fully understood, the activities should not proceed (11 (b) World Charter of Nature)

Principle of rehabilitation of areas degraded by human activity

Areas degraded by human activities shall be rehabilitated for purposes in accord with their natural potential and compatible with the well-being of affected populations 16. All planning shall include, among its essential elements, the formulation of strategies for the conservation of nature, the establishment of inventories of ecosystems and assessments of the effects on nature of proposed policies and activities; all of these elements shall be disclosed to the public by appropriate means in time to permit effective consultation and participation. (11 e World Charter of Nature)

Principle of early intervention and monitoring to protect ecosystems

The status of natural processes, ecosystems and species shall be closely monitored to enable early detection of degradation or threat, ensure timely intervention and facilitate the evaluation of conservation policies and methods. (19, World Charter of Nature)

• Principle of intrinsic value of biological diversity

- Recognition of the intrinsic value of biological diversity ... (Preamble Biodiversity Convention)
- nature has intrinsic worth and warrants respect regardless of its usefulness to humanity Caracas Declaration

• Principle of informed action

There is general lack of information and knowledge regarding biological diversity and of the urgent need to develop scientific, technical and institutional capacities to provide the basic understanding upon which to plan and implement appropriate measures, (preamble, Convention of Biological Diversity)

• Principle of anticipation and reduction at source

it is vital to anticipate, prevent and attack the causes of significant reduction or loss of biological diversity at source, (preamble, Convention of Biological Diversity)

- **Precautionary principle**

where there is a threat of significant reduction or loss of biological diversity, lack of full scientific certainty should not be used as a reason for postponing measures to avoid or minimize such a threat, (preamble, Convention of Biological Diversity)

- **Principle of in-situ conservation**

the fundamental requirement for the conservation of biological diversity is the *in-situ* conservation of ecosystems and natural habitats and the maintenance and recovery of viable populations of species in their natural surroundings,

- **Principle of intergeneration equity:**

to conserve and sustainably use biological diversity for the benefit of present and future generations, (preamble, Convention of Biological Diversity)

- **Principle of sustainable use and intergenerational equity**

the use of components of biological diversity in a way and at a rate that does not lead to the long-term decline of biological diversity, thereby maintaining its potential to meet the needs and aspirations of present and future generations. (definition, Biodiversity convention)

- **Principle of ecological diversity**

means the variability among living organisms from all sources including, *inter alia*, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part; this includes diversity within species, between species and of ecosystems. (Definition. Convention of Biological Diversity)

- **Principle of ecosystem as a dynamic complex**

"*Ecosystem*" means a dynamic complex of plant, animal and micro-organism communities and their non-living environment interacting as a functional unit. (Definition. Convention of Biological Diversity)

- **Principle of in-situ conservation**

"*In-situ conservation*" means the conservation of ecosystems and natural habitats and the maintenance and recovery of viable populations of species in their natural surroundings and, in the case of domesticated or cultivated species, in the surroundings where they have developed their distinctive properties.

(Definition. Convention of Biological Diversity)

- **Principle of identification**

(a) Identify components of biological diversity important for its conservation and sustainable use having regard to the indicative list of categories set down in Annex I;

(b) Monitor, through sampling and other techniques, the components of biological diversity identified pursuant to sub-paragraph (a) above, paying

particular attention to those requiring urgent conservation measures and those which offer the greatest potential for sustainable use;

Principle of identification of activities likely to have significant adverse impacts on the conservation

Identify processes and categories of activities which have or are likely to have significant adverse impacts on the conservation and sustainable use of biological diversity, and monitor their effects through sampling and other techniques; and (7 c Convention for Biological Diversity)

Principle of establishing system of protected areas

Establish a system of protected areas or areas where special measures need to be taken to conserve biological diversity; (8 a, Convention for Biological Diversity)

Principle of sustainable use of biological diversity

Regulate or manage biological resources important for the conservation of biological diversity whether within or outside protected areas, with a view to ensuring their conservation and sustainable use (8 c, Convention for Biological Diversity)

Principle of protection of ecosystems

Promote the protection of ecosystems, natural habitats and the maintenance of viable populations of species in natural surroundings; (8 d, Convention for Biological Diversity)

Principle of environmentally sound development adjacent to protected areas

Promote environmentally sound and sustainable development in areas adjacent to protected areas with a view to furthering protection of these areas (8 e, Convention for Biological Diversity)

Principle of rehabilitation and restoration of degraded ecosystem

“Rehabilitate and restore degraded ecosystems and promote the recovery of threatened species, *inter alia*, through the development and implementation of plans or other management strategies; (8 f, Convention for Biological Diversity)

Principle of protecting and encouraging traditional cultural use (10c, Convention for Biological Diversity)

Protect and encourage customary use of biological resources in accordance with traditional cultural practices that are compatible with conservation or sustainable use requirements (10 c Convention for Biological Diversity)

Principle of remedial action

Support local populations to develop and implement remedial action in degraded areas where biological diversity has been reduced; and (10d Convention for Biological Diversity)

Principle of promoting understanding of importance and measures required for conservation of biological diversity and sustainable use

- Promote and encourage understanding of the importance of, and the measures required for, the conservation of biological diversity, as well as its propagation through media, and the inclusion of these topics in educational programmes (13, a. Convention of Biological diversity)
- Cooperate, as appropriate, with other States and international organizations in developing educational and public awareness programmes, with respect to conservation and sustainable use of biological diversity.
(13, b. Convention of Biological diversity)

Principle of environmental impact assessment of projects likely to have significant adverse effects on biodiversity

Introduce appropriate procedures requiring environmental impact assessment of its proposed projects that are likely to have significant adverse effects on biological diversity with a view to avoiding or minimizing such effects and, where appropriate, allow for public participation in such procedures; Biological diversity (14 a Convention of Biological Diversity)

Principle of taking into account environmental consequences

Introduce appropriate arrangements to ensure that the environmental consequences of its programmes and policies that are likely to have significant adverse impacts on biological diversity are duly taken into account”
(14 a Convention of Biological Diversity)

4.4.2.2. APPLICABILITY OF INTERNATIONAL LAW TO ENVIRONMENTAL ASSESSMENT OF NUCLEAR SHIP VISITS

B.C. has been declared to be a nuclear weapons free zone. On April 23, 1992, by the same 51 to 1 margin of support, the B.C. Legislature passed a supporting resolution demanding a full public environmental review of nuclear powered and nuclear capable warships in B.C. ports and waters, including the Dixon Entrance.

For years, there has been great public concern about the significance of the potentially adverse environmental effects of the berthing of nuclear-capable and nuclear-powered vessels in Greater Victoria's urban harbour. This concern has been expressed for over ten years by the thousands of people that attended peace walks, and by the citizens of Greater Victoria through their representatives on municipal councils, and through their representatives in the Federal Government and the B.C. Legislature.

Now, on April 23, 1992 citizens throughout British Columbia expressed their concern through their elected representatives in the British Columbia legislature. By a 51/1 vote, all parties in the B.C. legislature passed the following resolutions:

" Be it resolved that the Legislative Assembly of British Columbia declares British Columbia a nuclear-weapons -free zone. (Honourable, Tom Perry, NDP Minister of Advanced Education)
; and be it further resolved that this assembly calls on the government of Canada to conduct a full public environmental review of the dangers involved by the presence of nuclear-weapons-capable and nuclear-powered vessels in British Columbia's harbours and waterways." (Doug Symons, Liberal)

On October 30, 1991, in passing orders in council which permitted the continuation of nuclear warship visits, the Federal government bypassed the following requirements for an environmental assessment:

Section 12 every initiating department shall screen or assess each proposal for which it is the decision-making authority to determine if ...
e) the potentially adverse environmental effect that may be caused by the proposal are significant. (EARP Guidelines)

section 13. notwithstanding the determination concerning a proposal made if public concern about the proposal is such that a public review is desirable, the initiating department shall refer the proposal to the Ministry for public review by a panel. (EARP Guidelines)

Both of those sections make a public review of nuclear ship visits, mandatory, and impose a duty to act on your government, and the responsible Ministers, including yourself as the ultimate minister in charge.

The issue of the continued berthing of nuclear-capable and nuclear - powered vessels is in essence an issue of survival. Such an issue transcends traditional ideological barriers. As Gordon Wilson, leader of the B.C. opposition stated "this is not a movement that is dedicated to those on the left, the right or the centre. This is a movement of those who wish to stand and speak out for humanity" (Hansard, April 23, 1992, p.912).

In June

The people of British Columbia have used the democratic process to voice their concern through their elected representatives. They are speaking to you Mr. Prime Minister, and to your government.

We urge you to undertake immediately a full public environmental assessment review of the continuation of the porting of nuclear capable and nuclear-powered vessels in Greater Victoria Harbours, and in B.C. waters generally.

CANADIAN INTERNATIONAL COMMITMENTS WILL BE IGNORED BY CANADA'S FAILING TO CARRY OUT AN ENVIRONMENTAL ASSESSMENT REVIEW OF NUCLEAR POWERED OR NUCLEAR-ARMED VESSELS IN THE URBAN PORT OF ESQUIMALT

In a recent court decision, June 18, 1992, Judge MacKay of the Supreme Court decided the cabinet could use the Royal Prerogative and bypass the Environmental Assessment review guidelines.

Not only has Canada issued orders in council bypassing its own national commitments, statutes and guidelines such as the following referred to in an affidavit submitted in the trial:

The Atomic Energy Control Act, R.S. C A-19, S 1
The Emergency Preparedness Act, 1988, C 11.
The Canadian Environmental Protection Act, 1988, C 22.
The Environmental Contaminants Act, 1974-75-76, C 72.
The Fisheries Act, 1977, C 35
The Department of the Environment Act, R.S., C 14 (2nd Supp.),
s2
The Government Organization Act 1979, C 13
The Hazardous Products Act, R.S., C H-3, S 1

But Canada, under the Conservative government, has also failed both to lead in the international forum related to nuclear weapons, and to comply with its international commitments to responsible care and environmental assessment.

In June 1992, , while, the Supreme court of B.C. in Canada was hearing this case which called for an environmental assessment review, of visits by nuclear-armed or nuclear-powered vessels, Canada along with the global community in Rio, was endorsing international principles that would, if complied with, require an environmental assessment of these visits:

For example, the general precautionary principle

" Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation." (Rio Declaration, 1992).

and the specific precautionary principle in the Biodiversity Convention, a legally binding document signed by Canada (June, 1992,) and ratified by Canada (December, 1992), and coming into force (December 29, 1993).

Noting also that where there is a threat of significant reduction or loss of biological diversity, lack of full scientific certainty should not be used as a reason for postponing measures to avoid or minimize such a threat, (Biodiversity Convention)

and the Precautionary principle specifically related to the marine environment:

17.21. A precautionary and anticipatory rather than a reactive approach is necessary to prevent the degradation of the marine environment. This requires, inter alia, the adoption of precautionary measures, environmental impact assessments, clean production techniques, recycling, waste audits and minimization, construction and/or improvement of sewage treatment facilities, quality management criteria for the proper handling of hazardous substances, and a comprehensive approach to damaging impacts from air, land and water. Any management framework must include the improvement of coastal human settlements and the integrated management and development of coastal areas. (Agenda 21, 17.21)

Apply preventive and precautionary approaches in project planning and implementation, including prior assessment and systematic observation of the impacts of major projects; (17.5d)

and the environmental assessment in marine environment principle

" Ensure prior assessment of activities that may have significant adverse impacts upon the marine environment; (Agenda 21,17.22 b)

Prior environmental impact assessment, systematic observation and follow-up of major projects, including the systematic incorporation of results in decision-making; (Agenda 21, 17.6 d)

Canada along with the global community represented at the Earth Summit that the role of United Nations Environmental Program should be to ensure that environmental assessment should be increased:

Role of UNEP

(i) further development and promotion of the widest possible use of environmental impact assessments, including activities carried out under the auspices of United Nations specialized agencies, and in connection with every significant economic development project or activity;(Agenda 21,)

The Conservative government has failed to observe that many of the provisions and principles emerging from Agenda 21 have not been met in Canada. Generally, Canada, under the Conservative government, has perceived its role in implementing Agenda 21 as being a mandate to only assist developing countries rather than ensuring that Canada also complies with these provisions and principles.

For years Canada has been signing international environmental agreements that are violated by the continued berthing of Nuclear armed or nuclear-powered vessels.

In 1972, in Stockholm, Canada endorsed principle 26; which reads

Man, and his environment must be spared the effects of nuclear weapons and all other means of mass destruction. States must strive to reach prompt agreement, in the relevant international organs, on the elimination and complete destruction of such weapons.

And yet when given the opportunity to use the appropriate international forum Canada, under the Conservatives, reneged on its responsibility

Recently the World Health Assembly voted "Yes" to the following question

" In views of the health and environmental effects, would the use of nuclear weapons by a state in war or other armed conflict be a breach of its obligations under international law, including the WHO constitution? They have now requested the Director General to transmit this resolution to the international Court of Justice for a judgment. Canada was one of the countries voting against this request.

In 1982, in the UN World Charter of Nature Canada agreed to the following assessment of activities that could have a significant adverse effect;

" Activities which are likely to pose a significant risk to nature shall be preceded by an exhaustive examination; their proponents shall demonstrate that expected benefits outweigh potential damage to nature, and where potential adverse effects are not fully understood, the activities should not proceed (11 a World Charter of Nature)

And now in 1992 at UNCED, Canada made a commitment in Agenda 21 to "responsible care," "culture of safety," "cradle to grave"

Canada, under the Conservatives, has thus bypassed its own national statues and guidelines, reneged on its international environmental commitments, and even ignored statements by the international human rights committee that

The production, testing, possession, deployment and use of nuclear weapons should be prohibited and recognized as crimes against humanity (General Comment 14, Article 6/23rd session, 1984)

Now, with the new Liberal government there is an opportunity for the new government to seriously undertake to fulfill its international obligations by immediately calling for an environmental assessment review of Nuclear powered and nuclear fueled ships in the urban harbour of Victoria.

**Joan Russow, Director, Vancouver Island Peace Society
604-598-2740**

APPENDIX 1

Federal Statutes which would also bring into question the bypassing of obligations by using the Royal Prerogative and the need to reassess the Royal Prerogative in the light of Statutory obligations indicated within the court presentation and within an additional affidavit submitted to the Court.

Re: Potential violations of Federal statutes that would bring into question the justification of using the "Royal Prerogative" to bypass through, orders in council, statutory law of Canada.

Excerpts from Affidavit submitted by Joan Russow.

4 That I have analyzed statements in the following Government of Canada statutes and attempted to extract and categorize general principles underlying these statements:

The Atomic Energy Control Act, R.S. C A-19, S 1
The Emergency Preparedness Act, 1988, C 11.
The Canadian Environmental Protection Act, 1988, C 22.
The Environmental Contaminants Act, 1974-75-76, C 72.
The Fisheries Act, 1977, C 35
The Department of the Environment Act, R.S., C 14 (2nd Supp.),
s2
The Government Organization Act 1979, C 13
The Hazardous Products Act, R.S., C H-3, S 1

5. That in all the statutes, which I examined, dealing with either hazardous materials or the pollution caused by hazardous materials, importance is placed on the determination of the safety of the hazardous materials. And it is recognized that in order to determine safety, it is necessary to have information about the materials and their uses. This principle is enunciated in the following examples drawn from the statutes.

a) In section 11 (Disclosure) of the Hazardous Products Act, "disclosure of information is required where the Minister has reason to believe that a product or substance may be dangerous... The Minister may send a written notice to the manufacturer of the product or substance requesting the manufacturer to disclose to the Minister the formula, composition or chemical ingredients of the product or substance and such other information in the possession of the manufacturer as the Minister deems necessary for the purpose of determining whether the product or substance is or is likely to be a danger to the health or safety of the public."(the Hazardous Products Act. R.S., CH-3, S 1)

b) Pursuant to 7 (2) Of the Environment Contaminants Act “where the Minister of National Health and Welfare believes that a substance will constitute a significant danger to human health or the environment, the Minister may send a written notice to any person engaged in any commercial, manufacturing or processing activity involving the substance or any member of a classes of substances of which the substance is a member requiring that person to furnish the Minister with such information specified in the notice.” (The Environmental Contaminants Act. 1974-75-76, C 72)

c) Section 33. 1 of the Fisheries Act states the following:
“Every person who carries on or proposes to carry on any work or undertaking that results or is likely to result in
a) the deposit of a deleterious substance in water frequented by fish or in any place under any conditions where that deleterious substance or any other deleterious substance that results from the deposit of that deleterious substance may enter any such water, or
b) the alteration, disruption or destruction of fish habitat shall on the request of the Minister... (a) provide the Minister with such plans, specifications, studies, procedures, schedules, analyses, samples or other information relating to the work or undertaking and with such analyses, samples, evaluations, studies or other information relating to the water, place or fish habitat that is or is likely to be affected by the work or undertaking as will enable the Minister to determine
c) whether there is or is likely to be a deposit of a deleterious substance by reason...d) whether the work or undertaking results or is likely to result in any alternation, disruption or destruction of fish habitat.”

(Federal Fisheries, 1977, C. 35)

6. That the principle is repeatedly seen in these statutes that the government has a duty to provide the public with crucial and essential information about the environment

a) In section 5 of the Department of the Environment Act it is written:

“The Minister in exercising his powers and carrying out his duties and functions ... shall...

(iii) provide to Canadians environmental information in the public interest.” (Department of the Environment Act, R.S., R.S., C 14 ,2nd Supp., S 2)

b) Also, in section 19 (6) of Canadian Environmental Protection Act the Minister may disclose information “where

a) the disclosure is in the interest of public health, public safety or the protection of the environment

and

b) The public interest in the disclosure clearly outweighs in importance any material financial losses or prejudice to the competitive position of the person who provided the information or on whose behalf it was provided.” (Canadian Environmental Protection Act, 1988, C 2)

c) In section 6 of the Government Organization Act, the mandate is given:

“6(iii) to provide to Canadians environmental information in the public interest.” (Government Organization Act, 1979, C 13)

7. That the principles are repeatedly enunciated in these statutes that the environment is worthy of protection and that government has a duty to protect the environment and to prevent environmental harm

a) “It is hereby declared that the protection of the environment is essential to the well-being of Canada.” (Canadian Environmental Protection Act, 1988, C 22)

b) “Whereas the presence of toxic substances in the environment is a matter of national concern.” (Canadian Environmental Protection Act, 1988, C 22)

c) In the Department of the Environment Act, under the division of "Powers, duties and functions of the Minister, it is stated that “the duties of the Minister include providing for a) the preservation and enhancement of the quality of the natural environment, including water, air and soil quality; and to

2(i) endeavour to protect the environment from the release of toxic substances.” (Canadian Environmental Protection Act, 1988, C 22)

d) The duty of the Federal Government is that it shall (a) take both preventative and remedial measures in protecting the environment, (section 2, Canadian Environmental Protection Act, 1988, C 22).

e) In section 5 Department of the Environment Act “The Minister in exercising his powers and carrying out his duties and functions under section 4 shall...

5(ii) ensure that new federal projects, programs and activities are assessed early in the planning process for potential adverse effects on the quality of the natural environment and that a further review is carried out of those projects, programs, and activities that are found to have probable significant adverse effects and the results thereof taken into account”,

f) Furthermore, in Section 2 of the Environmental Contaminants Act consideration is given to effects that are persistent and cumulative:

“(iii) the extent to which the substance or any class of substances of which it is a member can become dispersed and will persist in the environment.

(iv) the ability of the substance or of any class of substances of which it is a member to become incorporated and to accumulate in biological tissues and to cause biological change.” (The Environmental Contaminants Act. 1974-76)

8. That the principle is set out in the regulations related to the Atomic Energy Board Act that extreme precautions must be taken in the transport of atomic materials:

a) “*(2) Any person who transports or causes to be transported any radioactive material ...” (see Exhibit A for the list of stipulated regulations for atomic materials)

9. That the principle is expressed in the Emergency Preparedness Act that the government has a duty to make extensive provisions for civil emergency preparedness

a) “5 (1) c to provide education and training related to civil preparedness or emergencies.” (Emergency Preparedness Act, 1988, C 11)

b) “5 (1) e to analyze and evaluate civil preparedness for emergencies and conduct related research.” (Emergency Preparedness Act, 1988, C 11)

APPENDIX 2 The need to reassess the Royal Prerogative in the light of international obligations taken prior to the hearing of the case and undertaken concurrently while the case was being presented in June of 1992.

“Apply preventive and precautionary approaches in project planning and implementation, including prior assessment and systematic observation of the impacts of major projects; (Agenda 21 17.5d)

Prior environmental impact assessment, systematic observation and follow-up of major projects, including the systematic incorporation of results in decision-making; (Agenda 21 17.6 d)

Periodic assessment of the impacts of external factors and phenomena to ensure that the objectives of integrated

management and sustainable development of coastal areas and the marine environment are met; (Agenda 21 17.6 g)

Conduct regular environmental assessment of the state of the environment of coastal and marine areas; (Agenda 21 17.8 c)

A precautionary and anticipatory rather than a reactive approach is necessary to prevent the degradation of the marine environment. This requires, inter alia, the adoption of precautionary measures, environmental impact assessments, clean production techniques, recycling, waste audits and minimization, construction and/or improvement of sewage treatment facilities, quality management criteria for the proper handling of hazardous substances, and a comprehensive approach to damaging impacts from air, land and water. Any management framework must include the improvement of coastal human settlements and the integrated management and development of coastal areas. (Agenda 21 17.21)

(Ensure prior assessment of activities that may have significant adverse impacts upon the marine environment; (Agenda 21 17.22 b)

Research facilities should be strengthened or, where appropriate, developed in developing countries for systematic observation of marine pollution, environmental impact assessment and development of control recommendations and should be managed and staffed by local experts. (Agenda 21 17.40)

Develop and share analytical and predictive tools, such as stock assessment and bio-economic models (Agenda 21 17.57 c)

States, with the support, where appropriate, of relevant international organizations, whether subregional, regional or global, should cooperate to develop or upgrade systems and institutional structures for monitoring, control and surveillance, as well as the research capacity for assessment of marine living resource populations. (Agenda 21 17.68)

Establish or expand appropriate monitoring and assessment programmes; (Agenda 21 17.87 d)

Complete/update marine biodiversity, marine living resource and critical habitat profiles of exclusive economic zones and other areas under national jurisdiction, taking account of changes in

the environment brought about by natural causes as well as human activities. (Agenda 21 17.87 e)

Increased ultraviolet radiation derived from ozone depletion has been reported in some areas of the world. An assessment of its effects in the marine environment is needed to reduce uncertainty and to provide a basis for action. (Agenda 21 17.99)

States, in accordance with provisions of the United Nations Convention on the Law of the Sea on marine scientific research, commit themselves to improve the understanding of the marine environment and its role on global processes. To this end, it is necessary to:

Promote scientific research on and systematic observation of the marine environment within the limits of national jurisdiction and high seas, including interactions with atmospheric phenomena, such as ozone depletion (Agenda 21 17.100 a)

Identifying ongoing and planned programmes of systematic observation of the marine environment, with a view to integrating activities and establishing priorities to address critical uncertainties for oceans and all seas; (Agenda 21 17. 101 d)

Recognizing the important role that oceans and all seas play in attenuating potential climate change, IOC and other relevant competent United Nations agencies, with the support of countries having the resources and expertise, should carry out analysis, assessments and systematic observation of the role of oceans as a carbon sink. (Agenda 21 17.102)

Organization of periodic assessments of ocean and all seas and coastal area status and trends. (Agenda 21 17.106 d)

Adapt coastal area management techniques, such as planning, siting and environmental impact assessments, using Geographical Information Systems (GIS), suitable to the special characteristics of small islands, taking into account the traditional and cultural values of indigenous people of island countries;" (Agenda 21 17.129 d)

RESPONSE TO OCTOBER 20TH DOCUMENT

PROPOSED Environmental Bill of Rights

Public Trust

30. (1) Every resident of British Columbia has a right to protect the environment and the public trust from any pollution, impairment or destruction

(2) The government, as trustee, has a duty to conserve and protect the environment of British Columbia

3. Citizens of British Columbia have the right to have the environment conserved and protected (Suggested Environment meeting, February 19)

4. Citizens of British Columbia have to right to expect that no person shall **use generate or release**, waste or recyclable maters, or any other substance **(including fugitive gas or leachate)** into the environment in such a manner or quantity as to cause pollution

[moved from 41 (1) (Suggested Environment meeting, February 19)

5. Citizens of British Columbia have the right to expect that the government will live up to its obligations (Doctrine of Legitimate Expectation)

6. Present and future generations of British Columbia have the right to an ecological heritage (Suggested Environment meeting, February 19)

7. ensuring that no citizen will be prosecuted for advocating or acting to promote the purposes of the act (Suggested Environment meeting, February 19)

Right to request that a substance be added

Any person may file in writing with the Minister a request that a substance be added to the Priority Substances List and the request shall state the reasons for adding the substances to the List. (CEPA 12.4)

Where the Ministers make an assessment referred to in subsection (1) and decide not to recommend that the substance be added to the List of Toxic Substances in Schedule 1, any person may, within sixty days after publication of the decision in the Canada Gazette file a notice of objection with the Minister requesting that a board of review be established under section 89 stating the reason for the objection. (CEPA 13.2)

Where a substance has been specified on the Priority Substances List for a period of five years and the Ministers have not yet assessed whether the substance is toxic or capable of becoming toxic, any person may file a notice of objection with the Minister requesting that a board of review be established under section 89 (CEPA 14)

Right of action

31. (1) The Attorney General or any resident of British Columbia may commence an action in the Supreme Court against any person who has polluted or otherwise degraded the environment and the public trust or who is likely to do so.

2. A person may commence an action under subsection (1) without having to establish that there is, has been or is likely to be an infringement of an authorization issued under this Act or an approval, permit, licence, standard, regulation, rule or order issued by or under an Act listed in Schedule A.

3. A person who commences an action under subsection (1) shall provide notice of the proceedings to the Attorney General and the Minister.

4. This section does not abrogate those common law rights that would normally be available to a plaintiff to commence an action.

5. the need for intervener funding

Standing

32 A person may commence an action under section 31 without having to show that he or she has

(1) any greater or different right, harm or interest than any other person; or

(2) any pecuniary or proprietary right or interest in the subject matter at issue.

Burden of proof.

33.

(1 a) Every proponent of an intervention in the ecosystem must demonstrate that the intervention will not cause harm to the environment or will not create ecologically unsound wastes

If the proposal involves anything that could be hazardous, 0 emissions and waste must apply; if the proposal involves. lowest achievable discharge rate should apply (February 19, discussion)

(1 b) the plaintiff shall establish a prima facie case showing that **the defendant's proposed activities are likely to pollute or degrade the environment**

(1) the plaintiff shall establish a prima facie case showing that the defendants' activities have polluted or degraded the environment or is likely to do so

(1 c. In a prosecution for a contravention the burden of proving compliance is on the defendant [Section 46, ss 4]

2. Where a prima facie case under subsection (1) is established, the defendant may rebut the prima facie case by showing that there is no feasible and prudent alternative to the defendant's action

[If so, there must be some criteria for determining feasible and prudent alternatives in the light of the purpose of the Act; "providing prevention, conservation and sustainability of the environment" determined by an advisory, non-vested interest board or panel with representation from varied areas of expertise and experience]

3. *It is a defence to an action commenced under this Act that the defendant's action is authorized under this act or an Act listed in Schedule A, unless the plaintiff can establish, on balance of probabilities, that the standard is inadequate to protect the environment and that the defendant's action has caused, or is likely to cause, severe or irreparable contamination or degradation of the environment.*

The burden of proof must be on the defendant to demonstrate that the defendant's action has not caused or is not likely to cause, severe or irreparable contamination or degradation of the environment (Discussion, February 19)

Limitation Period

34. The limitation period for an action under section 31 of this Act is postponed and time does not commence to run until the plaintiff becomes aware, or ought reasonably to have become aware, of the identity of the defendant and of the material facts surrounding the claim

Appointment of minister's environmental mediator

37 (1) Subject to section 140, the Minister may, *where he or she deems it advisable* **where it is deemed advisable** and where the conflicting parties concur, appoint an environmental mediator acceptable to the parties to mediate between persons involved in an environmental conflict.

(2) when a mediator is appointed under subsection (1), the mediator shall, within 6 weeks after completion of the mediation, report to the results of the mediation to the Minister and the parties

38 (c) award damages to (iv) any person who has a concern for the environment

39 ...licence, standard, regulation, rule or order issued under an Act listed in Schedule A affects **the environment** and rights of a person, **any** person shall be furnished with a written statement of the decision setting out.... **(c) any dissenting opinions should be made public (Discussion, February 19)**

Freedom of information [SHOULD BE ADDED]

under the guise of client/solicit relation or confidentially shall not prevent the revealing, disclosing information about any actions that could have [wording from purpose]

40. Whistleblower protection

(1) for the purposes of this section "employee" includes

(a) a person, including a deceased person, in receipt of or entitled to payment for labour services performed for another

(b) a person whom an employer allows, directly or indirectly, to perform work or service normally performed by an employee, and

(c) a person being trained by an employer for the purpose of the employer's business.

Where a person has knowledge of the occurrence or reasonable likelihood of a release into the environment

of a substance specified in the List of Toxic Substances in Schedule 1, 37 [but the person is not required to report the matter under this Act, the person may report any information relating to the release or likely release to an inspector or to any person to whom a report may be made under section 36. (CEPA, 37)

of a substance in contravention of a regulation made under section 54. (CEPA 58)

Request of confidentiality

A person may request that the person's identity and any information that could reasonably reveal the identity not be released (CEPA37 2, and 58.2)

Requirement for confidentiality

Where a person makes a request under subsection (2) no person shall release or cause to be released the identity of the person making the request or any information that could be reasonably be expected to reveal the identity, unless the person making the request authorizes the release in writing (37.3)

2) For the purpose of this section, "employer" includes a person who(a) has control or direction of, or
(b) is responsible, directly or indirectly, for the employment of an employee, and includes a person who was an employer

3. No person shall dismiss, threaten to dismiss, cause to be dismissed, discipline, coerce, discriminate against, or impose any type of penalty on an employee or an authorized representative of an employee, because the employee or representative
(a) has reported or proposed to report any violation or perceived violation of this Act or an Act listed in Schedule A or
(b) refuses to carry out work that the employee reasonably believes would be or would lead to a violation of this Act or an Act listed in Schedule A

Notwithstanding any other Act of Parliament, no employee of a department, board commission or agency of the Government of Canada, or of a corporation named in Schedule III to the Financial Administration Act or of a federal regulatory body shall be disciplined, dismissed or harassed for making a report under subsection (1) (CEPA 37.1and , 57.4)

(4) Employers shall keep their employees informed of the protection available under this section

(5) a person who alleges that he or she has been treated in a manner contrary to subsection (3) may file a complaint with the board in the manner set out in the regulations.

(6) The board shall cause an investigation to be made upon the filing of a complaint, and may dismiss a complaint without a hearing where it appears to the board that

(a) the employee or representative was proceeding in bad faith or for an improper purpose [**as defined by the purpose of the act**]

7. the board may conduct a hearing into the complaint, and if the board is satisfied that the employer has contravened subsection (3) the board may make an order directing the employer to do any or all of the following:
- (a) cease doing the act or acts complained of
 - (b) rectify the act or acts complained of
 - (c) reinstate the person aggrieved with compensation
 - (d) compensate the person aggrieved in lieu of reinstatement for the loss of earnings or other employment benefits
 - (e) pay general damages, special damages or pecuniary damages to the employee.
- (8) the board may award either party all or a portion of the costs of the hearing as it considers appropriate.

4.5. INTERNATIONAL ASSESSMENT OF LOCAL ISSUES

4.1.5. Resolution passed by the IUCN General Assembly meeting at Buenos Aires, Tuesday, January 25, 1994

19.72REV2 North American Coastal Temperate Forests
(retyped with January 25 Amendments from the floor)

RECOGNIZING that temperate coniferous forests, and especially rain forests, constitute a very rare type of ecosystem in the world, originally covering less than one-fifth of one percent of the earth's land surface, and that one half of the earth's original forest of this type occurs along the pacific Coast of North America from northwestern California to southeastern Alaska;

UNDERSTANDING that many endemic and unusual plants and animals occur only in these forests; and that in biomass productivity, the old growth forests (ancient forests) of this biome are unequaled anywhere;

AWARE that more than one half of the Earth's original coastal coniferous forests (ancient forests) have been logged, including more than 40 % of the ancient forests of this type on North America, and that few large unfragmented examples of this type of forest, other than in protected areas, exist outside of British Columbia and Alaska;

MINDFUL of the fact that such ancient forests on Vancouver Island and on the mid-coast of British Columbia are disappearing at a rapid rate as a result of practices that have, to date, not been ecologically sustainable;

ALSO, MINDFUL that past management practices have been controversial, while the US government has enacted legislation to ensure sustainable management of all forests, questions continue to arise;

UNDERSTANDING that the Raincoast Conservation Society, the Sierra Club, and the Western Canada Wilderness Committee have proposed a large network of protected areas, including conservation corridors, in areas of such ancient forests on Vancouver Island and the midcoast of British Columbia;

AWARE of the fact that none of the protected areas that Canada maintains in forest areas along the Pacific Coast have been designated as World Heritage sites under the provisions of the World Heritage Convention[s] and that these ancient forests may be of outstanding universal value;

The General Assembly of IUCN — the World Conservation Union, at its 19th Session in Buenos Aires, Argentina, 17-26 January 1994:

1. URGES the Government of Canada and the United States to properly manage the temperate coastal coniferous forests of the Pacific Coast of North America by establishing appropriate protected areas and by adopting

ecologically oriented systems of forest management which can be permanently sustained and which protect biodiversity;

2. CALLS UPON the Governments of Canada and British Columbia to substantially expand the amount of land in networks of protected areas, with conservation corridors, on Vancouver Island and the midcoast of British Columbia, taking into consideration the recommendations of environmental groups active in the regions such as the Raincoast Conservation Society, the Sierra Club and the Western Canada Wilderness Committee;

3. URGES the Government of Canada to consider nominating sites or combinations of sites (such as networks), in these forests as World Heritage sites under the World Heritage Convention[s];

4. RECOMMENDS that special efforts be made by these parties and their citizens to restore degraded parts of these forests and to secure the overall integrity of the biome by linking now separate forest stands

Resolution proposed by Michael McCloskey, Sierra Club USA, in collaboration with Joan Russow (B.C. Canada) member of the IUCN Commission on Education and Communication

4.6. APPLICABILITY OF INTERNATIONAL CUSTOMARY LAW

4.6.1. Evolution of the precautionary principle

THE EVOLUTION OF THE PRECAUTIONARY PRINCIPLE FROM ITS INITIAL ENUNCIATION IN 1972, THROUGH ITS REINFORCEMENT IN 1982 TO ITS REALIGNMENT IN 1992

"it also seems clear that the road from declaring global principles to effective world-wide action will be a very long and hard one. (15, Man's environment and the Atlantic Alliance" 1972)

Since 1972, the essence of the precautionary principle was agreed to by the global community,

Determination to shape actions with prudent care for the environment principle

A point has been reached in history when we must shape our actions throughout the world with a more prudent care for their environmental consequences. Through ignorance or indifference, we can do massive and irreversible harm to the earthly environment...Declaration of the United Nations Conference on the Human Environment (Declaration of the United Nations Conference on the Human Environment (1972) 1972)

This principle was further reinforced in 1982, in the World Charter of Nature:

Avoidance of activities if adverse effects not fully understood principle

Activities which are likely to pose a significant risk to nature shall be preceded by an exhaustive examination; their proponents shall demonstrate that expected benefits outweigh potential damage to nature, and where potential adverse effects are not fully understood, the activities should not proceed (11 b) World Charter of Nature (1982)

Avoidance of irreversible damage to nature principle

Activities which are likely to cause irreversible damage to nature shall be avoided (11. a) World Charter of Nature (1982)

In 1992, in the UNCED documents there is the full enunciation of the precautionary principle. This principle is present in all the documents in differing forms:

In the Rio Declaration it is expressed in the following way

Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation." (Rio Declaration, 1992).

: and in the Framework for a Climate Change Convention it is phrased in a different way:

3. The Parties should take precautionary measures to anticipate, prevent or minimize the causes of climate change and mitigate its adverse effects. Where there are threats of serious or irreversible damage, lack of full scientific certainty should not be used as a reason for postponing such measures, taking into account that policies and measures to deal with climate change should be cost-effective so as to ensure global benefits at the lowest possible cost. To achieve this, such policies and measures should take into account different socio-economic contexts, be comprehensive, cover all relevant sources, sinks and reservoirs of greenhouse gases and adaptation, and comprise all economic sectors. Efforts to address climate change may be carried out co-operatively by interested Parties. (Climate Change Convention, 1992)

A comparison of these two enunciations of the precautionary principle indicate that the principle has been considerably weakened in the Climate Change Convention where it has moved from "shall" to "should", and where there is no mention made of the need to prevent environmental degradation. The Rio Declaration, though adopted by the global community by consensus, is not legally binding, whereas the Convention, is legally binding. However, in using the term "should" in a legally binding document the framers have perhaps given it no more status that it had in a non-legally binding document with "shall"

3. ESSENTIAL PROPERTIES OF THE PRECAUTIONARY PRINCIPLE DRAWN FROM INTERNATIONAL DOCUMENTS AND NATIONAL DOCUMENTS.

In this section, to begin to assess policy maker's response in Canada to the precautionary principle, we will examine different properties that have been identified as being essential to addressing the problem in Canada. We have selected as the principal document for this examination, the 1991, Canadian document from the Standing Committee of Global Warming because this is a document that arose from a set of hearings carried out by a committee of parliamentarians from all three political parties. Additional properties are also drawn from other documents from policy makers or advisory or consultative bodies.

"The precautionary principle has a number of underlying implicit properties that would have to be considered in determining adherence to the precautionary principle: these properties are evident in a number of documents emanating from policy makers.

(3.1.). The invoking of the precautionary principle to address one environmental problem should not cause another problem or that the solution to the environmental problem should not itself be an activity or a substance that could potentially cause irreversible harm.

1991 There is little merit in solving one problem by creating others. The Committee has therefore endeavoured to be responsible in making recommendations that clearly have wider implications beyond the problem of global warming.
(Standing Committee on the Environment, p. 18)

(3.2.). The invoking of the precautionary principle might require substantial change

“At the same time, however we need to insist that the character and importance of global warming will demand significant changes in the present situation. If we do not alter our 'life as usual' to reduce the threat of global warming, changes of climate and rises in sea-level will force unpleasant consequences on us. . (Standing Committee on the Environment,” p. 18)

(3.3.) the invoking of the precautionary principle might require the acknowledgment that the inaction could involve risks

Title of Standing Committee report " out of balance: the risks of irreversible climate change (Standing Committee on the Environment, 1991)

(3.4) the invoking of the precautionary principle could require supportable evidence not necessarily in the certainty of environmental harm but at least in the likelihood

" Global warming is real and serious

1.1. Our report is based on three main premises:

- global warming has been proved scientifically;
- It is an inevitable and continuing consequence of past and present patterns of human activity; and
- it represents a severe threat to both Canada and the planet as a whole”

(1991, Standing Committee on the environment)

(3.5.). The invoking of the precautionary principle will require a demonstration of the credibility of those who frame the problem

1.7 “As regards the reality of global warming, the international scientific community has during the last two to three years, undertaken and urgent and comprehensive review of the evidence. This inquiry by the IPCC under the auspices of the WMO and UNEP reported its findings at the Second World Climate Conference in 1990. The panel reported that

we are certain of the following:

the greenhouse effect is real

Manmade emissions are substantially increasing the atmospheric concentrations of the greenhouse gases: carbon dioxide, methane, the CFCs, nitrous oxide and tropospheric ozone. These increases will lead to a warming of the Earth's surface...

We calculate with confidence that:

Atmospheric concentrations of the long-lived gases (Carbon dioxide, nitrous oxide and the CFCs) adjust only slowly to changes in emissions. Present day emissions of these gases are committing us to increased concentrations for decades to centuries...

the long-lived gases would require reductions in man-made emissions of 60-80% to stabilize their concentrations at today's levels; methane would require only a 15%-20% reduction."

(Intergovernmental panel on Global change p. 29 as cited in the standing committee Report, p. 5)

(3.6.). The invoking of the precautionary principle will require an understanding of the position of experts who do not agree with the assessment of the problem, and the supplying of good arguments to justify the position to implement the precautionary principle

1.5 There is no mystery to what is happening, yet there are still some who are unconvinced. A very few of these are scientists who offer alternative explanations for the measurements and other data that have convinced the vast majority of their colleagues. A larger group of people lack the scientific background required to evaluate the evidence and appears reluctant to accept as reality what cannot yet be seen or touched. A third groups, apparently including many Canadians, regards the prospect of global warming as something desirable, and therefore no cause for concern.

1.6. the Committee's first task, therefore is to explain briefly why we are convinced to the basic premises set out in para 1.1. In doing so, we need to respond both to those who doubt global warming and to those who accept that it is taking place, but believe that it should be welcomed by Canadians.

1.10. In any case, it is clear from the evidence it provided to us, and from its report, that the Marshall Institute is mainly urging expanded research on global warming in a 3-5-year period and the avoidance of drastic policy changes before that research is undertaken.

Dr. Seitz,

" ... I want to make it clear that I do not place those who express a word of warning in the same category as the boy who cried wolf too often, since there may indeed be a wolf somewhere in the forest. There is too much to be gained by continuing on with

our form of civilization to deviate radically without more solid evidence that the biosphere is in mortal danger in the immediate future from uncontrolled warming. I fully realize that this attitude involves a calculated risk, but I also feel that we must balance that risk against the certain damage that will be done if we shut down our power stations and our factories, halt the great advances in communication and transportation achieved in the last century or so. These comments do not imply that we should not use fossil fuel in the most efficient and conservative manner or that we should not consider the use of alternative, non-polluting sources such as nuclear energy when appropriate. Indeed, economic factors alone may dictate such shifts. "Scientific Perspectives on the Greenhouse Problem, George C. Marshall Institute, Washington, D.C., 1989

1.11. We recommend that action should be taken now, not 3 to 5 years from now, to reduce substantially the rate of greenhouse gas emissions throughout the world and specifically in Canada.
1.16. Canada should be as active as other nations in taking action to reduce or delay such warming. ...p. 8

(3.7.). The invoking of the precautionary principle will require commitment to the principle that even though Canada may not benefit, for the sake of the global community, we must act.

1.16.4. Even if global warming could be shown to benefit Canada, which is far from being the case, there is growing evidence of its potentially severe and even disastrous implications in other parts of the world, and especially in developing countries. Canada cannot adopt a laissez-faire attitude to what is happening. Many millions of people live on the margin of survival not merely in terms of nutrition and similar measures; small changes of climate or of sea-level would make their physical environment uninhabitable. Manmade emissions are substantially increasing the atmospheric concentrations of greenhouse emissions.

"environmental policy should be integrated fully into other policies. It should be considered as a fundamental factor when economic decisions are taken. In this context we stress the importance of sustainable development; prevention rather than cure; environmental impact assessment; setting environmental standards on the basis of best technology; and development of less polluting and more cost-effective technologies, including those for controlling emissions at source. (5) "the Way forward Environment ministers London, 1984

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importance of sustainable development; prevention rather than cure; environmental impact assessment; setting environmental standards on the basis of best technology; and development of less polluting and more cost-effective technologies, including those for controlling emissions at source. (5) "the Way forward Environment ministers London, 1984

(3.8.). The invoking of the precautionary principle will require the commitment that the solution lies in prevention not cure or repair

"It is essential, in both developing and developed countries, to manage sustainable resources wisely, and to this end we emphasize that prevention of damage is better than repair. This principle is fully effective only in the framework of intensive international co-operation because many of these problems range far more widely than any one of our countries. (2) "the Way forward Environment ministers London, 1984

"the 'polluter pays Principe' is of key importance to ensuring that environmentally correct prices and market signals are given and should be developed and applied more widely (5) "the Way forward Environment ministers London, 1984

" we must also be more forward-looking in addressing emerging environmental issues such as possible climatic changes resulting from human activities, the need to examine alternative energy strategies, and the environmental impact of new forms of industry including biotechnology. (5) "the Way forward Environment ministers London, 1984

IV Environmental Policies

12. New approaches and strengthened international co-operation are essential to anticipate and prevent damage to the environment, which knows no national frontiers.... We shall also address other concerns such as climatic change, the protection of the ozone layer...1985 Bonn economic Declaration May 4, 1985

4. Economic progress and the preservation of the natural environment are necessary and mutually supportive goals. Effective environmental protection is a central element in our national and international policies. 1985 Bonn economic Declaration May 4, 1985

13. We shall harness both the mechanisms of governmental vigilance and the disciplines of the market to solve environmental problems. We shall develop and apply the polluter pays principles more widely. Science and technology must contribute to reconciling environmental protection and economic growth. 1985 Bonn economic Declaration May 4, 1985

(3.9.). The invoking of the precautionary principle will require the commitment that the solution calls for new initiatives and the maintaining of options (non-reduction of options)

1980 The Global 2000

" if these trends are to be altered and the problems diminished, vigorous, determined new initiatives will be required worldwide to meet human needs while protecting and restoring the earth's capacity to support life. Basic natural resources — farmlands, fisheries, forests, minerals, energy, air and water — must be conserved and better managed. Changes in public policy are needed around the world before problems worsen and options for effective action are reduced." iv

" If decisions are delayed until the problems become worse, options for effective action will be severely reduced" (5)

(3.10.). "The invoking of the precautionary principle will require global actions. Nonetheless, given the urgency, scope, and complexity of the challenges before us, the efforts now underway around the world fall far short of what is needed. An era of unprecedented global co-operation and commitment is essential. iv)

We can avoid polluting our own environment, and we must take care that we do not degrade the global environment. iv Finally to meet the challenges described in the Global 2000 Study our federal government requires a much stronger capability to project and analyze long-term trends." 1980 The Global 2000

"in a remarkable report to the Economic and Social Council of the UN (in May 1969) U Thant, then Secretary General of the UN, portrayed the extraordinary world-wide dangers to man's environment. HE said:

It has become clear that we all live in one biosphere with which space and resources, though vast are limited.

HE then proposed, and the General Assembly agreed to hold an International Conference on Human Environment, in Stockholm in June 1972. " Huntly Man's environment and the Atlantic Alliance" 1972

(3.11.). The solving of the environmental problem will require acknowledgment of the inertia and time lag that affects effective action
1981

OECD publications

"Our Governments today face inflation, unemployment, a leveling-off in the growth of productivity and rising energy prices. At the same time, they have to respond to popular aspirations including continued pressure for an improved environment. Governments are also faced with a lack of consensus among scientists about the nature, extent and damage of some of the

phenomena. Judging from a recent OECD - IEA workshop this is true, for example, of the rate and impact of rising levels of CO₂ on climatic change. In the absence of scientific consensus, political consensus, especially international consensus, is hard to achieve. However, if governments wait for scientific near-certainty, it will often be too late for them to act at all either because of the inertia of the natural phenomena, or because of the time lags associated with policy development and international negotiation. "(Van Lennep, Secretary-General of the OECD "The Environment Challenges for the 80s)

(3.12.). The solving of the environmental problem requires the summoning up of the international political will

" I am sure it is clear to everyone that it will not be easy for our nations collectively to Marshall the political will necessary to deal with these issues.

In the absence of scientific consensus, political consensus, especially international consensus, is hard to achieve. However, if governments wait for scientific near-certainty, it will often be too late for them to act at all either because of the inertia of the natural phenomena, or because of the time lags associated with policy development and international negotiation. "(Van Lennep, Secretary-General of the OECD "The Environment Challenges for the 80s)

4. OVERVIEW; COMPARISON OF THE 1988 CONFERENCE STATEMENTS, 1988 SCIENCE COUNCIL OF CANADA. THE STANDING COMMITTEE ON THE ENVIRONMENT AND THE 1992 CLIMATE CHANGE CONVENTION IN RELATION TO THE APPROACH TO THE PRECAUTIONARY PRINCIPLE

To attempt to extend the understanding of the social learning that has occurred in Canada in the crucial years leading up to the framing of the *Framework Convention on Climate Change*, we will examine the transition that occurred between the official and the NGO recommendations contained the proceedings from the international conference, *The Changing Atmosphere*, held in Canada in 1988, and the action plan in the Atmosphere section of Agenda 21/ the binding commitments contained in the Climate Change Convention.

[the Montreal Protocol, and the Canadian proposals to the climate change discussion at the New York Prep Com, and follow-up meeting should also be included]

the following documents and sections from documents will be examined

Recommendation from the Changing Atmosphere, 1988;

Recommendations from the Changing Atmosphere submitted by the NGOs 1988

Atmosphere section in Agenda 21 1992

Climate Change Convention 1992

4.0. Overview

Humanity is conducting an unintended, uncontrolled, globally pervasive experiment whose ultimate consequences could be second only to a global nuclear war. (Conference statement, 1988)

Although we are examining the precautionary principle and the impact of the precautionary principle on the commitment to action to address the global warming issue, it should be acknowledged that the precautionary principle is inextricably linked to the "Environmental assessment" principle, "the full life cycle analysis" principle, the "non-transferring of harmful activities or substances" principle, "polluter pay principle", all enunciated in the documents emanating from UNCED.

Before tracing the precautionary principle as it manifests itself in the documents, and before placing the different sections into the "social learning project" functions (SEE APPENDIX), we will first reflect on a property, of the precautionary principle, which was enunciated in the UN mandate to set up the World Commission on Environment and Development (Brundtland Commission).. In the mandate the global community was to "elaborate strategies and measure to halt and reverse the effects of environmental degradation ..." (reported in Agenda 21, section 38.1)

One of the questions that has to be addressed in relation to the precautionary principle, is "is the global community 'halting and reversing the effects of environmental degradation' by stating generally that it will address the problem, without making a commitment for targets and timelines? Would this mandate to halt and reverse form the basis for the precautionary principle? Could the global community be committed to adhering to the precautionary principle if the documents contain an enunciation of the precautionary principle but there is no commitment to halt or reverse the effects of environmental degradation? Is the only way of carrying out the precautionary principle to enunciate and act upon targets and timelines?

Up until the end of the February session of the negotiations for the Framework Convention, targets for CO₂ were included in the Proposed Framework Convention on Climate Change:

section 4.2.1. started with the following: The developed country Parties shall adopt national policies and take corresponding measures on the limitation of anthropogenic emissions of greenhouse gases and the protection and enhancement of greenhouse sinks and reservoirs. These developed country policies and measures will have the effects of as a first step, stabilizing individually or jointly emissions of Carbon dioxide in general by the year 2000 at the 1990 level...

After February, the same section of the Framework Convention read, or at least the final version read as

(a) Each of these Parties shall adopt national policies and take corresponding measures on the mitigation of climate change, by limiting its anthropogenic emissions of greenhouse gases and protecting and enhancing its greenhouse gas sinks and reservoirs. These policies and measures will demonstrate that developed countries are taking the lead in modifying longer-term trends in anthropogenic emissions consistent with the objective of the Convention, recognizing that the return by the end of the present decade to earlier levels of anthropogenic emissions of carbon dioxide and other greenhouse gases not controlled by the Montreal Protocol would contribute to such modification, and taking into account the differences in these Parties' starting points and approaches, economic structures and resource bases, the need to maintain strong and sustainable economic growth, available technologies and other individual circumstances, as well as the need for equitable and appropriate contributions by each of these Parties to the global effort regarding that objective. These Parties may implement such policies and measures jointly with other

Parties and may assist other Parties in contributing to the achievement of the objective of the Convention and, in particular, that of this sub-paragraph;

(b) In order to promote progress to this end, each of these Parties shall communicate, within six months of the entry into force of the Convention for it and periodically thereafter, and in accordance with Article 12, detailed information on its policies and measures referred to in sub-paragraph (a) above, as well as on its resulting projected anthropogenic emissions by sources and removals by sinks of greenhouse gases not controlled by the Montreal Protocol for the period referred to in sub-paragraph (a), with the aim of returning individually or jointly to their 1990 levels these anthropogenic emissions of carbon dioxide and other greenhouse gases not controlled by the Montreal Protocol. This information will be reviewed by the Conference of the Parties, at its first session and periodically thereafter, in accordance with Article 7;

Generally, the reasons for moving from the strong targets was the United States insistence on a Convention with no specific time lines or targets. The United States position was characterized by one member of NGO community in the following way:

The United States — with 25% of global carbon dioxide emissions, remained the main culprit in watering down the text. ... the United States — urged by the coal lobby — ensured that the convention lacked any legally binding commitment to stabilize or reduce emissions of carbon dioxide and other greenhouse gases. (Dubash, N, and Hajost, S., Network, June, 1992, p. 11)

The climate change convention conveys an ambivalent message about the need to implement the precautionary principle, whereas the 1988 Conference and the 1991 parliamentary committee appear to convey a consistent message about the need to implement the precautionary principle. The atmosphere chapter of Agenda 21 appears to be in an intermediary position between ambivalence and consistency. These documents appear to reflect the different frames described in the introduction.

In the conference statement from 1988, and in the NGO statement of 1988, and in the Standing committee of 1991 the recommendations form a consistent whole which appears to reflect the deep concern by the participants for the serious environmental impacts from global warming and ozone depletion. In the Science Council document and in the Framework Convention, however there appears to be an uncomfortable [uneasy] alliance between environmental concern— "Concerned that human activities have been substantially increasing the atmospheric concentrations of greenhouse gases" and economic growth — "the Parties should co-operate to promote a supportive and open international economic system that would lead to sustainable economic growth." This ambivalence is also reflected in the potentially irreconcilable incompatibility between advocating adherence to the precautionary principle and the admonition to consider the impact on economic development that would be required to cease if the precautionary principle were to be adhered to.

Unfortunately, in a legal environmental documents, conventions and charters in contrast to recommendations coming from a gathering of concerned representatives , there appears to always be strong statements that appear to reflect genuine concern for addressing the urgency of the problem that are weakened by the "notwithstanding" clauses that are always present to be ferret out for appropriate self-interest. A comparison between the clear statements made at the international conference in Toronto in 1988, the "Changing Atmosphere" and the ambivalent statements from the Climate Change Convention reflect the contrast between a unifying statement of concern and a potentially irreconcilable conflict between interest and concern.

One underlying theme that pervades these documents, is that in one case there is willingness to accept the certainty or if not the certainty, a willingness to actually use the precautionary principle — not having to wait for scientific certainty to act —, and in the other, there is a willingness to state the "uncertainty", and then state the precautionary principle without acting upon the precautionary principle. In the preamble of the Convention is a statement noting that there are many uncertainties in predictions of climate change, particularly with regard to the timing, magnitude and regional patterns thereof, " Subsequently in the text is the enunciation of the precautionary principle. If the precautionary principle were adhered to in the document itself, stronger actions to address the "treats of serious irreversible damage" would not have to wait for "scientific certainty." In the climate change issue, because of the scientific uncertainty of many of the outcomes of anthropogenic activity on climate, the precautionary principle which was enunciated in most of the documents from UNCED is particularly significant. Unfortunately, the

precautionary principle has been weakened in the Climate Change Convention. It is less strong than the one in the Rio declaration.

“In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.” (Principle 15, Rio Declaration)

3. “The Parties should take precautionary measures to anticipate, prevent or minimize the causes of climate change and mitigate its adverse effects. Where there are threats of serious or irreversible damage, lack of full scientific certainty should not be used as a reason for postponing such measures, taking into account that policies and measures to deal with climate change should be cost-effective so as to ensure global benefits at the lowest possible cost. To achieve this, such policies and measures should take into account different socio-economic contexts, be comprehensive, cover all relevant sources, sinks and reservoirs of greenhouse gases and adaptation, and comprise all economic sectors. Efforts to address climate change may be carried out co-operatively by interested Parties.” (Climate Change Convention, 1992)

A comparison of these two enunciations of the precautionary principle indicate that the principle has been considerably weakened in the Climate Change Convention where it has moved from "shall" to "should", and where there is no mention made of the need to prevent environmental degradation. The Rio Declaration, though adopted by the global community by consensus, is not legally binding, whereas the Convention, is legally binding. However, in using the term "should" in a legally binding document the framers have perhaps given it no more status that it had in a non-legally binding document with "shall"

There are a number of constraints present in the Convention on Climate Change that were absent in the recommendations from the 1988 Convention. First of all, in 1988, there was a willingness to go beyond the "sovereign right to exploit resources" to perceive of the problem in global terms, and to opt, through international standards, for a form of international environmental governance. In the Climate change convention, the "sovereign right to exploit resources" (albeit with the traditional trans-boundary proviso) is enshrined:

Recalling also that States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental and developmental policies, and the responsibility to ensure that activities within their jurisdiction or

control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction,

This appears to be somewhat qualified in the fourth principle of the Climate Change Convention by indicating that states have the sovereign right not "to exploit their own resources" but to "sustainable development."

The Parties have a right to, and should, promote sustainable development.

Another constraint, is the discouraging of strong unilateral environmental action. In the climate Change convention, not only has there been a reluctance to go beyond relatively established state environmental standards to high international standards, but also there has been an admonition to individual states which may seek high environmental standards that could be construed with interfering with international trade:

5. The Parties should co-operate to promote a supportive and open international economic system that would lead to sustainable economic growth and development in all Parties, particularly developing country Parties, thus enabling them better to address the problems of climate change. Measures taken to combat climate change, including unilateral ones, should not constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade.

A further example of the ambivalence between "concern and interest" appears to be present in the following paragraph of the Climate change convention. The first part of the paragraph appears to place a strong obligation on individual states to take measures "to mitigate," or "limit," anthropogenic emissions and "to protect and enhance sinks." Yet at the same time, advocate "strong and sustainable economic growth," at a time when sustainable development may not be sustained growth.

(a) Each of these Parties shall adopt national 2 policies and take corresponding measures on the mitigation of climate change, by limiting its anthropogenic emissions of greenhouse gases and protecting and enhancing its greenhouse gas sinks and reservoirs. These policies and measures will demonstrate that developed countries are taking the lead in modifying longer-term trends in anthropogenic emissions consistent with the objective of the Convention, recognizing that the return by the end of the present decade to earlier levels of anthropogenic emissions of carbon dioxide and other greenhouse gases not controlled by the Montreal Protocol would contribute to such modification, and taking into account the differences in these Parties' starting points and approaches, economic structures and resource bases, the need to maintain strong and sustainable economic growth, available technologies and other individual circumstances, as well as the need for equitable and appropriate

contributions by each of these Parties to the global effort regarding that objective. These Parties may implement such policies and measures jointly with other Parties and may assist other Parties in contributing to the achievement of the objective of the Convention and, in particular, that of this sub-paragraph;

In 1988 in the NGO recommendations there was a call for the need to provide development opportunities for the poor, and the NGOs linked need with the environmental threat. Although it is implied that the NGO recommendation refers primarily to "humanitarian" development rather than "increasing"—exploitative development (Delegate from Senegal, personal communication, New York Prep Com, 1992). The NGO recommendations does not explicitly make this distinction.

It is imperative for governments and the international community to sustain the agricultural and marine resource base and provide development opportunities for the poor in light of this growing environmental threat to global food security. (Conference statement, 1988)

The commitment to future generations is also indicative of this ambivalence: in the preamble there is a statement indicating that the signatories from the global community are "Determined to protect the climate system for present and future generations", Yet, in principle 1. it is indicated that the commitment is not in the form of a legally binding mandate but of a discretionary principle — "the Parties should protect the climate system for the benefit of present and future generations of humankind, on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities."

The question that the segment of the global community, that is concerned about global warming, may be left with could be "will the implementation of the Climate change Convention reflect the high ground in the document — actions to address the global warming issue, or will the document be used to devise and justify a new set of pseudo "techno-eco fixes" — such as the cutting down of old growth trees and replacing them with fast growing tree plantations?

4.6.2. Evolution of the principle of intergenerational equity

INTERGENERATIONAL PRINCIPLE: PRINCIPLE OF INTERNATIONAL CUSTOMARY LAW

The principle of considering the need to preserve ecological heritage for future generations, because of its continued inclusion in international documents has become a principle of international customary law.

following obligations that Canada and other nations of the world have made towards future generations:

(i) In the United Nations Convention for the Protection of Cultural and Natural Heritage:

“Each State Party to this Convention recognizes that the duty of ensuring the identification, protection, conservation, presentation and transmission to future generations of the cultural and natural heritage referred to in articles 1 and 2 and situated on its territory, belongs primarily to that State.” (United Nations Convention for the Protection of Cultural and Natural Heritage, 1972)

(ii) In the Stockholm Convention of 1972, the requirement to preserve our environmental heritage and the requirement to save a representative sample of natural ecosystems for future generations were being recognized:

“The natural resources of the earth including the air, water, land, flora and fauna and especially representative samples of natural ecosystems must be safeguarded for the benefit of present and future generations” (Principle 2)

“Man has a special responsibility to safeguard and wisely manage the heritage of wild life and its habitat which are now gravely imperiled by a combination of adverse factors” (Principle 4),

(iii) in UN Resolution 37/7, World Charter of Nature, 1982

Reaffirming that man [humans] must acquire the knowledge to maintain and enhance his ability to use natural resources in a manner which ensures the preservation of the species and ecosystems for the benefit of present and future generations, (UN Resolution 37/7, 1982)

(iv) in the Convention of Biological Diversity

“to conserve and sustainably use biological diversity for the benefit of present and future generations” (Biodiversity Convention, UNCED, 1992)

(v) and in the Framework Convention on Climate Change:

" to protect the climate system for present and future generations"

CHAPTER 5

Elements of negative global change (ecological change through anthropogenic activities); Instruments of societal and institutional response

-ozone depletion

-climate change

5.1. OZONE DOCUMENTS (SEE CHAPTER 3)

5.1.1. ozone: The Challenge of a Common Threat

F.H. Knelman PhD

Of all the global environmental issues, the one which has achieved the greatest level of consensual response, although not complete, is the depletion of ozone in the stratosphere. More cooperation between the two world solitudes has been achieved on this issue and there has even been an initiative to establish an equity directed fund for the non-industrialized world. While not sufficient to assume a full meaningful abatement of the threat this agreement represents a model of North-South cooperation which unfortunately eluded the other global environmental threats in Rio. One of the major reasons for the relative success of agreement on ozone depletion unlike the climate change issue is the absence of scientific uncertainty over the anthropogenic contribution to the problem.

It is valuable to have a scientific understanding of the role of ozone and the threat of its depletion in the stratosphere due to the impact of ozone-depleting substances (ODS), currently in use. It is also valuable to understand the history of this problem and the evolution towards international mediation because it reveals both the opportunities for agreement and the obstacles, as well as the related roles of the major actors.

Solar radiation is the basis of all life on planet Earth. However, in a billion years of evolution, various preconditions necessary to support life had to come into existence. Within the full spectrum of solar radiation certain factors have wave lengths which are very short and have the capacity to damage and destroy living cells of both plants and animals. The ultraviolet part of the spectrum which has wavelengths less than 420 nanometers (1 nanometer = one billionth of a meter), is particularly hazardous. In the evolution of life support capacity, some 20 to 40 kilometers above the earth's surface, in the middle stratosphere, there developed a thin envelope of ozone about 400 million years ago. This ozone layer created a shield around the earth against UV radiation through the capacity of ozone to absorb it. This enabled life to emerge protected from the destructive impact of UV.

Predictable History

"In 1974, two atmospheric scientists from the University of California, Irvine campus, F.S. Rowland and M.J. Molina, restated a fundamental

ecological principle, i.e. "Everything has to go somewhere." In this case, they were applying this principle to a class of chemicals, chlorofluorocarbons, or CFCs. At that time, the major use of these chemicals was as aerosol propellants. Being gases and particularly stable, i.e. highly unreactive, they were used to provide the pressure inside the aerosol can in order to propel the active product when the can valve was opened. They were also used as refrigerants in the heat exchangers of refrigerators and air conditioners due to their advantageous change of state properties, i.e. their transformation from liquid to gas and back to liquid. Finally given their unusual stability, they were used in the manufacture of foam insulation and other materials such as plastics.

Rowland and Molina, in the manner of sound scientific analysis, proposed a model of what happened to the CFCs once they were released into the atmosphere. Being unreactive, this model suggested they would slowly diffuse upward into the middle stratosphere some 25 kilometers above the earth's surface and finally encounter the natural-occurring ozone layer which totally surrounds our planet. Ozone (O₃) provides an ultraviolet shield, preventing the very short-wave part of the solar radiation spectrum, from reaching the surface of our planet. Ultra-Violet B (UV-B) radiation (wavelengths of 290 to 320 nanometers) is extremely dangerous, leading to skin tumors and cancer, depressing our immune system, reducing crop production and destroying critical micro-organisms. Just in terms of human health alone, each 1% drop in ozone concentration is expected to lead to about a 5% increase in two types of non-malignant skin cancer - squamous and basal carcinoma. In Canada this would amount to as many as 1.5 million new cases for people born before 2075. Some 25,000 could die, these two types of skin cancer not being normally fatal. However, an additional 3000 Canadians could also die from the fatal skin cancer melanoma. In the US, the number of cases of melanoma has increased by 83% in the past 7 years. Added to the cancer toll for Canada, some 280,000 born before 2075 will suffer from cataracts induced by enhanced ultra-violet exposure. This would also have a devastating impact on the Third World, where surgical procedures are not readily available. Then there is evidence the UV exposure depresses the human immune system with its ability to damage DNA, and we therefore can expect to see a more rapid growth in infectious diseases such as herpes and AIDS, let alone diphtheria and tuberculosis. There is also strong evidence of the vulnerability of many of the most important terrestrial and aquatic ecosystems such as soybeans, and the most sensitive of all aquatic microorganisms, the plankton species. This could be disastrous, given the function of these one-celled microscopic organisms in photosynthesis, as well as being the backbone of the marine food web. Finally, some synthetic materials, such as plastics, are vulnerable to UV damage. Damage in the US has been estimated to amount to \$4.7 billion by 2075 just on one polymer alone - polyvinyl chloride." (Shea, 1988)

In 1985 an alarming decrease in the ozone concentration over the Antarctic was first discovered. The average was down more than 50% each spring. At first it was argued by some that this was a natural phenomenon. By March, 1988, an international group of 100 experts in the relevant field (The NASA Ozone Trends Panel), reported that ozone depletion was taking place all over the globe at much faster rates than earlier predicted, and that the

culprit was definitely CFCs. There was now a hole in the layer over the South Pole. Beneath the hole, UV intensities some 2 or 3 times normal are common.

As early as 1987, the United Nations Environmental Program (UNEP) initiated the signing of the Montreal Protocol on Substances that Deplete the Ozone Layer. This was designed to cut ozone-depleting substances (ODS) by 50% by 1998 and to freeze production of the halons at 1992 levels. This was preceded by a conference in Vienna in 1985 and was further strengthened in the 1990 London meeting, which set strict timetables for phasing out CFCs and other ODS by 2000 in developed countries and by 2010 in developing countries, and established a set of rules regarding international trade in these and related products. By 1991 an expert panel of international scientists stated that some 3% of the ozone layer over the US had been depleted, permitting some 6% increase in UV radiation reaching the ground. They also argued that this could lead to some 12 million cases of skin cancer by the year 2041 and because ozone loss was at its highest in the spring and summer, it could lead to severe crop damage. Because halogenated hydrocarbons (HHC), the general class of ODS, take up to 10 years to reach the stratosphere and have a lifetime of up to 100 years (See Table I), they recommended a more rapid removal of these compounds from current use. (World Meteorological Organization WMO and UNEP, October 22, 1991). At the same time the ozone loss in Antarctica continued and a deep hole was again discovered in September 1991.

All of the above evidence prompted calls by ENGOs to speed up the elimination of ODS, to eliminate some of the proposed substitutes i.e. HCFC's, and renegotiate the Montreal Accord in 1992. Du Pont, the world's largest producer of CFCs, said it would phase out sales to industrialized countries by 1991 and halons by 1994 and would "hasten" the elimination of HCFC-22. (B. Davis and B. Rosewicz "Panel Sees Ozone Thinning, Intensifying Political Heat" Wall Street Journal (Oct.3.1991) p.B1. To complicate matters even further, scientists have discovered that decreased ozone in the stratosphere actually causes a global cooling effect balancing the greenhouse impact of CFCs in the atmosphere. Thus, the phasing out of CFCs might not decrease global warming significantly. While methane is another major greenhouse gas whose sources are coal mines, rice paddies, livestock, landfills, etc., the real culprit in climate change is CO₂. But to return to the ozone-depletion problem, there is no scientific uncertainty about the role of halogenated hydrocarbons. Complicating this issue even further is that Mount Pinatubo's eruption in June 1991, emitted more metric tons of Sulphur Dioxide (SO₂) into the stratosphere than the entire emissions of this acid-forming gas in the whole of the US in one year. This SO₂ gas diffusing into the stratosphere turns into tiny droplets of sulphuric acid, eventually covering the entire globe. The resulting haze can reflect and scatter sunlight leading to a cooling effect, while at the same time encouraging ozone depletion. All of this tends to increase the relative uncertainty of the direction of climate change.

The starter chemical compound for producing all halogenated hydrocarbons is the common natural gases, methane or CH₄. Here a carbon atom is linked to four hydrogen atoms. Each of these hydrogen atoms can be replaced by a halogen i.e.. by fluorine (F), Chlorine (CL) or Bromine (Br). Thus, the well-known solvent, carbon tetrochloride, CCL₄, has all four hydrogen

atoms replaced by chlorine while the fumigant, methyl bromide, CH₃ Br has one hydrogen atom replaced by bromine. CFCs have all the hydrogen atoms replaced by chlorine and fluorine, while HCFCs have two hydrogen atoms replaced by chlorine and fluorine. It has been known for many years that chlorinated hydrocarbons are carcinogenic, vinyl chloride being a classical example. But this requires the chemical release of chlorine and the CFCs were thought to be safe as far as cancer was concerned because of their unusual stability. Nevertheless, other ozone-depleting halogenated hydrocarbons such as CHCl₃ (chloroform), CCl₄ (carbon tetrachloride) and CH₃Br (methyl bromide) are all suspected carcinogens.

In the middle 1970's, when the ozone issue first surfaced, the response of the affected industries was totally predictable. One might imagine that having always used an exact set of ploys to forestall judgment, they would invent new tactics for each critical issue. But there has never been any major chemical or environmental hazard we have encountered when the proponent has not responded in an identical manner. When such a hazard is first disclosed, the affected industry simply ignores it, hoping it will go away. The next step is to seize on uncertainty in the scientific evidence and to use one's own captive scientists to argue against the alleged hazard, prolonging the debate as much as possible. Industry and government most often are in the same bed in this endeavour. As the evidence of the hazard becomes accepted in the scientific community, the next step is to argue economic ruin and to bring to bear cost-risk/benefit analyses. The argument is that when the hazard is examined in this way, the risks are justified and the benefits exceed the costs, or that the costs of compliance would be too large and too negative. The spectre of economic losses, particularly unemployment, is deployed to exert pressure for still further legislative delay. This ploy can move from argument to threat with considerable political clout to back it up. The final step in this process is that even after legislation, enforcement is lax or permissive. And in all of the above processes, the proponent always received the benefit of doubt and the victims, the burden of proof, yet another example of the accommodation of industry by government.

The above anatomy of the corporate response to hazards applies historically to the CFC Ozone-depleting role. In fact, the response to the ozone issue was more rapid than many other chemical and environmental hazards, e.g. D.D.T., carcinogenic food additives, etc. By 1975, a 14-agency US task force had concluded it might be necessary to regulate the use of CFCs in aerosols. In 1976 a US National Academy of Sciences panel report supported regulation. Later that year the US's Environmental Protection Agency (EPA) and Food and Drug Administration (FDA) announced a CFC aerosol spray product ban for 1978. By 1977, miraculously, most of the US aerosol industry had replaced CFCs. However, the bad news was that CFC use was widespread, particularly as refrigerants and in the manufacture of foam plastics. Then came the Reagan administration, when the powerful corporate lobbyists had found their ultimate anti-regulation ally. While DuPont, the major manufacturer of CFCs had announced in 1977 that they would move swiftly to introduce substitutes for all its use, they reneged. The US could have been totally free of CFC production by 1989. Instead, CFC production was able to overcome the rollback achieved by the 1976 spray-can ban by shifting to the cleaning of microelectronic circuits. Sherwood Rowland

took air samples outside electronics plants in the Silicon Valley of California. These samples were analyzed in his laboratories at the Irvine Campus of the University of California. Here he discovered the highest concentration of CFCs in the air, in the world. And the electronics industry has done this in full knowledge of the ozone-destroying capability of the CFCs. Added to this seemingly criminal neglect is the fact that there exists an atmospherically "clean" organic solvent derived from citrus rings, i.e. terpenes. These have been shown to do a better cleaning job than CFCs and, at the most, would increase the total printed circuit-board manufacturing costs by 1%. Still, electronics firms continued to resist the changeover to terpenes and argued for a 10-year lead time to continue to use CFCs. Even AT and T and Bell Labs had concluded that terpenes and water-based cleaners "enable cost-effective electronics assembly without the need for the use of CFC's": IBM alone uses 44,000 pounds of CFCs every day, with their San Jose plant being the biggest user of CFC-113 in the US. IBM also used TCA, a chemical implicated in birth defects. In fact, IBM settled a class action suit in this respect in 1986, but continued to use TCA. IBM continues to be intractable about the CFCs, seizing on assumed and selective uncertainties in the data. This was supported by the American Electronics Association, who have also rewritten the history of the controversy. Another sinister fact is that IBM had already experimented successfully, as early as 1979, with a water-based mild detergent, the Triton-100 Ultrasound process, before they switched to CFCs.

What was needed was a ban; A legally enforceable ban on CFCs used in the electronics industry, much as was done with aerosols. The aerosol industry predicted the collapse of its business if the CFC propellants were banned. In 1976 EPA-FDA gave them two years to get out of CFCs. Most were out in less. The industry continued to grow. A Canadian company, Northern Telecom was able to cut CFC use by 50% by 1989 and planned a complete phase-out by 1991. Sweden has scheduled a complete CFC-solvent ban by December 31, 1990. The US electronics industry had asked for at least 10 years and then was planning to shift to TCA, another hazardous substance. And a ban on CFC-113, the worst of these chemicals has been feasible for years. The substitute for CFC-113 is Bio Act, EC-7 is already available. HFC-134 is a substitute for the two major CFCs (CFC-11 and CFC-12). It contains no chlorine, only fluorine. And while it costs more, this is not purely an economic issue, but one of survival. Moreover, governments now distort markets and provide subsidies for highly undesirable products and processes and these same techniques can be applied to get rid of CFCs and change over to benign substitutes. We will have to be certain about possible toxicity of these new chemicals and that takes time, but the urgency of this problem should speed up these tests. Helium refrigerators are now moving from military to civil use and the rigid-foam insulation for refrigeration can be replaced by vacuum insulation.

In the case of the bromine compounds, the halons, used mainly as a fire-fighting chemical, these can be controlled, since they suffer their greatest losses in testing. Testing can be done using substitutes in fire-fighting training. The US Army, with the world's largest program, has already begun to switch to substitutes. But, on the other hand, they have been even more intractable than industry, hiding under the umbrella of national security.

Returning to the micro electronic industry, existing methods of solvent recovery and recycling have proved to be both cost-effective and environmentally constructive, in part because of the high cost of CFC-113. Existing methods in West Germany and Japan can recover over 90% of the emissions for reuse. Similar techniques can be used to capture CFC vapours from flexible foam manufacturing. Such a system, developed in the U.K., can recover about 90%. This problem, given the fact that 34% of CFC emissions from automobile air conditioners are due to leaks, can certainly be overcome by proper quality control and maintenance. There are on-site units for recovering CFCs when car air-conditioners are serviced, rather than simply draining them. This could be made mandatory.

There is a natural inertia both in terms of life-style and public response to environmental threats and this can be observed in the case of the ozone-depletion hazard. That is why public education programs, prominent in Australia should be instituted in all threatened regions. And since there is a premium on profit, there is also a momentum to waste and a resistance to recycle. And only when the full costs are revealed do we understand that prevention is not only the best cure but also the best economic option.

A critical region is Australia where populations have been exposed to greater UV radiation when the Antarctic vortex breaks up in the spring. The response of Australia to the evidence of alarming increases in skin cancer of all kinds has elicited a national defensive program. An information campaign on the hazards has led to profound changes in both public policy and personal habit. The government at all levels has launched public awareness campaigns which have already led to an increase in protective measure. In the schools, the government has mandated hats for children in playgrounds and efforts to build shade trees are under way as well as even altering school schedules in very sunny periods. The use of sun screens has been greatly accelerated and public measurements of UV indicators are universal. Research in Australia has been vastly expanded and it has been discovered that UV-A, the longer range of ultraviolet radiation i.e. 320 to 420 nanometers is also a threat and even though less is reaching the earth's surface, its damage effects are serious. Thus, sunscreens not effective against UV-A may be inadequate. Now that ozone depletion is occurring over the Northern Temperate Zone, the experience of Australia is very valuable in guiding our response. New information is also impacting on our understanding of the problem and thus also affecting our response. UV-C with the shorter wavelength i.e. less than 270 nanometers is totally absorbed by oxygen not ozone.

The Complicating Factors

There are several new factors that have been discovered which will undoubtedly be important in how we respond to the ozone problem. It is important to understand that the chain reaction that releases chlorine in the stratosphere which then destroys ozone, also regenerates the chlorine which then continues its destruction of ozone. By 1992 additional findings caused even greater apprehension of the ozone-depletion problem. For one thing a similar but weaker springtime ozone loss had been discovered over the Arctic, where some 10% of the ozone had been consumed. In 1991, the US Environmental Protection Agency (EPA) stated that the ozone layer over the

US. had been depleted by 4 to 8% and as a result, they had calculated that there could be some 200,000 skin cancer deaths by 2042, a doubling of the projected rate. In February 1992, the US. National Aeronautics and Space Administration (NASA) revealed that they had found record levels of CFCs in a band stretching from Hudson Bay to Europe, with a 15% decrease over the middle of North America. In 1991 the rate of non-malignant cancer and malignant cancers in Canada was over 3,000 and 46,000 respectively. US. figures were more than 10 times this rate. Also, by February 1992, the United Nations Environmental Program (UNEP) reported the link between infectious diseases including AIDS and the thinning of the earth's ozone layer. By spring 1993, the ozone layer over Canada had reached its highest recorded state of depletion. By that time the additional "aerosol factor" was discovered. Atmospheric chemists discovered that stratospheric clouds which are composed of tiny suspended ice particles accelerate the reaction between chlorine, the culprit element, and destruction of ozone. A well-known phenomenon relating to surface chemistry was involved. The tiny ice particles act as extended platforms for both the reactions that release chlorine from CFCs and also those that remove certain natural nitrogen compounds from the stratosphere. These nitrogen compounds can combine with chlorine and prevent ozone depletion. The ice aerosols require very low temperatures and this accounted for the polar phenomenon of ozone depletion. For an actual hole to develop, extreme cold is necessary which creates an aerosol vortex over the poles which contains stable ice particles. This leads to a maximum ozone depletion by the spring when sunlight returns and accelerates the chain reactions that lead to the destruction of ozone until the developing warmth destroys the vortex in the summer. The above stratospheric aerosols are not only formed as ice particles but also arise from the burning of fossil fuels with the formation of sulfur compounds or sulfates. This finding explained the ozone depletion occurring over temperate and even tropical zones. However, they took on greater significance in 1991 where Mount Pinatubo, in the Philippines, erupted spewing out some 20 million tons of sulphate aerosols into the stratosphere. Measurements of ozone depletion due to El Chichon, the largest eruption in 50 years in 1982, also led to the above observation. Pinatubo's impact is also being felt over tropical regions. The depletion over the Northern Hemisphere is now partially attributed to Pinatubo's eruption. Nevertheless, the long-term anthropogenic impact are the ozone-depleting chemicals and measurements of chlorine in the stratosphere is still increasing. Holes form only when the life of the polar vortices are stable for long periods. The average for the Arctic is about 70 days but they can last 100 days or more under conditions of extreme cold. The hole is formed with the break-up of the vortex in the spring. Still another complicating factor is the role of hydroxyl radicals (OH) which help to stabilize the planetary atmosphere. This radical is the most important natural oxidizing agent in the atmosphere even helping to break down industrial halocarbons and has been referred to as the "tropospheric vacuum cleaner." According to a study by the Institute for Energy and Environment (IEER), OH levels have decreased in the past few hundred years primarily due to increases in methane and carbon monoxide from anthropogenic activities. These latter chemicals react with OH, a natural constituent of the atmosphere, leading to its depletion and as a consequence to higher levels of CFCs reaching the stratosphere" (IEER, 1993)

“Ozone depletion in the stratosphere impacts on atmospheric temperature. By permitting UV radiation to reach the earth and then being partially absorbed by gases in the atmosphere, there is a warming effect. At the same time the stratosphere is being cooled. Thinking in terms of a greenhouse, if solar energy is being trapped inside the greenhouse i.e. in the troposphere, that heat is no longer radiating back into the stratosphere. Lower stratospheric temperatures accelerate the chemical reactions that deplete ozone. Thus, global warming and ozone depletion are also related.

There are other complicating factors that relate to both the hazards of global climate change and ozone depletion. For example, UV radiation can destroy the microorganisms in the surface water of the oceans which are the largest carbon sink on earth, absorbing carbon dioxide and releasing oxygen. This damage could lead to a large build-up of CO₂ in the atmosphere and lead to enhanced global warming. Volcanoes also inject CO₂ into the atmosphere but the particles they produce have an opposite effect i.e. of shielding solar radiation from reaching the earth. The destruction of phytoplankton also reduces the quantity of oxygen in the atmosphere while increasing CO₂. A further complication is the reduction in oxygen in the atmosphere due to forest destruction and fossil fuel combustion, seriously disrupting the carbon cycle.

There is also a complication in the use of sunscreens. There is some evidence that key ingredients in these products may themselves be hazardous. For example, one of the most popular of the new UVA-blockers is Parsol 1789, a derivative of dibenzoylmethane. Like the earlier PABA, there are suspicions of possible skin damage including allergic reactions and even the creation of cell mutations. At least one group of scientists have argued that sunscreens may even be a factor in melanoma (Garland et.al., 1993), although the Garland brothers admit their study is by no means definitive. They point out that the increasing incidence of melanoma has coincided with increased use of sunscreens since the mid-1970s. But to complicate the analysis, these earlier sunscreens were PABA-based and did not block UVA.

To repeat our analysis therefore, CFCs belong to a class of compounds of halogenated hydrocarbons. Halogens are a group of elements including chlorine, fluorine and bromine, which form compounds with hydrocarbons, compounds of carbon and hydrogen. CFCs are compounds containing chlorine, fluorine and carbon. But there are also a number of other compounds in current commercial use. Some of the other compounds have not been limited to the degree of CFCs and can pose new problems in the future. Table I shows the major compounds in this category in use in 1985. But a very important factor that is not shown in this table is the relative rate of ozone destruction of each of these chemical compounds. For example, Methyl Bromide, CH₃Br, a toxic pesticide used all over the world as a fumigant, releases bromine into the stratosphere. Bromine has between 30 and 120 times the ozone destructive capacity of chlorine. Yet it is not currently subject to international controls. Moreover HCFCs, which have one chlorine atom less than CFCs were heralded as the effective alternative by both governments and producers since it was argued that they reduced ozone destruction by 90%. But we now know that HCFCs, over time frames of 5 to 15 years, are 5 to 25 times more destructive than originally thought.” (Friends of the Earth, Ottawa, "Save Our Sky", 1992)

Table II illustrates the relative contribution of ODS by function. As we have seen the aerosol spray application has declined radically while the use as solvents and in the production of foam products has increased dramatically. A greater impact of refrigeration and air-conditioning can be expected as India and China absorb these applications on a mass scale. What is also important to understand is that the corporate actors predicted economic chaos when the use in aerosol sprays was prohibited and yet the transition went extremely smoothly. Admittedly the refrigeration application is more complicated. Finally, there should be no confusion about the ozone problem in the stratosphere compared to ozone created at ground-level by photochemical smog. The latter poses a serious health hazard but is not related to the ozone in the stratosphere.

Table II

	Percent
	3.1
AEROSOL SPRAYS ¹	
FIRE-FIGHTING (HALONS) ²	12.0
REFRIGERATION AND AIR CONDITIONING ³	15.6
AUTOMOTIVE AIR-CONDITIONING ⁴	16.2
SOLVENTS ⁵	21.7
FOAMS ⁶	27.5
MISCELLANEOUS	3.8
	<hr/> Approx 100%

NOTES:

1. CFCs are banned as propellants in Canada, the US., and Western Europe.
2. Halons are usually brominated hydrocarbons.
3. There are for household 4 commercial use.
4. For all forms of transportation.
5. A very large uses of ODSs is the microelectronics industry as solvents for cleaning circuits.
- 6., Foam plastics and insulation are the single largest use.

SOURCE: US. Environmental Protective Agency (totals do not add to 100.00 % due to recording of percentages)

We have mentioned that very simple methods are available for the public to protect themselves. Among these are the use of hats and sunscreens. Just as ground-level ozone alerts have been issued for days of bright sunlight and photochemical smog, Australia and Canada, are now publishing an ozone-depletion threat index in terms of the impact of UV. Figure 1 shows the UV spectrum in units of one millionth of a meter of wavelengths i.e. 1000 times greater than the nanometer. Note that UV-C is absorbed by oxygen and UV-B by ozone. Solar energy in watts per square meter measures the amount of solar radiation. A small amount of UV-B is transmitted, although most is absorbed by ozone.

In chemical terms the basic reactions of ozone destruction are as follows:

1. $\text{Cl} + \text{O}_3 - \text{ClO} + \text{O}_2$
Chlorine atom + ozone - Chlorineoxide + Oxygen.
2. $\text{ClO} + \text{O} - \text{Cl} + \text{O}_2$
Chlorineoxide + oxygen atom - Chlorine atom + Oxygen
- 3, $\text{Cl} + \text{O}_3 - \text{ClO} + \text{O}_2$ (same as #1)

It is in this way that the chlorine atom is regenerated in these reactions to continue its destruction of ozone. Now, keeping in mind that the actual size of these chemical atoms and molecules is infinitesimal compared to the space they occupy, then only chance encounters lead to actual chemical activity. However, if there is in that space a large amount of particulate matter to which the reacting chemicals can adhere then the number of reactions increases dramatically. This occurs on the surface of tiny ice particles in the clouds of the stratosphere over the poles or on the surface of sulfate particles spewed out by volcanoes into the stratosphere. If in addition chlorine is also injected into the stratosphere from these volcanoes that would add to ozone destruction. What the above equations do not show is that ozone reacts with CFCs to produce chlorine in the first place, then leading to the above reactions where one chlorine atom can destroy thousands of ozone molecules.

Recent findings have questioned the efficiency of most commercial sunscreens with high protection factors against UV-B but which are transparent to UV-A. UV-A makes up more than 90% of the ultraviolet energy in the solar spectrum Laboratory data indicates that UV-B sunscreens may not be effective in preventing basal cell carcinoma and melanoma (Garland et al., *Annals of Epidemiology* 3: 103-110, 1993). Another interesting discovery is the possibility that an excessive exposure as a child or intermittent exposure i.e. a severe sunburn, can be more impacting than continuous exposure. This also occurs in the case of exposure to ionizing radiation. Episodes of overexposure at ages 15 to 20 appear associated with increased risk of melanoma. The above study arose because of the rapid increase in the use of sunscreens since the mid-1970s and nevertheless the dramatic increase in skin cancer since then Melanoma is now the second leading cause of cancer death in white males, 15 to 35 years old (Garland op cit.)

Two interesting developments in the treatment of skin cancer are six new vaccines containing tumor molecules. It is hoped that these will spur the immune system to recognize melanoma cells and produce antibodies and white blood cells to fight them. Another hopeful approach uses infusions of alpha interferon and inter-leuken-Z, which are natural proteins in the body that stimulate the proliferation of immune cells. In some cases, these infusions have been found to be as effective as surgery (S.R. Undy, Beauty 103. Spring, 1993)

However, the best defence against UV radiation is prevention, not only on the part of individuals but society as well. A combination of clothing particularly hats, sunglasses and wide-band sunscreens is the first line of defence. Education is also very important. But most important of all is to stop the production and use of all ozone-depleting chemicals as soon as possible.

Residual Controversy

It is valuable to pursue this issue of the difference between the climate change and ozone depletion problems. Essentially the former has far higher levels of scientific uncertainty. That is, within the scientific community, to which society looks to arbitrating conflicts which fall within the realm of scientific validation, there are major disagreements over the hypothesis of global warming. It was this controversy that former President Bush used to refuse to sign a climate change treaty incorporating targets for reduction of climate-altering emissions. Even the language of the climate controversy has altered in time with global warming giving way to "climate change" and "greenhouse gases" giving way to "climate altering emissions." One of the intrinsic problems with the climate change issue is the sheer complexity of the global climate system and the multiplicity of the interacting factors. On the other hand, the ozone depletion issue, while not completely free of controversy and being a complex system as well, although far less so than climate change, is relatively free from major controversy. The facts are well established. There is a direct correlation between the increase of certain chemicals, anthropogenically produced, and the depletion of ozone in the stratosphere and consequent greater quantities of ultraviolet radiation (UV) reaching the earth's surface. And while one might have hoped that the precautionary principle might have led the world to more meaningful action to avoid costly climate change, one must also be aware that economic determinism is a powerful factor in all environmental regulations, even in the ozone depletion issue, as we shall see.

While the international scientific community is as close to unanimity on the ozone depletion threat, there are the inevitable confusionists/obstructionists. The latter include Regalio Maduro an editor with the Lyndon La Rouche tabloid, 21st Century Science and Technology. La Rouche is the notorious ultra-conservative who has run for president several times and supports very questionable technologies such as fusion. Maduro's book "Holes in the Ozone Scare: The Sky Isn't Falling" has been described by Dr. Sherwood Rowland, the original discoverer of the ozone-CFC relationship and past President of the American Association for the Advancement of Science as a "good job of collecting all of the bad papers (in the field) in one place" (No Sweat News, P.O.Box 10346, Olympia, WA 98502, Summer 1993,

p.9) Another member of this group is Fred Singer, whose organization Science and Environmental Policy Project is funded by a "blood brother" of LaRouche, the Reverend Sun Myung Moon. The former chairperson of the US. Atomic Energy Agency (USAEC) and later one term Republican Governor of Washington State, Dixy Lee Ray, has added her contribution to this strange group with her book "Trashing the Planet." She was so implacable in her blind defence of nuclear power as AEC Commissioner that she even embarrassed her colleagues. It is not surprising that visceral anti-environmentalists such as columnists George Will and Alton Chase and radio show host Rush Limbaugh, together with the John Birch Society, Bob Hotzknecht's "Ozone Truth Squad" have been banded together to attack the ozone depletion issue as a hoax. In fact, all the information used by these people comes from Maduros' book and thus they all rest on a firm bed of house feathers. In fact, Maduro has dared to repeat a version of Ronald Reagan's statement "trees cause pollution" with "Mother Nature is the worst polluter." (No Sweet News op. cit. p.10) The lesson from all of this is that it is dangerous in reacting to the abuses of science and technology to throw out the baby with the bath water. In particular it is important that considerable amounts of both ignorance and arrogance can easily lead to being badly wrong in full voice and, worse yet, with a considerable following (Rowland, 1993). It is of great interest that ultra-conservative groups would support the "ozone backlash" (Taukes, 1993).

In a study (Boston, 1993) of the anti-environmental movement what is revealed is a connection between the extreme right, the corporate world and captive scientists, all sharing an almost theological dedication to the imperative of the "bottom line." For them environmental protection is virtually subversive since it threatens to subtract from the perfection of the free market system. What is revealed in this analysis of various organized groups comprising the anti-environmental movement is a clear case of conflict of interest i.e. a pseudoscientific front funded by corporations whose interests are threatened by environmental hazards. Real or fabricated issues of uncertainty are seized upon to delay regulations in direct contraventions of the precautionary principle. The idea is to pollute now and if necessary, pay later. But there is an ideological fervour added to the brine of ignorance and malice which is clearly part of the New Right agenda.

One of the controversies involved in the ozone debate relates to volcanoes which eject very large amounts of chlorine (as HCl). Both Maduro and Dixy Lee Ray, in their books, argue that this chlorine reaches the stratosphere and dwarfs the anthropogenic impact by thousands of times. Dr. Fred S. Singer who has argued against both the ozone depletion thesis and global warming went so far in 1992 as to call for a presidential commission to investigate the "ozone hoax." However, he recently reneged and called the above claims i.e. chlorine from volcanoes "red herrings and completely false" (No Sweat News op. cit., p.11) This has not prevented the Moonie daily, the Washington Times, from continuing to support the "hoax" idea. An excellent paper on chlorine in the stratosphere by two expert authors have laid the issue of volcano injection to rest. They show that some 90% of the chlorine ejected does not reach the stratosphere but is "scavenged" by the huge amount of condensing water in the volcano plume, falling down as dissolved acid (Tabazadeh and Turco,1993). Also, it depends on whether the volcanic eruption is violent or merely a slow oozing. In the case of Mt. Erebus in the Antarctic, which has been at issue in the debate, this exception is of the latter kind. Thus, the great majority of chlorine in the stratosphere derives from CFCs. Nevertheless, some chlorine from volcanic eruptions does reach the stratosphere and there has been a tendency in the past of mainstream scientists to ignore this. Thus El Chichon eruptions in 1992 added some 10% to the chlorine content of the stratosphere (Tabazadah and Tueco, 1993). It should also be pointed out that dominant scientific theory has often been incorrect, yet strongly upheld long after anomalies appeared which were ignored. In the history of science this is the norm. However the contestants were always two groups of scientists using a common method of validation. In the case regarding the alleged "ozone hoax", the two sides are very different. Those supporting the hoax hypothesis have done so out of political, theological, polemical and ideological reasons and operate within an institutional context that is outside of scientific accountability. They are much more like the "creationists" in the debate over evolution. They are part of a general conservative agenda which is fundamentally anti-environment, pro free enterprise and being armed with a little knowledge and much error they have embarked on a dangerous course. Fortunately, the world community has ignored them in the case of the ozone issue. They are more akin to a flat earth society. Nevertheless, a cautionary note is necessary in that the history of science is replete with examples where the dominant theory held by a majority turned out to be invalid and was eventually overthrown by a courageous minority.

A Case of Relative Success

By July 1991, 70 nations who accounted for over 90% of global CFC use had signed the convention (The Montreal Protocol on Substances that Deplete the Ozone Layer). About 30 of these are developing nations. Mexico and Egypt being two of the earlier signatories. This agreement involves many of the critical issues that emerged in Rio, the funding issue possibly being the most significant. In many ways the Montreal Protocol broke new ground and to a degree overcame this basic obstacle to common action. The cost of converting to ozone-friendly substitutes (OFS) would be prohibitive to the non-

industrialized world. And if anything, refrigeration is more critical to the South than the North. The problem is somewhat more complex than is apparent. Refrigeration technology is sensitive to the chemical properties of the refrigerant. This means that we cannot simply replace ODS in current refrigeration equipment with Ozone Friendly Substances (OFS). The refrigerator requires redesign and some 90% of the cost of complying with the Montreal Protocol will be accounted for by this conversion. (Mackenzie, 1990). Thus, conversion for the poor countries involves both an additional financial burden as well as a matter of technology transfer. In response to the above concerns, the treaty was amended in 1990 to create a \$160 million fund to be provided by the major CFC users and to assist the developing countries to comply. Certain facts are important to understand this complex situation. At present, the South uses only some 16% of the total CFCs while the North consumes 84% (Rosencranz and Milligan 1990). Examining China and India alone, they now account for 40% of the world's population, yet account for only 5% of CFC use. In India, refrigeration accounts for 75% of all CFC use with 6 million refrigerators now in use but expected to increase to 80 million by 2010 (Touche Ross Management Consultants, 1990). In China the current number is 30 million but will be some 60 million as early as 1996 and annual production reaching 11 million units (Isaksen et al. ,1990). The financial burden to convert all of these is huge and in recognition of this, the Protocol offered an additional 80 million to the fund if India and China would sign. In June 1, 1991, China agreed to sign by January 1,1992 (World Resources Inst. 1993, p.152). Two points that are important to keep in mind is that the growth potential in the use of ODS in the developing world is very great and even modest increases in CFC releases are significant in ozone destruction. One molecule of CFC can participate in the destruction of 100,000 molecules of ozone, a process that goes on for some 100 years. There is a further problem of ownership of the replacement technology which resides in the private sector which is not inclined to provide this technology free of charge. Both the design and the substitute refrigerants are a matter of proprietary rights involving patents held by international corporations and thus licensing is involved with royalties plus the 2 to 3 times extra cost of replacement chemicals. Thus, the additional \$80 million added to the fund to attract China and India, is simply insufficient when we are dealing with hundreds of millions of new refrigeration units by early in the next century.

An additional complication is that patents on CFC productions have now lapsed so India, which is a fairly major chemical producer, pays no royalties on its own CFC production. Thus, India's request to free access to the whole new refrigeration technology is being resisted by the international corporations who want protected access to that market (Cutter Information Corporation, 1990).

Alternative refrigeration technologies are available such as ammonia, helium and propane - based units which are patent-free and are more efficient and cost far less than CFC replacement chemicals now being produced (MacKenzie, 1990; Rowland,1990. Isaksen, et al.,1990) For all the problems discussed above, developing countries have been given a 10-year grace period as an amendment to the Montreal Protocol. This treaty also restricts trade on CFC products which could impact on India's program. There are also independent innovative developments in Brazil and China which could be

significant. China has opted for helium refrigerators and Japan for ammonia. While we are not confident that the current treaty will be effective, timely and provide adequate additional funding for the South, there is no question that the Montreal Protocol is a model for international agreements on threats to the global environment. Given the long-lasting and pernicious impact of ODS, the necessary time for total conversion of the existing inventory of hardware and the financial aspects including the primacy of the profit motive and the size of "additional funding" required, we again are not confident of truly effective coping with the ozone depletion threat.

Problem Substances

In Chapter V we dealt with the frustration at Rio due to various techniques of opting-out or creating loopholes. Two substances, Methyl Bromide (CH₃Br) and methyl chloroform CH₃Cl are both serious ozone depletors. The 1996 phase-out of all CFCs nevertheless created a very serious loophole in the case of methylchloroform. Certain applications deemed "essential" would be exempted and continued use would be permitted due to "special needs" or the Canadian contribution of "societal well-being" as one of the main criteria of what constitutes the "essential." This loophole, predictably, was engineered by the US and its the current use of methyl chloroform is the same order as the current total production of CFCs of some 2 billion persons in the non-industrialized world, including India and China (F.O.E. Ottawa, 1992).

Methyl Bromide is globally as a fumigant for soils, buildings, such a food processing, plants and other physical commodities. Keeping in mind that Bromine is some 100 times as effective in destroying ozone as chlorine, the fact that methyl bromide is not currently controlled by the Montreal Protocol is a glaring omission of great significance. In fact, a ban on methyl bromide would be equivalent to advancing the global phaseout of CFCs by some three years. We are witnessing a repeat of the tragedy of delaying the total elimination of CFCs at the time of the aerosol controversy. The same stalling techniques have been carried out by industry with the support of governments. The powerful agricultural lobbies in Canada and the US have convinced governments that a phase out would lead to a global agricultural crisis. These governments have learned nothing from the past. Methyl bromide is also released in large quantities in polyester manufacturing.

It is of interest that the entire US supply of methyl bromide fumigation gas is produced in Arkansas and Mr. Clinton like Mr. Mulroney has succumbed to agribusiness pressure. In November 1992, at the meeting in Copenhagen of the Montreal Protocol group of UNEP, proposed reductions in methyl bromide were blocked by some major Mediterranean countries who are large users. The US. proposal was to put forth a "compromise" where by a non-binding resolution to "evaluate" controls by 1995 "aims" at establishing target dates for phase out. The US. EPA then responded to pressures by major environmental groups by recommending phaseout by 2000, against a frantic campaign by the US. Department of Agriculture (USDA) to obtain a reprieve on the basis of damaging import export trade. USDA makes the use of Methyl bromide a condition of entry for a variety of products from Chile and other countries. It has also become a replacement for ethylene bromide which was banned in the late 1980 by EPA. There is no existing tolerance level for

methyl bromide even though it is a suspected carcinogen, the basis for banning ethylene bromide. There have been numerous warnings by scientists of the great risk of methyl bromide as a neurotoxic gas which ends up in literally every food product in the world (L. and B. Bowie, 1993)

What the above proves is that when the corporate world adopts a stand-fast strategy using the threat of economic or in the case of methyl bromide of an agricultural disaster and government capitulates the search for replacements is impeded and the problem is attenuated. We heard the same refrain over every CFC application. Phaseout targets are not an outright ban but they are the necessary force to seek replacements. But even then, there is the problem of the politics of phaseout which creates dangerous delays. Thus, even the dimensions of the global threat of ozone destruction has not led to truly meaningful resolution.

Concluding Thoughts

The ultimate obstacle to a clear solution to the ozone threat is surely the fact that big business and big government, in bed together, oppose threats to economic and political power, even when they and their families are also potential victims. We do not mean to attribute evil to this force but as we have analyzed social systems in our opening chapter, corporations and governments are captives of the internal dynamics of these systems. ODSs are used in 135 billion of equipment in the US. alone, in 100 million home refrigerators, 90 million auto air-conditioners, 100,000 air-conditioned high-rises and in countless rigid foams and flexible foam packaging and other products. Corporations resist changes, particularly rapid ones, in any existing trade or technology because they claim this could have negative economic impacts. Ultimately governments must find the will to regulate the use of dangerous chemicals. But governments are not usually independent of industry. Even in the case of refrigerators which would require redesign to accommodate non-ozone-depleting chemicals, the bulk of CFCs are in the insulation and not in the cooling systems i.e. a typical home refrigerator has 2 1/2 lbs. CFC-11 in the insulation and 8 oz. CFC-12 in the coolant. We could eliminate CFC-11 in insulation immediately in all new units. Just applying across-the-board mandated recovery systems from solvent applications and junked appliances can control a significant percent of current emissions.

Historically aerosol use of CFCs reached 425,000 tonnes per year in 1974 and declined to 50,000 tonnes by 1990 (Chemical Manufacturers Association) while non-aerosol use rose from 600,000 tonnes in 1972 to over 800,000 tonnes in 1988. The ban by the US. in 1978 was the significant factor. A ban is always far more effective than a phase out. While it is true than an outright ban would cause some discomfort, it would limit the problem to current use and on the sales shelf but no further ODS would be produced, forcing suppliers to attend to alternatives in a truly determined way. This is exactly what happened with DDT and exactly the same protest was launched by the producers. In fact, a Du Pont executive testified before a Congressional Committee in 1974 that "The chlorine-ozone hypothesis is at this time purely speculative with no concrete evidence to support it" and then promised that if it was proved to be a threat to health" Du Pont would stop production. They did so, 14 years later. Yet the ban in 1978 in the US. simply led to new

applications. Keep in mind that the threat was established by then but there was no operational precautionary principle, as there is none today, being "non-binding." The major CFC producing nations stalled negotiations leading to the Montreal Protocol but pressure by UNEP and environmentalists prevailed. There is no question that DuPont was caught with a "smoking gun." The London agreement of 1990 agreed to phase out all CFC productions by 2000 and added some other ODS but with notable exceptions and notorious loopholes. Keep in mind that the Montreal Protocol would have permitted CFCs to double by 2050. Finally, the ban in aerosol use which was resisted on the grounds of massive unemployment, did not. The threat is by no means over and further damage is inevitable. We feel this is a case of global environmental crime but that is not the normal judgment of what constitutes a criminal act such as the murder of a single individual. Here we have a case of structural violence in numbers equal to genocide.

There is great resistance to the "green fridge" which uses propane or butane as refrigerant and pentane-blown foam insulation. There is a combined reluctance by government and industry that are supporting the HCFC and HFC systems. The reluctance comes from both the chemical manufacturer DuPont, the major producer, as well as the refrigeration industry and national governments in general. At least the US altered its labeling requirements as of May 15, 1993 whereby major ozone-destroying chemicals in the product or used to manufacture it must carry the label "harms public health and the environment by destroying ozone in the upper atmosphere" (ODNOT, 5/6/93). Nevertheless, DuPont is moving to HCFCs which are still 25% as depleting as CFCs. Moreover, DuPont still uses CFCs to manufacture its HFC replacements even though the Montreal Protocol bans CFC feedstocks. The major shareholder of DuPont is Seagrams and there is now a move to boycott this company's products (Tropicana juices, Seagram's Coolers and Liquors). Not only does HFC production require CFCs but carbon tetrachloride (chloroform) a serious ozone deplete in a by-product.

There is a deception in the marketing of HCFCs as an "ozone-friendly" product. HCFCs deplete ozone over a shorter time period while an indicator, the "ozone depletion potential" (ODP) used by regulators such as EPA, spreads the chemical's action over 200 to 500 years. In the shorter time horizon much more relative damage will occur from HCFCs. Incidentally, the former director of US EPA, William K. Reilly has now joined the Board of Directors of DuPont. One can only wonder at the possible conflict of interest between Reilly's previous support, as EPA Director, of HCFC replacements for CFCs, and his current position to protect that decision.

The major corporation involved in the production of CFCs is DuPont. It is this company that has defended the continued use of CFCs long after the ozone-depletion threat was documented. For years it denied this threat and promoted CFCs as safe and non-toxic, working laboriously to deter and delay legislation on aerosol use in the 1970's. After the 1978 ban of CFCs in non-essential aerosols, Du Pont continued to develop other applications, despite being fully aware of the ozone-depletion threat. By the end of 1980 sales of CFCs as refrigerants, cleaning agents and foam insulation products had exceeded previous production. As the ozone-depletion issue surfaced DuPont shifted to HCFC production despite their knowledge that HCFC -22 for example is three

to five times more ozone -depleting in a 10 to 20-year time frame than CFCs. DuPont had quickly patented HCFC and HFC, the latter containing no chlorine but being a powerful greenhouse gas. In fact, both of these are global warming gases. By 1990, DuPont was producing 460 million pounds of CFC-11, CFC-12 and HCFC-22, 45 million pounds more than in 1982 (J. Doyle "Hold the Applause: A Case Study of Corporate Environmentalism as Practiced at Dupont" FOE, Washington D.C. Aug, 1991.

The fact is that HCFCs release their chlorine more rapidly than CFCs and so the greatest impact is over a much shorter time frame. The method developed to measure the impact is known as the "Ozone Depletion Potential" or ODP. The problem with this indicator is that it measures the long-term impact but underestimates the short to medium term which is the more critical at present, due to the cumulative impact of CFCs already working their ozone destruction in the stratosphere. UK government scientists are rejecting ODPs preferring to use "chlorine loading potentials (CLPs) which are direct measures of how much chlorine is getting into the stratosphere in the medium term. When calculated in this latter way, the ozone depletion potential of HCFC 22 is a significant proportion of that of CFC-11 over the medium term. In fact, therefore ODPs seriously underestimate the impact of HCFCs. Chlorine loading is expected to peak over the next several years and the use of HCFCs will add significantly to this period of maximum risk. Finally, HFC 134 a is a greenhouse gas, 3200 times stronger than CO₂ (Greenpeace "HCFCs Hidden CFCs, Washington DC April 1992 - a briefing on the threat)

Readers should understand that ultimately such policy-assisting economic techniques as risk-cost benefit analysis (RCBA) can justify a continuance of environmentally hazardous operations through narrow economic criteria such as jobs and profits, involving placing economic costs on human morbidity and mortality. The huge investment of DuPont, originally in CFCs and now in HCFCs, despite the knowledge that other alternatives which posed no threat to the ozone shield were available is a typical response pattern. We saw this same response in the case of IBM and microelectronic solvents. Our final judgment is that while the ozone-depletion problem experienced considerable progress to a common solution, there is still a residual probability that the final judgment could be "too little - too late."

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In-house Library:

Additional readings on ozone depletion and climate change

CHAPTER 6

Elements of negative global change (ecological change through anthropogenic activities); Instruments of societal and institutional response

6.1. GENERAL ENERGY ISSUES

- **Energy issues**
- **Resource extraction issues**

6.1.1. Energy: the measure of all things

Introduction

It can rightly be said that energy is the measure of all things, sacred and "profane." From the necessities to the luxuries of life, energy provides the myriad goods and services that sustain lifestyle and life expectancy. The military, economic, and political power of nations and the sanctity of their sovereignty rests on energy. Energy serves what we have, what we wish to keep, what we hope to increase, and what we feel we must take away from others. Earlier in this century we dreamed of new, exotic, boundless forms of energy, a panacea for all the woes of the world. Nuclear energy was part of that dream. Now, that it is no longer dream but reality, it has become tarnished. Energy itself has a dark side — its negative environmental and social impacts. The limits to waste are hastened by current energy technologies. The casual assumption that energy consumption and the level of economic development are closely correlated — as with the belief that conventional economic progress is the source of all that is good — is again being challenged.

Our way of life needs ever-increasing sources of energy to fuel ever-increasing consumption. The metabolism of the system provides an internal dynamic that gears it to grow: energy is the "source of that growth. At the same time no other organized social activity is more fundamental or more socially and environmentally implicating than the full cycle of energy production and consumption. In terms of social impacts, energy is also highly correlated with the nature of economic and political institutions, with conflicts between dominant and challenging paradigms and with the most current of global debates on development and environment on growth and limits and therefore on the entire social system, values and lifestyles. The choice of energy futures is therefore a choice between vitally different visions of social evolution and sustainability. The word "power" provides the critical semantic connection between physics and politics in that an important choice in the current debate is between large centralized elitists systems and smaller decentralized democratic/participatory systems. The corruptibility of power is at once physical and political. The control of the former is almost always translated into centralized political and economic power. But cutting across these longer-term energy futures is a more fundamental issue, that of choosing the best energy policy, economically, politically and environmentally in the short to medium term i.e. in the next few decades. Currently fossil-fuels dominate the global energy scene and are the source of severe global social and environmental problems. The irresistible conclusion is that ultimately all

non-renewable sources of energy are doomed to extinction. Even hydro-power experiences a corrosion of potential as silting is also inevitable. Thus, we are reduced in the long-run to choices which are sustainable. Moreover, given the obstacles to change and the time required for implementation we are forced into transitional paths of sustainability from the present to the long-term future. In that path we are constrained to alter an entire inventory of hardware and attitudes, both resisting rapid change.

As we have pointed out, the production and consumption of energy impacts on the environment more than any other social activity. It is because of this that energy policy choices can be the means of mediating the level of environmental degradation. The policies that yielded the highest returns, economically and ecologically, and above all permit the purchase of that most valuable of all commodities, time, are conservation and efficiency (C and E). With this purchased time, we can match the learning curves for various alternative energy forms with the social and environmental needs for the future. In economic terms, we can have a pie of projected size and eat it. We can actually reduce energy-consumption over the mid-term while maintaining reasonable developmental goals. This reduced consumption is supportive of environmental protection, reducing both waste and depletion of critical resources. And perhaps most important of all, we can democratize our energy future, permitting it to become a national participatory dialogue. This is a necessary operation, since citizens are legitimate actors in this future, being the major victims or beneficiaries.

At the same time, as we have suggested, energy production and consumption are also highly correlated with the nature of economic and political institutions, impacts on the environment as well as values and lifestyles. The resolution of conflicts between too little and too much, lies in matching energy technologies and social institutions in such a way as to conform to ecological principles whose design is survival and stability. And, of course, we must subscribe simultaneously to environment and equity, for both are essential to survival.

A massive C and E program accompanied by a nuclear moratorium, would not only purchase the time required to complete the R and D on alternative energy options, but would also enable us to seek solutions to the most serious of problems associated with existing nuclear power — reactor safety, waste management and storage and proliferation. It appears eminently unethical to proceed with any expansion of nuclear power while these unresolved problems exist. the only argument now being offered is based on the blind expression of faith by nuclear proponents. (Leach, 1979; Flavin et al. 1988; Lovins, 1976; Brooks, 1981)

“The broad spectrum of our conservation/efficiency options includes the techniques of demand management, the radical improvement in first and second law efficiency, waste energy recuperation, decentralized supply utilizing the combustion of wastes, co-generation and appropriate end-use matching. At the same time, we will have to deliberately destroy our present market economy so that the allocation of capital between new supply and conservation/efficiency can support the latter program. The energy market is already distorted by huge government supply subsidies and the accumulation of externalities. We are proposing counter distortions and reversal of role-playing on the part of energy suppliers, a process already begun by the

utilities. The powerbrokers who have been the major recipients of a distorted market for supply may resist counter-distortion. We must give added value for durability, life cycle cost, efficiency and reduced social and environmental debt. Through a combination of incentives and disincentives and tax credits and penalties we can catalyze the transition.

In the energy sector, the volume of rhetoric in support of free market principles is only matched by its violation in enormous social subsidies, overt and covert, in support of conventional technologies. The nuclear industry in Western Europe, the US and Canada has received such support to the tune of billions of dollars. In Canada alone, a variety of subsidies to the nuclear industry add up to tens of billions. In addition, there are the huge social and environmental subsidies for fossil fuel exploration and production. In fact, the entire market is "rigged" by its failure to internalize the social and environmental costs associated with these technologies, including the costs of acid rain, climate change, air pollution, etc. Moreover, the market favours low initial cost, while being blind to lifetime and replacement costs which sometimes favour renewable over conventional technologies, and almost always favour conservation and efficiency. A critical area of biased social subsidy is in the energy R and D field, where nuclear and conventional receive a large fraction of funding. Moreover, in the nuclear weapon states such as France and the US, a large proportion of civil nuclear costs are absorbed by the military and are hidden in the integrated fuel cycles. What we need to do is to counter-distort the market in favour of conservation, efficiency and renewables, or to make the market truly free and fair, which would surely favour these latter options.

The ultimate choice of energy futures is between renewables and nuclear fission and fusion (hot or cold). Our policy will buy the time needed to make a rational choice. Our conservation/efficiency program (including second law efficiency and end-use matching) can be supported by a clean fuels program designed to radically reduce urban and trans-boundary pollution. At the same time, we must face up to the associated threat of climate change and ozone depletion. The price tag for living in an air-conditioned jungle and supporting our love affair with the automobile must include all the social and environmental costs in a forum of public accountability and information equity. Moreover, in the past decade we have entered a period of critical choice. If we are to avoid global environmental catastrophes, the adjectives associated with the energy debate, "soft" and "hard", have to be changed around. the supply-side "hard energy path" is neither economically or environmentally viable, and the so-called "soft paths" are in effect "hard", enabling us to achieve economic goals while reducing environmental impacts" (Lovins, 1977); Lovins et al (1989).

The Anatomy of the Energy Debate

When one examines the current energy debate, the dichotomy of views coalesce around three critical areas:

1. Social Structures and Systemics;
2. Social Processes for Policy and Decision-Making and Regulating Anthropogenic Activities;
3. Appropriate Means for Ethical Goals/Ends

Social Structures and Systems:

Here the division is whether the most urgent global problems are a consequence of existing social structures and systems or whether existing structure and systems are, if not the best of all possible worlds, then only require modest modifications. On the other side, the view is that these problems are directly the consequences of existing sociopolitical structures and systems and what is required is a radical restructuring, if there is to be any hope of solving the major global problems (see Knelman, 1980 a; Knelman, 1989). The disagreements, therefore, are not the identification of these problems or the virtue of solving them, but whether a global perestroika would be required to solve them.

By inference, the division could also be expressed as between those who adhere to extrapolated futures (with minor reform) and those who argue for invented futures. This often finds expression in the energy debate with captive scientists arguing for an eternal future of fission and fusion while independent scientists tend to emphasize conservation, efficiency, solar and solar-related technologies (Johansson et al. 1973), which are far more decentralized and amenable to community direction and needs (see Knelman, 1979). This argument has been extended from domestic energy policy to the energy policies for both the developed and developing world.

Social Processes

In many ways the division of view in this area derives almost directly from the division over structural change. Those supporting a world of business almost as usual, tend to defend the role of the expert as natural and exclusive adviser to the policy and decision-makers. They see little virtue and many problems in opening up these processes to a broader segment of society, particularly to involve impacted communities in the energy choices that will decide whether they are victims or beneficiaries. On the other side, there is criticism of elite accommodation and the negative aspects of a cult of expertise, on the hoarding and manipulation of information and, above all, on the general lack of accountability in the policy-making process. Central to this view is the need to democratize the process of policy-making based on the right to information, the right to become informed, the principles of informed consent, information equity and affirmative action (see Knelman, 1982 a). This would also require a redistribution of costs and benefits between victims and beneficiaries and above all, the rights of affected people to participate. Currently, risks and benefits are mal-distributed and the assessment processes favour the proponent. This author has proposed reversing the current modes of the benefit of doubt on the part of the proponent and the burden of proof being placed on the opponent (Knelman, 1980 b). The above democratization would cover the full regulatory, assessment and policy systems. In cost/risk benefit analysis, purely economic criteria are to be augmented by the deliberate insertion of values as having equal standing in assessment, thus legitimizing ethical impacts.

Appropriate Means:

Since there is a general agreement on ends, i.e. social equity and justice, environmental protection and the elimination of war as a legitimate means of resolving conflicts etc., the sharpest debate is reserved for the discussion of what are appropriate technical means to achieve these desired ends. In most ways, the three areas of division, i.e. structure, process and means are highly integrated within each of the opposing groups. Those who support existing structures and processes also support the current major focus on energy supply options while downgrading, dismissing or denying the virtues of demand management, conservation and efficiency and "soft energy paths" "Appropriate" for them means fission and fusion and the inevitable electrification of the world, operated by giant utilities with centralized structures. Appropriate energy for the other side has its appropriateness defined by a restructured society, much more decentralized, much more open and democratic, with large elements of cultural, thermodynamic and human appropriateness. This ultimately could be a solar future (Johansson et al. (1978); Knelman, 1979). Of course, the debate includes arguments on feasibility with the "hard path" group largely downgrading the solar option. The other side, in turn, draws attention to the radical bias in current funding, between dominant supply options and solar, with the latter receiving a very small fraction of R and D support. Thus, it is clear that the debate on energy futures is not merely a technical argument between advocates of "hard" or "soft paths. "It is perhaps even more a debate about politics, economics, culture, ethics and equity. In fact, energy choices are pregnant with values, particularly those which are concerned with the longer-term future. The UN report of the World Commission on Environment and Development (WCED). "Our Common Future" (1987) correctly cites energy centre-stage in the issue of sustainability. And there are many references to energy in Agenda 21 and the UNCED declaration of principles has certainly applications to the energy debate. It should be noted that nuclear power is explicitly excluded from future energy options in the UNCED documents, being considered as inappropriate.

Energy Policy

Energy policy should logically follow certain logical questions and answers. These are:

1. What goals has our society set for itself?
2. What tasks, that require energy, does a society need or want?
3. What energy resources and savings are available to fulfill these tasks?
4. Given alternative energy systems to fulfill those tasks, which are preferable and by what criteria?
5. What energy sources not currently fully developed do we need to develop and in what time frame?
6. What basis of selection should we apply to our program of energy R and D? and
7. How does our energy plans, programs and policies jibe with our social and environmental goals?

It should be noted that societal energy needs are tied to demands for specific types of energy and that certain functions have appropriate energy demands and sectors i.e. heat, electricity, liquid fuels etc. There are numerous studies

by a variety of groups, institutes etc. that provide detailed answers/studies to the above questions. Such studies may include or exclude nuclear power which is a producer of electricity. What is clear is that nuclear power is not necessary now or in the short or medium time horizon. There is a serious debate over its long-term requirement. However, nuclear advocates/proponents consistently allege that it is necessary now and, in the future, that it is relatively benign, socially and environmentally and that it is essentially sustainable and for all these reasons it is a desirable option in any energy program. We contend that the nuclear option is not necessary now or in the short through medium time horizon and may never be necessary depending on longer term energy options. We argue this way because we consider nuclear power has many unsolved problems associated with unacceptable social and environmental hazards.

In any energy system, it is necessary to examine the entire cycle of production, through consumption/application and waste. This is called the fuel cycle in the case of energy systems requiring fuels. Thus, it is the social and environmental impacts of the complete nuclear fuel cycle that we must assess to judge the relative viability for the nuclear option comparing these to other energy choices.

What is the demanding conclusion of this analysis is that energy policy can be highly integrated to a policy for minimizing social and environmental costs. By choosing energy sources and systems which can fulfill the desired economic missions yet avoid the huge social and environmental costs of current energy choices, we can achieve the goal of sustainability.

One might add that while the concept of common security and a common future have entered the consciousness of many people and have received the token support of many world leaders. in the wake of WCED and UNCED, the fact is that our social systems are not geared to prior assessment, anticipatory, and planned response to crises. At the same time, rate and magnitude acceleration of technological impacts have globalized environmental threats. Given the inability of social systems to defer economic gratification, the major obstacles to solving the problems of climate change and ozone depletion are the absence of the collective will to make timely decision, despite some brave initiatives, in the case of the latter. In a disunited world, divided by ideology and inequity and systemically programmed to sustained growth, environmental protection is likely to lose out to the imperatives of profit and power (Knelman, 1989). A dedication to a maximum C and E program becomes the litmus test for one's sincerity in the promotion of sustainability. In all of this, it will be the people who will have to led the leaders.

A particular global problem often raised in the energy debate has to do with global warming, i.e. the threat of the "greenhouse effect" resulting from significant production increases in "greenhouse gases" such as CO₂ and CFCs. Nuclear proponents, predictably, have seized on this threat to launch a global campaign in support of nuclear power as a greenhouse salvation technology. We will deal with this argument later. We prefer to use the more neutral term "climate change" and "climate-altering " gases given the legitimate scientific debate on global warming. The debate should not deteriorate into the politics of uncertainty whereby inaction is justified. A large body of highly qualified experts believes in the warming trend but no reputable

scientist would deny that we are threatening significant climate change through anthropogenic activities. To delay action, in view of the magnitude of this risk is totally unacceptable. An estimate of the social risk of climate change and the ensuing famine is 7,000 deaths/EJ (an EJ = 10^{18} , joules. According to some analysts, this is the largest energy-related risk to life except for nuclear war (Holdren, 1980). It is of the same order of magnitude as the long-term hazard from radon release ex uranium tailings. Added to this is the estimate of 700 deaths per EJ of primary energy from air pollution diseases and the huge accompanying health costs. Yet, as we have seen, the US position at UNCED was to use uncertainty as a basis for delaying action in the reduction of "climate-altering" emissions. Nor are we encouraged by any of the initiatives of the Clinton administration, admitting of course, that the fossil -fuel lobby in the US is very powerful.

Energy and Environment

In general, energy tends to be a most powerful determining social force. But above all, the environmental consequences of energy choices are truly dramatic. Energy production, transportation and use are involved, either centrally or indirectly, in the major environmental problems of our time. Among these are:

1. Climate change due to the production of "greenhouse gases";
2. Ozone depletion, particularly due to the use of Chlorofluorocarbons (CFCs) in refrigeration, foam plastics, electronics cleaning and air-conditioning, but also from the release of methane (CH₄);
3. Acid rain, derived mainly from the combustion of coal in thermal generating plants;
4. Impacts on land use from exploration, development, production and transportation of energy fuels; hydroelectric development and transmission: production of biomass fuels, large-scale ground-based solar collectors/converters etc.
5. Air pollution ex the transportation sector and thermal generation: air pollution from the cutting, clearing and burning of forests and firewood
6. Oil spills;
7. Nuclear wastes and discharges from reactors and the nuclear fuel cycle,
8. Thermal pollution of lakes and rivers from nuclear and thermal generators.

And, of course, accompanying these profound environmental impacts are the social consequences of energy systems, including the economic and health impacts of air pollution and the mining of energy resources, the cost of clean-up of oil spills, the social and health costs of acid rain, the social and health costs associated with global warming and ozone depletion etc. Most of these social and environmental costs are treated as "externalities", being deferred and /or being paid in part as social cost, outside the economics of energy production and use.

What we should not do is to continue to prime the global pump of potential climate change by continuing and increasing climate-altering emissions. Rather we should be obliged to reduce these emissions on the basis of the principle of prudence, given the potentially huge cost of climate change. This was embodied in UNCED '92 through the Precautionary Principle in the Rio Declaration i.e. "when there are threats of serious or irreversible change, lack of full scientific certainty shall not be used as a

reason for postponing cost-effective measures to prevent environmental degradation" But even more to the point in the energy section of Agenda 21, among the environmentally safe energy technologies that are identified, nuclear power is notable by its omission (Section 9, Subsection 9g). The emphasis in this section is renewable resources. And further to this point, the Global Energy Charter 1993 of the World Sustainable Energy Coalition (Kellerweg 38, P.O Box 928, CH-8055 Zurich, Switzerland) deliberately excludes nuclear power as a viable option and the judgment of the international group of independent experts who wrote the charter is that nuclear power is not necessary or desirable.

It is in respect to climate change that the global nuclear establishment has launched a world-wide propaganda campaign. We use the word propaganda deliberately since this proposal is so pregnant with error compounded by fantasy as to border on the ridiculous.

Energy and the Greenhouse effect

It has now been known for over 100 years that certain gases in the atmosphere, particularly CO₂, trap heat (infrared radiation) and warm the earth, functioning in a similar way to glass in a greenhouse, keeping the air inside warm. Human activities (anthropogenic) are now the source of additional burdens of these gases, apparently beyond the ability of natural cycles to mediate. We are experiencing indications of global warming, involving unprecedented threats to life on this planet. The global greenhouse gases come from different sources. This will affect our strategies for their elimination. Globally, the breakdown is as follows:

thermal electrical generation CO ₂ (ex fossil fuels)		10%
CO ₂ ex transportation		40%
Total CO ₂ (transportation)		50%
Methane	CH ₄	18% (cattle, landfills, rice, crops etc.)
Nitrous Oxide	N ₂ O	6% (fertilizers, deforestation etc.)
CFCs		14% (refrigerants, foams, sprays)
Surface Ozone	O ₃	12%
		100%

CO₂ ex transportation would be higher in more industrialized countries. In Canada, for example, 56% of all CO₂ comes from the combustion of petroleum products and 20% from coal and natural gas. Of the total greenhouse effect, CO₂, is responsible for 60%. As we have stated while the evidence for global warming is not definitive, the risks are so large as to be totally unacceptable. Global common security is clearly at stake in this issue. It has been a major contention of nuclear establishments all over the world that nuclear power is an answer to the greenhouse problem.

Examining the above categories, it is clear that, given the current inventory of technologies, nuclear power can substitute (theoretically) only for the 10% of greenhouse gases ex thermal generation. Since all the other 90%

of sources are growing over time, the net result of attempting to solve the greenhouse problem by nuclear displacement seems futile (Lovins et al. 1989). Energy conservation and efficiency (C and E), on the other hand, tend to moderate all energy uses representing some 70% of total greenhouse gases.

In a detailed study of a number of energy scenarios, the high growth recommended by the Brundtland Report to achieve global equity would mean we would have to build a new 1000 MW nuclear reactor every 1.61 days for some 37 years at the astronomical figure of \$8.39 trillion. But in that same period general growth would wipe out any gains through displacement by nuclear power and we would have higher concentrations of CO₂ than we now have (Krepin and Kats, 1989). The above trillion-dollar cost is only the capital outlay at the extremely optimistic figure of \$1 billion/ plant. In fact, the total generating cost would reach over \$30 trillion in the 37-year period. The \$1000/KW installed cost could well be over three times as high, the projected cost at Darlington, Ontario, being over \$3000/KW installed.

Yet another advantage of a massive C and E program compared to nuclear displacement of CO₂ is the availability factor. Almost the entire range of C and E options are readily available, either through retrofit or rapid displacement. The technology and techniques of application and implementation are essentially off-the shelf. Thus, the rate of turnover of current hardware and software to more efficient systems is rapid. On the other hand, nuclear power plants take at least 6 years to complete (the current average) and can be delayed further by regulatory obstacles, public disfavor and cost overruns (Koumanoff, C. (1988) "Greenhouse Effect Amelioration", Aug. 24, (KEA, 270 Lafayette St., #902. N.Y.C.) 10012, 212- 334-9767.

We are constrained to use large amounts of capital, a scarce resource in a world of debt and competing demands, as wisely and effectively as possible. The cost effectiveness of efficiency, its greater availability and accessibility, its environmental benefits and its relative labour intensity, all combine to make this our major option in combating the greenhouse effect. In fact, \$100 invested in nuclear and taking an average construction time, one tonne of additional carbon would be released into the earth's atmosphere during that time (Krepin and Kats, 1989; Koumanoff, 1988).

In June, 1989, at the Canadian Nuclear Association meeting in Toronto, a pioneer of the nuclear industry, Alvin Weinberg, downgraded nuclear power as a solution to the greenhouse effect. In his estimate, 5000 very large reactors would have to be built quickly "to make a dent on greenhouse" and "Such a nuclearized world is impossible if the core melt probability is as high as 10⁻⁴ per reactor-year or even 10⁻⁵ per reactor-year, since this leads to a core melt every 2 to 20 years."

The opportunity costs of the \$5 to \$10 trillion investment in nuclear to achieve at best a marginal decrease in CO₂ emissions when 1/7th to 1/10th of that amount invested in efficiency can achieve a very large decrease would ordinarily rule out nuclear as an option in the short to medium term. Thus, decisions to expand nuclear are neither economically or environmentally sound and are therefore only political in nature.

Although we are strongly recommending a nuclear moratorium in the period of several decades when conservation and efficiency programs can offer us superior combined economic and environmental benefits, we can

never say "never" to nuclear power. In the longer run, we may have no choice. Thus, we should spend some resources on developing theoretically safe, proliferation resistant models of nuclear power plants while phasing out all existing plants. And even more urgent than this, we should continue to investigate the safe and hopefully permanent disposal of high-level wastes. The latter's urgency arises in part from the fact that we will have to dispose of the large quantities of weapons grade nuclear weapons materials as we complete existing nuclear disarmament agreements (START II). At the same time, we have built a large inventory of these wastes in our civil nuclear programs which we will have to manage sooner than later. What appears unethical is to continue to build more nuclear power plants before these problems are solved. Given the superiority of demand management, conservation and efficiency as energy options, as well as their environmental advantages, we do not need to expand nuclear power now. We should therefore declare a moratorium, not only on ethical, but a wise decision. We should reject the current unwarranted and invalid assertions of the nuclear power industry and its advocates suggesting this is the way to reduce the greenhouse effect. This is propaganda and public relations, which does a disservice to the facts.

What is interesting is that the nuclear establishment possesses all the characteristics of a fundamentalist cult in the uniformity, in fact homogeneity of its perspectives. Their homogeneous mindset leads to the phenomenon of an internally shared set of rationalizations in the implacable defence of nuclear power. We will be dealing with this in detail in the next chapter. The proposal regarding the construction of 1000s of new nuclear power plants to mediate against climate change becomes part of the universal litany of blind faith in nuclear power. This technology deteriorated into a blind faith even as it rests on blind reason, creating not double vision, but double blindness. At this point we will discuss the issue of nuclear power and climate change in some further detail.

Nuclear Power: The Greenhouse Lie

An international body, the International Atomic Energy Agency (IAEA), based in Vienna, played an interesting role at UNCED '92. In effect it was granted access to the formal conference in order to make a presentation on behalf of nuclear power as a salvation technology, not only serving environment and development, but equity as well. The politics of this event had to do with those governments, particularly the weapons states and reactor-selling nations such as Canada, who are committed to nuclear power. IAEA violates a basic principle concerning conflict of interest. It is the major regulatory body of civil nuclear power in the world, entrusted with fulfilling the Non-Proliferation Treaty (NPT) agreements. At the same time, it is the major global "pusher" of nuclear power, a "full" sales and promotion service for the world. In fact, its ability to safeguard is at best minimal and its promotion of nuclear power is fanatic, the former often being a function of the latter via Iraq. In the case of Iraq, IAEA committed a double fault. It failed to detect a

program to develop atomic weapons, as it has failed in so many previous cases, and it then proceeded to serve George Bush's political agenda by exaggerating the level of development of the Iraqi program. In fact, IAEA has a long history of safeguarding the development of nuclear power while failing to safeguard proliferation. But much worse than this they have engaged in the proliferation of lies while they have lied about proliferation. In the next chapter when dealing with nuclear power per se, we will amplify our analysis of IAEA's role at UNCED '92. For now we will focus on IAEA's promotion of the view that nuclear power is the answer to the global climate change threat, part of a global promotional campaign by nuclear establishments all over the world, including Atomic Energy of Canada Limited (AECL) and their US counter parts in the private sector and corporate associations.

We will be analyzing two major documents, "IAEA's" Nuclear Power Techniques and Sustainable Development", Vienna, 1992 and AECL's Corporate Public Affairs Branch special package of background briefs both designed for UNCED '92, later in the next chapter in some detail. Both subscribe to a double oxymoron by linking nuclear power with sustainability and development. At this point, however, we are concerned with the global propaganda play equating nuclear power with climate change avoidance. We have provided some general details of the impracticability of this proposal to build some four to five thousand large commercial nuclear power plants all over the world, a program which alleges it will stave off the greenhouse threat. This not only is ridiculous but is a typical technological fix fantasy abstracted from the real world of social systems, of environmental and economic restraints, in fact of reality itself. The US Department of Energy itself in 1975 had predicted that with the 5000 reactors they projected to be operating by the year 2000, a new "permanent" waste repository would be needed every 5 to 7 years. If the US had eventually reached 2000 reactors there would have to be disposal sites 20 miles apart throughout the entire landmass of continental US (Resnicoff, 1985). In fact, we are asking the earth to do something which is against its essential nature i.e. to stand still for 250,000 years while the high-level wastes decays to some acceptable level. Granite, the preferred rock formation, is not a continuous structure, it is, in effect, an assembly of large slabs, subject to fracturing by heat, vibration and water pressure. The assumption of technological omnipotence is so powerful a vision, that it does not permit reality to deter it. Many of the top geological and geochemical scientist in the world have argued the high level of uncertainty to this proposal. Finally, returning to the IAEA projection of 4000 new commercial reactors in the world. we can see the enormous problem of waste disposal and the incredible increase in the traffic of mining refining and enriching of uranium in a world where "no acts of God are permitted." This is an example of exponential myopia in its worst form. In fact, no site has yet been finally designated to even begin to establish feasibility of the so-called "permanent" disposal of high-level waste (HLW). IAEA and the rest of the nuclear establishment are really pushing a "plutonium economy" i.e. to use to that element taken from the warheads of the reduced nuclear arsenals together with reprocessing spent fuel to recover plutonium. IAEA has been a major "pusher" of this plutonium economy virtually from its beginning. In such a plutonium economy, illicit diversion would become inevitable even within the

limits permitted by inspection let alone "acts of malice." The non-proliferation regime would be totally sabotaged by "trickle diversions," alone

Using US data, the actual average time it took to bring a new nuclear power plant into operation was between 8 to 14 years. While there are 113 nuclear power plants currently licensed to operate in the US no new nuclear plant has been ordered since 1978. 118 plants, including all plants ordered since 1974, have been canceled or deferred, at an enormous loss. The average capital cost of a 1000 MW nuclear plant in the US is now about \$3 Billion. This does not include operating costs nor does it include the enormous subsidies, some of them hidden, that the nuclear industry depends on in every country. The nuclear industry and this includes IAEA, always attribute delays, to environmentalist intervention but to quote the Union of Concerned Scientists, a major scientific intervener, "the real roots of the problem lie in faulty and incomplete design work, inadequate control during construction, and inability to secure necessary financial backing, poor management, and the nuclear industry's lack of credibility..." (Nuclear Power: Past and Future," Cambridge Mass: USC, 1990). There are also several critical generic design safety problems that remain unresolved and in particular, poor siting has placed reactors in hazard from fires, earthquakes and hydrogen fires. In fact, the Nuclear Regulatory Commission (NRC) itself has estimated "there is a 45% change that a meltdown will occur at a US reactor within the next 20 years " (UCS. 1990). Nuclear power plants have also been plagued with frequent forced shut downs reducing their capacity to about 60% of design (coal plants average about 80%). Thus, nuclear plants have higher operating costs and since they only supply base load electricity, they require backup plants for peak demand or when they are shut down. And of course, a nuclear power plant only has a working life of about 40 years after which it becomes too "hot" i.e. radioactive to operate. Then it must be decommissioned, a euphemism for becoming a source of low-level radioactive waste which must be buried in concrete or "mothballed" No other industrial plant has a life cycle where after its useful life it becomes, in its entirety, hazardous waste.

An entire book "A Circus of Sophistry" by Jack Doiylen provides an endemic picture of the endemic design flaws in a nuclear power plant, Comanchy Peak, in Glen Rose, Texas. This is a fascinating, yet typical revelation of cover-up, elite accommodation by reluctant regulators and denial or even deceit by operators.

The Renewables Potential

The nuclear establishment in a vain attempt to be politically correct are sometimes willing to acknowledge some contribution to our energy problems through conservation and efficiency. However, they consistently deny any significant role for renewables. Yet, some independent studies project a potential for renewables in the US as being able to supply some 50% of total energy supply by 2020 (M. Brower, "Cool Energy" Cambridge MA: Union of Concerned Scientists, 1991), through a mix of solar, biomass, wind and hydroelectric. incentives and strong government support. Renewables advocates are only asking for a level This, of course, will require some appropriate playing field in market incentives and R and D investment. At present, nuclear and fossil fuels, receive huge subsidies, both open and hidden, in Canada and the US. The so-called "free market" does not exist in

the energy field and nuclear, in particular, as we have indicated, receives huge direct and indirect subsidies. These intentional market distortions promote nuclear energy. If the same kind of market distortions were applied to renewables, they could make a dramatic contribution to our energy needs. Moreover, there would be many accompanying social and environmental benefits. And when mature renewables technological were in place, it would be economically viable and significantly less costly than nuclear, with none of its major problems. But it is not merely that renewables are relatively unsupported; they are deliberately impeded. The US Environmental Protection Agency (EPA) did a study in 1989 on Policy Options for Stabilizing Global Climate, which indicated that renewables and conservation /efficiency could reduce greenhouse gases by some 42% by the end of the next century, renewables contributing to half of that reduction. This same study concluded that renewables could make up 30 to 45 % of the projected global primary energy supply by 2050. In this same study nuclear power's contribution to greenhouse reductions was projected to less than one third that of renewables or conservation/efficiency alone or about 16% of their sum. You will not see references to this study in the propagandist literature of the nuclear establishment. Just doubling the fuel efficiency of the American automobile will reduce their total CO₂ production by some 20 %. To illustrate this the fleet auto fuel economy of the United Kingdom in 1988 was about 8 litres per 100 km, of France 9/litres, of Norway 10, of Sweden, 10 1/2 of Japan 11 while that of the United States was 13 litres per 100 km. But it is technologically feasible to achieve a fleet fuel economy of 4 or 5 liters per 10 Km. Since transportation produces 4 times the CO₂ that thermal generation, one can readily see how CO₂ reduction could be accomplished. The US government and the US auto manufacturers say that large fast, powerful cars are what the consumer wants and the consumer decides what the manufacture produces. But the cost of operating an automobile is a fiction. If people knew the true costs they would opt for efficiency, particularly if government played its proper rule. If people further understood the risks associated with climate change, they would not only opt for efficient transportation but for substitution by mass transit systems. The Western World spent trillions of dollars to mediate against the risk of nuclear war yet spending to avoid climate change, a cost-effective action, is being frustrated in the name of narrow short-term lobby-induced policy.

The fact is that renewable energy already provides over 25% of the total energy currently used in the world through numerous ways such as passive heat, biomass energy for human and animal nutrients, combustion of fuel wood and waste, biomass for pulp and paper and wood building materials, hydropower, wind energy in place of active air exchange in buildings, biogas and biofuel production and small quantities of dedicated wind, solar and tidal energy. Moreover if we did two things: a) use an energy cost accounting system which included all the costs-economic, social and environmental and b) provide equal R & D and other subsidies to renewables, then such technologies as flat-plate solar collectors for space and water heating would be viable in many parts of the world, particularly in the Third World where solar energy is so abundant and appropriate. Solar energy would be equity energy. Photovoltaic collectors to convert sunlight into electricity would be competitive with nuclear but still more expensive than thermal or hydro. The

modern horizontal-axis wind turbine are already competitive with thermal plants for bulk electrical production, particularly if designed to fill less than 25 % of demand, eliminating dedicated storage requirements. Geothermal has a large potential where the resource is available. Biomass for direct combustion or for conversion to liquid biofuels has a great potential. With a full dedicated program of development for renewables, at least equal to the other conventional systems, the combination of renewables and C and E could supply 100 % of our energy requirements by the year 2050. Photovoltaics are now in the high-technology stage of development and the learning curve is very promising, with costs decreasing radically.

China has a large renewables commitment. 100 factories supply solar water heaters for the domestic market. Each year some 200,000 tonnes of coal are eliminated by these devices. Mini-wind power generators reached 9000 units by 1990, solar cookers, 10,000 units and biogas digestives, 250,000. A 20 KW photovoltaic system was being built in 1992. These are now 12 solar photovoltaic (PV) factories in China with a total capacity of 4.5. MW . Small units of 20 to 50 watts are appropriate for isolated and remote areas. It is estimated that wind potential in China is 160 giga watts (GW). China appears dedicated to achieving the UN Nairobi Programme of Action for Development of New and Renewable Sources of Energy (Hu Chengchun and Lu Weide, Ecodecision, March 1993, pp 60-61).

There are several other aspects of renewables that deserve comment. Firstly, we already enjoy two major renewables sources - hydroelectric and wood, realizing of course that their renewability is subject to natural constraints. But as we have suggested solar and solar-related technologies such as passive solar space and water heating, solar-thermal-electric generation and photovoltaics (PV) have all had some limited success. In fact, the price of PV has shown a steady decline i.e. from \$300 per KWH in 1976 to between \$6 and \$10 today. This is already competitive with most conventional sources for peak daytime generation (Brower, 1990). New promising designs of solar thermal generation indicate a price of about \$6 per KWH. Another advantage of renewables is the short lead time for installation.

In the 1980's over 15,000 wind turbines with a total peak capacity of 1500 MW were installed in California alone (Brower, 1990) at an average cost of 7-9cents per KWH. Estimates as high as 20% of current electricity demand could be met by large numbers of wind turbines installed on the Great Plains. Biomass, organized in the form of "energy plantation" could supply some 15-30% of US energy consumption (Brower, 1990). Biomass fuels derived mainly from corn, such as ethanol, currently supply about 8% of transportation fuel in the US., in the form of mixture with gasoline, gasohol. Biomass fuels are relatively expensive, but costs are declining and new circumstances could make them competitive with petroleum-based fuels in the next decade. A principle is that the biomass consumed forming CO₂ must be replaced by new growth, absorbing an equal quantity of CO₂. A major problem for all renewables is a rigged or distorted market (Heede et al. < 1985)

In terms of electrical generation, we can see a real limitation of solar generation. We cannot supply base-load demand unless we were to place a large satellite PV array in space. Vulnerability would be a very serious consideration of this technology as, of course, the tremendous cost involved (Knelman, 1982 (b)). But this is worth exploring. What we have to always

remember is that there is no such thing as a free lunch and in the end, we will have to choose between relative values of different lunches but with full accounting of all costs.

Forms of biomass that could make a contribution to our energy needs are the combustion or conversion of wastes as fuels or for the generation of biogas. While these have the virtue of renewability. By planting new growth at the proper rate we can avoid increased CO₂. Biomass fuels can help in reducing oil dependency. Biogas can be generated from decaying organic matter, i.e. garbage, animal wastes and crop residues. There is an advantage to this since it will burn the generated methane which is a greenhouse gas. This could help balance the CO₂ produced in the combustion.

To give some idea of the renewable potential, in the US this amounts to 80,000 quads or 1000 times the total energy used in the US in 1988 (US DOE (1985)). This is almost 7 times the energy recoverable from coal.

Contrary to conventional wisdom, solar and renewable energy is not "pie in the sky" but practical today in its application to residential needs. The correct policy is to tie solar to major conservation and efficiency measures. There is a natural synergism between these two approaches. There are now several hundred "super-insulated" or "micro-energy" houses, the model being the Saskatchewan Conservation House in Regina (Dumont et al. < 1980). Gross shell heat losses are so small that heat gains from occupants, cooking and appliance radiation supplemented by passive solar heating through special design of south windows can provide all space and water heating requirements. There are similar houses in Alaska and Norway, i.e. in other cold climates, and in general these houses have space-heating requirements so low that they are a fraction of water-heating energy. These houses do not require a furnace. Increased cost of construction is about \$5,000.00. This type of house makes solar water heating and hybrid solar heating particularly attractive economically and environmentally. In conclusion, the storage of direct solar energy is facilitated by first making the energy system as efficient as possible. While these systems are costly, they are not as costly as their supply alternatives, particularly when the external costs of those alternatives are included. Payback times are also attractive. Moreover, many of the techniques for these energy-efficient buildings can apply to retrofit techniques to convert older buildings. While lifetimes of housing are very long, retrofitting can be accomplished quickly, so that it is feasible to expect a rapid rate of changeover of the existing housing stock to more energy-efficient systems.

Assuming that there is a technical fix to our energy problem which embraces as its central principles conservation, efficiency, expansion of solar and renewables, including small-scale hydro projects and a broadly decentralized supply system, while at the same time managing to avoid the greenhouse and ozone depletion problem, then the issue is whether these measures can be implemented in time. We face a current inventory of physical stock and a current inventory of attitudes. Both of these inventories have to be turned over rapidly to energy-efficient systems supported by people and institutions committed to the conserver/sustainable ethic. These are closely related since it is people, government and industry that will have to make the decisions to proceed on this sustainable path. This is a major decision or complex of decisions involving systemic and organizational

restructuring. Up until now, the evidence is that real commitment is absent, being mainly rhetoric designed for political advantage.

The potential for C and E cum renewables program is large in Canada. We are among the poorest nations in the ratio of energy to economic output among industrialized countries (Darmstadter, 1978). For example, to produce one 1980 dollar of GNP, Canada uses almost three times as much energy as the most efficient countries. Since 1973, Canada has improved its energy efficiency far less than most of these countries. Canada also uses more energy per unit of industrial product than most industrialized countries (IEA, 1986).

A technological learning curve may be plotted in terms of declining price of a technology. As a technology matures several developments occur. One of these is the growth in market penetration. Another is a quantitative and qualitative increase in efficiency of both production and use. These combine to reduce unit cost. In the case of solar energy and wind power, a plot of the price per kilowatt hour versus time indicates that the cost of the former decreased from 30 cents to 6 cents and the latter from 60 cents to less than 10 cents per kilowatt hour, between 1980 and 1990 (C. Heaton et al., 1991). Projected costs for 1995 for each is 4 and 6 cents respectively, much lower than fossil fuel or coal-generated electricity.

A Global Nuclear Moratorium

For all the reasons we have presented, we are proposing a global nuclear moratorium and eventual phase-out, based of course on the assumption that a C and E program will carry us through the transition phase, followed by the maturation of renewable technologies. Citizens will have to decide on the merits of this proposal and insist on public debate to assure the transparency of policy.

It is difficult and understandably so, for the concerned citizen as non-expert to assess the relative credibility of the very large number of experts from within the nuclear establishment who are proponents and who discount all the problems dealt with in this paper and who view nuclear power as beneficent and necessary as opposed to a fair number of independent assessors who disagree on every point. One aspect of this division is that scientists, not less than many other professional people, become so firmly attached to their own prophecies as to become virtually blind to anomalies and contradictions. In the case of nuclear science, the passionate adamant belief in its superiority has transformed science into an ideology of nuclearism. The history of science is filled with examples of an entire generation of scientists clinging to a dominant theory/hypothesis long after its foundations have been undermined by new evidence (see Thomas Kuhn, 1962).

One general way the concerned public can make a rough judgment of credibility is through conflict of interest. Virtually all the proponents of nuclear power have affiliations with the nuclear establishment either directly through directorships on boards or through support of university programs or through direct affiliation with government or industry, affiliation with that establishment. This does not prove conflict of interest but it does define it. Direct investment in profits or prophecies are a questionable basis for neutral disinterested assessment. On the other hand, the expert critics of nuclear power have no

vested or invested interest. More-over, many of the opponents have equal expertise in the normative sense of that word, including a substantial number of Nobel Laureates. All other aspects being equal, these conflicts of interest become a basis of judging credibility for concerned citizens who have not made an in-depth and independent assessment of the debate. Appended to this chapter is such a declaration, aimed at UNCED '92.

The theme of the nuclear cornucopia is a vista of "endless growth" based on the simplistic notion that economic growth, the ultimate good, is a direct function of energy growth, particularly electricity. In the past, monstrous projections were made of a world of 10 to 20 billion all-consuming at the level of the most "developed." Thus, there was an easy step to equate sustainable growth with the more current and camouflaged concept of sustainable development. All limits — technical, social, economic, thermodynamic and environmental are abstracted away from this pure fantasy of cornucopia.

As we have suggested, there is a logical projection from the earlier claims of "boundless energy", "too cheap to meter" to the current fad of sustainable development, the Brundtland prescription. But society should be warned that behind the facade of "fission forever" is the hardly disguised conspiracy of a plutonium economy, better described as poison forever. Uranium is a non-renewable resource and therefore by definition, cannot be a sustainable energy source in the current technological mode. However, through the reprocessing of spent fuel which one of the nuclear faithful called a "plutonium mine" but more particularly from the production of plutonium in "breeder" reactors, and utilizing the plutonium from destroyed nuclear weapons the fission age can be extended by centuries. What cannot be extended is the survival of life.

Nuclear proponents have created an unprecedented hazard for the world not merely in the unattended wastes of the military but in the unsolved problem of safe civil waste disposal. As one expert put it "the announced treatment processes ...have a high imagination content but low ingredients of reality" (IAEA US Congress, "Industrial Radioactive Waste Disposal, p. 16, 1959). A non-problem has persisted as an unsolved problem to this day, over 30 years later.

When we propose a global moratorium on nuclear power for all the reasons given in this paper, the questions that arise are:

1. Can we dispense with nuclear power in terms of current and medium term electrical requirements?
2. Are the alternatives economically and environmentally viable? and
3. in the long and very long term do we have to keep the nuclear option open?

In response to questions 1 and 2, there is absolutely no question that we can safely dispense with the nuclear option, at least for the next 40 to 50 years. Studies by such reputable groups as the Union of concerned Scientist (UCS), the Natural Resources Defence Council (NRDC) and the American Council for an Energy Efficient Economy (AGEEE) all confirm that the feasibility of an economic and environmental energy policy without nuclear is, beyond question (American energy Choices, 1991). They show that, over the next 40 to 50 years savings of over 2 trillion can be made while at the same time reducing CO₂ to stable levels (from over 5 billion to less than 2 billion tons), decreasing SO₂ and NO_x emissions by 67 to 75% and consuming 25% less energy than in 1988. This represents overwhelming and irrefutable

evidence that nuclear power is unnecessary in the US. This is true of the rest of the world as well. Energy effectiveness by every known indicator is far better throughout Western Europe compared to Canada and the US.

In the case of the developing world not only is nuclear power unnecessary but exceedingly inappropriate. On the other hand, renewables are appropriate in almost every sense of that word. This is not to deny that there is a cost to developing renewables or applying conservation and efficiency measures. It is to affirm that these costs are far less than the equivalent cost of nuclear power and a far more effective use of limited funds in the reduction or avoidance of environmental hazards. Yet despite the compelling validity of the above argument, Canada and the US continue to pursue a blind pro-nuclear policy while downgrading R. and D. on renewables and dying a sincere conservation and efficiency program. What we have to say about Canada in the following section applies even more to the US there was a relatively short period, following the Arab oil boycott of 1973, that all of the Western World, particularly Western Europe but also North America created broad programs for C and E and began to subsidize renewables. But while the European (and Japanese) commitment continue, the US and Canada quickly abandoned these programs.

Canadian Perspectives on Global Warming

On June 30, 1988, at the end of a conference sponsored by the Canadian government to discuss the "greenhouse effect" problem, the conference clearly linked the huge production of carbon dioxide (CO₂) as the major culprit, and, in turn to the major sources of this gas being from fossil fuel combustion of all kinds, i.e. oil, coal and gas in electrical generation and transportation, and to a lesser extent, from the burning of wood. In addition, another group of gases related to ozone depletion, i.e. chlorofluorocarbon, (CFCs) and nitrous, N₂O, also a product of combustion as well as occurring naturally, also contribute some 15-20% to the greenhouse effect. On the other side, forests and ocean plankton are huge sinks for CO₂, using it in the production of photosynthetic oxygen. Deforestation threatens the former and pollution the latter, but we are clearing forests at ten times the rate of reforestation in the world as a whole.

Prime Minister Mulroney made the following statement at the end of the above conference, "The Changing Atmosphere": "In no area is the link between our economic activity and environmental degradation more evident or more troubling than in the area of energy policy. Canada is committed to applying the principles of sustainable development to our energy future."

The conference went on to make strong recommendations to governments around the world, to:

1. Design energy policies to reduce CO₂ emissions and to introduce new energy sources that reduced or eliminated these emissions;
2. Energy efficiency improvements should be targeted to the above reductions and
3. To encourage energy efficiency for all new projects.

It also included the following statement about nuclear energy

"revisiting the nuclear power option, which lost credibility because of problems related to nuclear safety, radioactive wastes, and nuclear weapons proliferation. If these problems can be solved, through improved engineering designs and institutional arrangements, nuclear power could have a role to play in lowering CO₂ emissions. ("the Changing Atmosphere, 1988, p. 297)

This, of course, left the nuclear option open but it also involved a revealing admission about "nuclear safety", about the disposal of "nuclear wastes", and about the linking of nuclear energy with "nuclear weapons proliferation." (For further analysis about the flaws in this reasons)

Precisely such policies were introduced in the wake of the 1973 oil embargo with remarkable success. There was a high level of cooperation between government, industry and citizens in meeting this challenge. Moreover, in terms of supply cost of electricity, conservation and efficiency measures are more labour-intensive per unit of capital invested than any of the energy supply options. In effect then, they cost less, reduce energy consumption and create more jobs. Canada, incidentally, has the second highest per capita carbon emissions. Only the US is higher among OECD countries.

Current Policy in Canada

In the wake of the Arab Oil Boycott in 1973, Canada, like many other affected countries, instituted a host of energy conservation and efficiency programs. By the Fall of 1984, the budget cuts of the Mulroney government were as follows:

1. The research work of the National Research Council on passive solar heat for building was canceled; expenditure on researching alternative energy was cut by \$60 million;
2. The Canadian Home Insulation Program (CHIP), begun in 1977, was a \$200 million/year program in 1986 and was also canceled in the Fall of 1984;
3. A large number of cuts were made to the many conservation and renewable energy programs of Energy Mines and Resources (EMR), leading to an overall reduction from \$140m in 1984 to \$74m in 1988
4. Also the \$125 Canadian Oil Substitution Program (COSP) was canceled.

All in all, not counting COSP, the federal budget on energy efficiency and conservation was cut from \$405.1 m in September 1984 to \$59.1m in 1989/90.

On September 9, 1988, EMR Minister, Marcel Masse announced a new program, Energy Efficiency and Diversity Initiative (EEDI), whereby it would spend \$600m on "clean safe power" and "increased use of non-oil resources." In fact, the breakdown was \$253m for EEDI and \$350m for energy R & D.

Here is the real picture. Of the \$253m for EEDI, this includes \$74m from fiscal year 1989, and therefore we are speaking of \$179m, spread over five years. By 1990/91, the annual budget will be about \$40m for the last three years to 1992/3. Taking inflation into account, the federal budget for conservation and renewable energy fell by 93% since early 1984. Staff for EEDI declined in the 5-year period by 50%.

The above is not the only bad news. The other \$260m destined for energy R & D went, almost exclusively, to energy supply options. To illustrate the striking difference between energy R & D that will enhance the

"greenhouse effect" and conservation and efficiency which would reduce it, the following budget should be noted:

	FEDERAL LOANS	FEDERAL CAPITAL	TOTAL
SUPPLY MEGAPROJECTS (HIBERNIA, HUSKY, VANCOUVER PIPELINES, HEAVY OIL UPGRADER, R & D ON SUPPLY	\$2.860	\$2.273b	\$5.133b
CONSERVATION AND RENEWABLE			\$253M

Even being generous and not subtracting the \$74m for the current year, we can see that energy supply related to creating the "greenhouse effect" was receiving 19 times the budget of that to mediate and reduce it. But there is still more to this budgeting. The money for the megaprojects is not new money but the continuation of energy R & D fund begun in the mid-1970s. After combustion, the above fossil fuel operations will inject millions of tonnes of CO₂ into the atmosphere, compounding the warming problem.

Budgets are not merely detached numbers. They reflect values. They are in effect, the real values held by those whose decisions led to the policies and programs. What are these real values? They are energy budgets for the exacerbation of the "greenhouse" effect that are 19 times those for its relief. Or we can examine the ration of budgets of Defence (DND) and Environment (EC). In 1985, that ratio was DND/EC 12, and in 1989 DND received 14 times Environment Canada's budget. DND went from \$7.973b to \$9.157b between 1983 and 1989, in 1983 dollars. Environment Canada went from \$704m to \$703m, an actual decline in the face of accelerating environmental threats and declining military threats. In 1989, DND received 9.6% of the federal budget, while EC received 0.6%. There is a similar pattern in the US between DOD and EPA (Caccia, 1989).

Reversing the defence and the environment budgets could make Canada the leader in environmental protection and peace. Giving Royal Assent to the 1982 fuel economy law passed in the House of Commons in 1982, which would double the current standards, would reduce CO₂ emissions in this country by 5% by 2005, or one quarter of the target reduction of 20%. A reinstatement of an Office of Energy Conservation with a full program of efficiency and conservation in every sector could enable us to meet the 20% reduction target shortly after the year 2000. All the successful environmental victories have come about by ban, not retrofit, viz DDT, airborne lead, PCBs etc. We must find the courage to ban CFCs after a short phase-out period.

In addition, the Canadian government continues to increase its support for nuclear power both for domestic use and export, thus compounding the current distortions and divisiveness in energy policy. And they do this knowing that Canadian uranium continues to find its way into the nuclear arsenals of the weapons states, falling through holes in the multilateral and bilateral safeguards net.

There is a fundamental and operational ethic which applies to all technology. This is embodied in Hamlet's prescription. "When in ignorance, refrain" and was enunciated as the "precautionary principle" in the Rio Declaration, 1992. In effect, we should neither introduce a new technology nor compound the negative impacts of an existing technology when we do not have acceptable solutions to anticipated or known impacts. This applies directly to nuclear power when there are no reliable solutions to the problems of proliferation, reactor safety against a worst-case accident or the reliable disposal of wastes, particularly high-level wastes from spent fuel rods. As we suggested earlier, there is an ethical obligation to declare a moratorium on further nuclear expansion, until solutions to these problems are established. As long as we have the more cost effective and less environmentally impacting options of conservation and efficiency, there is little risk in such a moratorium. In the longer run, we must keep our choices open. In effect such a moratorium has existed in the US due to the huge cost overruns and delays in construction of nuclear power plants.

In the case of the developing countries, particularly China and India, the application of nuclear power rather than the projected use of coal for electrical generation might be a trade-off we have to consider. On the other hand, we must also examine the alternative energy sources for these countries. and where two options are examined within their full social and environmental impacts, the latter seems certainly the superior option.

In an earlier section, The Anatomy of the Energy Debate, we began a discussion on the need to restructure energy policy-making. In particular, we argued for the legitimacy of citizen participation in the making of such policies, since they are clearly the major victims or beneficiaries. At present energy policy is a relatively closed process conducted by elites often accommodating their institutional imperatives. We feel there is a basic need for citizen energy literacy incorporated into a participatory scheme in the making of energy policy. At the same time, we must always be aware of an inseparable complex of issues involved in energy policy, i.e. equity principles and environmental protection and enhancement. We are proposing a model process for achieving the above goals of energy literacy and public participation. We term this as a multi-media national energy policy teach-it (NEPT) and base it on a model developed in New Zealand (Harris, 1977), which was particularly effective. The idea is to first inform and then involve large segments of the Canadian public. This can take place in every church, town hall and school in the country. The rationale for this proposal is that energy policy is by intrinsic nature, social policy, while at the same time highly determining of environmental consequences. There can be little question for all those who uphold democratic process as a basic value, that citizens should have the right to participate in public policy issues which so fundamentally affect their lives and future. Basic to participatory democracy is information democracy i.e. the right to know i.e. that is to be informed and become informed. The elitist experts will argue that these issues are not amenable to public understanding but experience with open hearings and commissions has shown that this view is merely another form of elitist privilege, and intellectual territorial imperative, held equally by such scientists and in the past by priesthoods.

The National Energy Policy Teach-in (NEPT)

No other aspect of our concept of restructuring the processes of energy policy-making is more important than our proposal to inaugurate a national energy policy teach-in. New Zealand initiated such a program in the 1970's (Harris, G.S. et al., 1977) and in some important ways we will be basing our proposal on the New Zealand model. Earlier models also have some relevance (Freeman, 1974; Lovins, 1976; Hedlin, Menzies, 1976). It is of interest that the Bush administration began to reject some of the policies of his predecessor of "just keep the oil flowing and keep it cheap." In fact, Bush's energy Secretary James D. Watkins attempted to create some new roles for the Energy Department. The eight years of the Reagan administration were disastrous with drastic cuts in the support of conservation, efficiency and renewables. In the fall of 1989, the US Department of Energy (DOE) conducted a series of public hearings across the country. The national message was a clear mandate for federal support of C and E. This was never to lead to a new energy policy for the '90's, which would not have been accepted in any case, by the nuclear and oil lobbies, but would have been the best policy from both economic and environmental considerations. Bush's policies quickly fell in with these lobbyists who were a major source of his political support. When the public understands that there is a cost to environmental protection, but that cost is dwarfed by the cost of delay or denial, then we may be able to create a consensus on energy policy. Current policies in Canada have been very similar to those of the Bush-Reagan-Thatcher governments and also need to be turned around.

The above analysis provides the major rationale for our NEPT proposal. The basic goal is to educate, sensitize and involve large sectors of the Canadian public on all the issues and aspects of energy policy. By building feed-back channels for public response and by prior assurance that this feedback will be acknowledged as a significant input to government policy, the major goal of achieving public participation in the making of energy policy can be achieved. A key aspect of this NEPT is the preparation of multi-media informational/educational materials and a two-way communication channel. This has to be entrusted to a designated group of consultants accompanied by a clear set of criteria. At the top of these guidelines is the need for balance and objectivity. These are difficult problems. The use of energy/social scenarios would permit the public to gain insights into the multiple trade-offs involved. In all cases these alternative energy scenarios must adopt a consistent methodology of economic, technical, environmental and cultural implications. Essentially these scenarios will deal with medium to long-term prospects, leaving the necessary time for the decisions that will follow.

Essential to the success of this process is the establishment of an independent professional group familiar with the methodology of energy scenario-building (Bott et al, 1983; Knelman, 1975). These are both quantitative and qualitative pictures of three energy futures, with full technological, economic and environmental implications as well as the integrated principles attached to each scenario. The usual form of such energy scenarios is to have three discrete pictures of energy futures (1) extrapolated (2) reform and (3) alternative. Scenario #1 is simply following current trends. Scenario # 2 refines current trends by some conservation and efficiency. #1 is based on historical growth in energy with traditional sources.

#2 relies on the same resource mix but with lower growth rates. The third scenario is distinct in that it maximizes conservation and efficiency, puts a moratorium and phase-out on nuclear and moves away from fossil fuels to renewable energy resources. It involves zero growth or even negative growth. All these scenarios are tied to demographic assumptions and to both basic needs and higher needs of society. The above form the major educational materials made available to the public with other relevant materials.

Beyond the period required for the preparation of educational materials, NEPT is designed to cover a period of one year. Large numbers of these materials will be made available to the public and distributed to NGO's, business and industry, secondary schools and colleges etc. Following the distribution of these materials' public meetings at all levels of society will be encouraged to discuss the issues. At the same time a special national commission will hold hearings across the country. A measure of success of this program is that it will help to create an energy literate public, an achievement of great value for a democratic society.

A series of public debates on the issues will also be a part of the program. A critical principle in this process is to assure the equitable funding of expert interveners on behalf of the concerned public, non-governmental groups etc. The use of experts by government and industry must be matched by access to experts on behalf of alternative and anti-nuclear positions.

In summary, because energy policy is in effect social policy, we must not confine the discussion in time or context. Energy policy must be analyzed within the entire context of sociopolitical development. Energy policy must therefore be viewed as concerned with the broad goals of vulnerability and independence, public health and environmental quality, job opportunities and levels of employment, the patterns of urban and regional development, the international agenda of issues particularly environmental, a dedication to the needs of future generations and to the division of power in society, i.e. social structure and the level of public participation, i.e. social process in energy policy-making. As we have argued earlier, since the energy policies we make today will create the social futures we face tomorrow, and since people generally will be the beneficiaries and/or victims of those choices, we believe that the broad public is a legitimate actor in the processes of energy policy-making.

We are recommending a new structure and process of energy policy making that accommodates the principles of openness, democratic process, accountability and that permits and encourages the public to participate while avoiding some of the pitfalls of undue delay or divisive confrontation. The debates will be vigorous and will not evaporate deep disagreements but they will also yield meaningful public policies in an open social environment. The following criteria are recommended as a guide to our NEPT program:

1. Opening the question of energy policy to its total social, political and cultural contexts as well as economic, environmental and technological considerations;
2. Creating a national public debate on alternative futures related to energy (the New Zealand model);
3. Access to all relevant information by the public: freedom of information insured, the right to become informed insured, affirmative action programs on

information. The process should be a public learning and values-clarifying process and capable of reiterative and flexible response;

4. Linkages between the various institutional bodies incorporated with decision and policy-making responsibilities all the way from grass-roots groups to Parliament.

5. A means for resolving policy conflicts in favour of a selected policy, democratically established, hopefully consensual but certainly not necessarily so, and within a reasonable time frame, serving both continuity and flexibility;

6. Permitting regional diversity in energy policy and decision-making, based on regional resources, physical and human, and regional preferences. Thus, the policy and decision-making process must have a built-in regional basis, while still recognizing there may be over-riding national consideration;

7. Giving consideration to proceed beyond national authority to decentralize the entire process of policy and decision-making, within a structure that would permit dialogue and debate between the various concerned institutions and groups in any particular region, i.e. in effect reducing the basic policy structure for the process to the community level, if this was considered feasible. It certainly will have limited applications but these deserve standing. On the other hand, national energy policies are essential.

Several of these criteria have been dealt with in considerable detail, yet still require further analysis and development (Hooker et al, 1981). Of course, basic to NEPT is a government committed to it and committed to abide by the results of its citizens judgments. Variations of this process have been conducted in Norway, Sweden and New Zealand as well as in the state of Oregon. In every case, the result was a choice of long-term social and environmental benefits over short-term economic gains. In every case the industrial and energy lobbies lost the public debate. In these circumstances it is wise to trust the people on their informed consent.

Lest some readers confuse NEPT with "round tables", the differences are profound. In the main, the former is elitist, information at best trickling down to interested segments of the public. NEPT, on the contrary, multiplies the number of policy actors to a very large percentage of the total citizenry. Secondly, NEPT involves information democracy in a dynamic sense by not merely assuring the right to information by creating an environment for the active transmission of information so that the people can become informed. Because energy policy has such a powerful impact on social and environmental policy, the principle of informed consent applies, people have the right to become informed, and only then to consent. Also, there is an opportunity to provide a context of principles established at Rio, many of which are basically supportive of conservation, efficiency and benign alternative sources. finally, NEPT is an affirmation of participatory democracy far beyond and in a far more fundamental way than round tables. We believe a dedication to democracy is more basic than achieving preferred outcomes. On the other hand, this author is confident that the NEPT process would conclude with his preferred policy. That is the advantage of transparent processes coupled to information democracy, both central aspects of the NEPT. In conclusion, we believe fossil fuel and nuclear energy policies would wilt in the glare of public revelation, while conservation, efficiency and alternatives would bloom. That is the virtue of such openness.

6.1. GENERAL SPECIFIC ENERGY ISSUES

- Energy issues
- Resource extraction issues

6.1.1. Energy: the measure of all things

6.1.2. Specific Energy Issues

6.1.2.1. NUCLEAR

Excerpts from "Nuclear Power: The Unforgiving Technology" 1994 (unedited notes Unpublished manuscript)

6.1.2.1.1. Nuclear Power: The Unforgiving Technology

By its very nature, nuclear power imposes a structure on political power — large, centralized, bureaucratic, elitist, and alien. More subtly it imposes a way of life, a technocratic attitude toward nature, and an adaptive culture of extended mindless consumption — the source of most of our modern dilemma. Nuclear energy is the last hurrah of the technological society, the trump card of the growth paradigm and the exemplification of technological optimism — the faith that there are always technical solutions for social problems. This attitude has created a new technological theology in which "we can invent anything we dream" and must produce anything we invent." 1 As A.B Lovins has said, "What is not specifically forbidden becomes compulsory" 2. The unassessed consequences of growth are riding the juggernaut of technology, creating a major source of the global problem of survival. And nuclear power in all its forms is high on the list of these technological threats. to develop or not to develop is never the question.

As Albert Einstein has written: The splitting of the atom has changed everything, save our modes of thinking, and thus we drift toward unparalleled catastrophe." Nuclear energy must be seen for what it really is — a matter of survival — a fact often subscribed to by both the proponents and opponents of it.

The notion that most of the issues may be resolved by scientific criteria is false. Almost all of the issues reveal ethical and normative judgments firmly attached to and inseparable from the purely scientific equations. They are what A. M. Weinberg [a senior US. nuclear scientists] calls "transcientific" questions, whose areas of concern cannot be confined to scientific knowledge alone. This is true of the human biological threat of low-level radiation, the safety of nuclear reactors, the transportation of nuclear materials, nuclear waste reprocessing and disposal proliferation and the issues of energy options and the transfer of technology to other nations. Because the potential social and environmental impact of nuclear energy is so large, the public should be recognized as a key factor in the policy-making process.

Science cannot possibly be the final exclusive arbiter at this stage of our knowledge. There is a genuine scientific task to be accomplished in reducing the level of uncertainty and in identifying the means of doing so. But there is no early resolution in view within the scientific community on most of the critical issues. There is a tendency to mask uncertainty through probability statements of risk and through an estimate of the magnitude of risk. But again, there is no agreement among experts on methods or results. The debate is

almost always one in which contending paradigms or world-views clash. Usually it is split between technological optimists and skeptics, or between belief in technological infallibility versus belief in the imperceptibility of humans and the inevitability of accident. These paradigms are assumptions and are themselves not amenable to scientific proof. When the eminent nuclear advocate A.M Weinberg realizes this:

"Nuclear power is once again situated centre stage in the new theatre of global polemics. Nuclear energy is an issue integrated in many ways with that of survival itself — for Canada and for the world. The great global debates on energy, resources, growth, environment, arms control, weapons proliferation, and terrorism are affected in a critical way by nuclear technology, both civil and military. (3)

There may well be a powerful undercurrent of denial the psyche of the nuclear scientist. Hiroshima and Nagasaki were horrendous events invested at the time with the power of myth and religion, a supernatural force having been released at once more dangerous and sacred than any other power humans had ever unleashed. Robert Oppenheimer, the chief scientist of the Manhattan Project was in many ways the prototype of the Faustian model of his profession. Oppenheimer actually said in 1956 "We did the Devil's work" The devil is an essential part of religious myth. Oppenheimer gave the name "Trinity" to the first atomic test. Much later Weinberg (1991), was to say something similar:

The advent of nuclear energy poses issues of unprecedented magnitude and weight for mankind. the half-life of PU-239 (Plutonium-239) [note plutonium's underworld association] is 24,000 years and nothing man can do will change this. We have created materials that man has never seen before, that remain toxic for times much longer than we have even had experience with ...when I try to visualize matters from this very long-range point of view, I sometimes am concerned about our present course, (4)

Later Weinberg (1972) went on to talk about a "nuclear priesthood" modeled on the Catholic church as being delegated as guardians of atomic fuel into perpetuity. And returning to the Faustian role wrote even the eminent pro-nuclear scientist Alvin Weinberg, former director of the nuclear laboratory at Oak Ridge, Tennessee, wrote in Science:

We nuclear people have made a Faustian bargain with society. On the one hand we offer — in the catalytic burner — an inexhaustible source of energy. But the price we demand of society is both a vigilance and longevity of our social institutions to which we are unaccustomed. There must always be intelligent people around to cope with eventualities we have not thought of ... Reactor safety, waste disposal, and the transport of radioactive materials are complex matters about which little can

be said with absolute certainty. Is mankind prepared to exert the external vigilance needed to ensure proper and safe operation of its nuclear system? 12

In 1973, Weinberg explained his vision of a technological priesthood more fully:

[N]o government has lasted continuously for 1,000 years: only the Catholic church has survived more or less continuously for 2,000 years or so. Our commitment to nuclear energy is assumed to last in perpetuity—can we think of a national entity that possesses the resiliency to remain alive for even a single half-life of plutonium 239? A permanent cadre of experts that will retain its continuity over immensely long times hardly seems feasible if the cadre is a national body....; The Catholic Church is the best example of what I have in mind; a central authority that proclaims and to a degree enforces doctrine, maintains its own long-term social stability, and has connections to every country's own Catholic Church.⁶

Weinberg, is noteworthy for his candid, yet revealing analysis of the "keepers of the flame." In general, however, the existence of a nuclear priesthood, would never be admitted in the theological sense that Weinberg suggested. In an operational and public relations sense, it manifests itself as the exercise of expertise which has degenerated into a cult. Expert nuclear proponents have become a cult, their necessary disinterestedness having become subverted by absolute faith, the essential characteristic of a theological elite i.e. a priesthood. The subversion also is derived from the heavy investment in profit and prophecy. It is a combination of scientism, the belief in the omnipotent power of science and technology supported by an alleged flawless rationality coupled to human and technological infallibility.

Yet another aspect of global nuclear establishment involved in the production, promotion and marketing of nuclear power, together with all their auxiliary and ancillary technical and scientific-support groups — all have vested and invested interests and share a communal "group-think," the net result of which is a set of highly rationalized polemics, constituting a conspiracy of the like-minded. Nuclear power, the last hurrah of growth and technology, is an expression of a unified ideology of progress — resting directly on the omnipotence of technology, or the casual faith of technological optimism. For all true believers, nuclear power is both salvation and challenge. It fulfills and reinforces existing power structures, including the small but significant power base of the technical-support staffs. It is the perfect toy for the technological personality, while it bureaucratizes and centralized power for the powerful. It thus reinforces manipulative, elitist, and aggressive psychological, political and economic structures.

Hannes Alfvén (1972), a Nobel Laureate in physics has expressed the eradicable, internal contradiction of nuclear power, a formulation of Alvin Weinberg's concern.

"fission energy is safe only if a number of critical devices work as they should, if a number of people in key positions follow all their instructions, if there is no sabotage, no hijacking of transports, if no reactor fuel processing plant or repository anywhere in the world is situated in a region of riots or guerrilla activity, and no revolution or war— even a "conventional" one — takes place in these regions. The enormous quantities of dangerous material must not get into the hands of ignorant people or desperadoes. [NO ACTS OF GOD MAN BE PERMITTED 1

None of the nuclear-energy issues are amenable to settlement by purely scientific or "objective" criteria. Each of them has an area of uncertainty, which is the residence of values. Societies must assert their legal and recognized rights to determine their own future and to choose, if they see fit, to deny the nuclear option. Public debate must be encouraged and promoted because the transparencies of the nuclear proponents' argument will be revealed as not merely invalid, but in fact unscientific in the best sense of that word. Their arguments are based on faith and not on disinterested assessment—a faith that borders on the psychotic, and on the fundamentalist belief system that cannot tolerate any dissent.

There is yet a further flaw in the area of nuclear regulation whereby, not only is the future discounted but mortality and morbidity are reduced to economic accounting for the present.

Thus, the International Commission on Radiological Protection (ICRP) is frank in its recognition of the trade-offs:

...unless man wishes to dispense with activities involving exposures to ionizing radiations. ...[he] must limit the radiation does to a level at which the assumed risk is deemed to be acceptable to the individual and to society in view of the benefits derived from such activities 11

The words "assumed," "acceptable," and "benefits" reveal the use of value judgments. But even worse is the fact that neither individuals nor society have been given the right to make such judgments. Only the beneficiaries not the victims have been consulted.

"Nuclear priesthood's," "Faustian bargains," "eternal vigilance," "permanent disposal"; these are surely not the language of science. No other science would dare to expose itself to such non-science concepts. Keep in mind that the Faustian bargain was made with the devil, something Weinberg seems to have overlooked. Nuclear physics became the temptation of absolute power at the very beginning in the development of the bomb and the horrendous destruction of Hiroshima and Nagasaki.

A central question about technological choice and the principle which should guide it, is whether the choice to proceed with civil nuclear power violates both operational and ethical principles. UNCED revived a major theme of technological choice by proclaiming the Precautionary Principle.

Permitting nuclear power to proceed is clearly in violation of this principle. The argument that almost everything or even that everything has

been done to ensure the safety of civil nuclear power does not carry with it if it is still not enough. As long as there are outstanding risks arising from unsolved problems, then without an acceptable solution in place, the risk is unacceptable. In the words of the precautionary principle "we do not have to wait for scientific certainty that irreversible harm will occur, for us to take appropriate measures to prevent such harm.]

NOTE EXCLUSION OF ATOMIC FROM HAZARDOUS WASTES

There is yet another aspect of civil nuclear power which should have been invoked to halt its commercial application. This aspect relates to an analytic tool society has developed for technological assessment — the risk/cost-benefit analysis (RCBA) or cost-benefit analysis (CBA). These are essentially economic tools for assessing technology in terms of possible costs and perceived benefits. These methods of analysis require a full accounting of all the benefits and costs of choosing a particular technology, such accounts usually being far more amenable for the benefits than the costs due to quantification problems on the cost side. . But there are still other aspects particular to nuclear power. These involve intergenerational impacts and intrinsic uncertainties, fundamental ethical considerations. UNCED and several others documents have acknowledged the need to recognize intergenerational equity.

The ethical nature of the nuclear problem transcends all other considerations. As the noted economist A.V., Kneese (1973) wrote:

"It is my belief that benefit-cost analysis cannot answer the most important policy questions associated with the desirability of developing a large-scale, fission-based economy. to expect it to do so is to ask it to bear a burden it cannot sustain. This is so because these questions are of a deep ethical character. Benefit-cost analysis certainly cannot solve such questions and may well obscure them...Unfortunately, the advantages of fission are much more readily quantified in the format of a benefit-cost analysis than are the associated hazards. Therefore, there exists the danger that the benefits may seem more real. Furthermore, the conceptual basis of benefit-cost analysis requires that the redistributive effects of the action be, for one or another reason, inconsequential. here we are speaking of hazards that may affect humanity many generations hence and equity questions that can neither be neglected as inconsequential nor evaluated on any known theoretical or empirical basis. This means that technical people, be they physicists or economists, cannot legitimately make the decision to generate such hazards. Our society confronts a moral decision of great profundity; in my opinion, it is one of the most consequential that has ever faced mankind. 8

Surely such a profound moral decision, affecting the present and the long-term future cannot be left to governments and their expert advisers alone. But the entire history of the development of nuclear power, civil and military has been characterized by decision-making which is elitist and covert and in

violation of moral principles. and above all inhuman. cost such as mortality and morbidity are reduced to placing a price on life and pain.

Finally, Amory Lovins sums up this fundamental internal contradiction of nuclear power.

as Amory Lovins (1972) has put it in his book:

Nuclear energy is not a mere engineering problem that can be solved with sufficient care, but a wholly new type of problem that can be solved only by infallible people. Infallible people are not now observable in the nuclear or any other industry 11

and one may add it, depends on the assumption of perfectible technology which does not and cannot exist either.

Thus, we may conclude that it is unethical to encourage a technology which can only be safe if it is perfected and operated by infallible pope, where "no acts of God are permitted." Alvin Weinberg's term "nuclear priesthood" is totally appropriate. While one must admit that no energy system is without its attendant social and environmental costs, none of the alternative poses the same magnitude of threat over the same length of time. None of them is linked to the current and future arsenals of weapons of mass destruction. None of them is so pregnant with social and environmental uncertainties. None of them receives the same level of overt and covert social and environmental subsidies. Finally, in the short to medium future, we do not need nuclear power to serve our legitimate social and environmental goals. It is an inappropriate energy system for the developing world where the solar resource base is generally very large and where many rural communities are not likened to a highly centralized system. Finally, we should note that nuclear power is intrinsically elitist in nature and largely closed to public scrutiny by law and design or as one expert critic has described it " a circus of sophistry"

The Nuclear Establishment

There exists a global nuclear establishment, as well as national nuclear establishments. These establishments, include individuals and institutions — private and public, national and international, regulatory and productive — that have a uniform perception of nuclear technology, or a global nuclear world view. This world view consists of a common belief in technological omnipotence. It accounts for the intimate relationship between utility bodies and nuclear bodies. It is guilty of tunnel vision, in that technological faith rests on fission technology and its perfectibility. The ideology is complex, technician, elitist, manipulative, fear of exposure and therefore sensitive, protective, and defensive in posture and policy. It rests on a well-structured set of myths translated into highly homogeneous arguments, postures and beliefs. This homogeneity is global, so that within the relatively closed networks of communication among the various members, national or international, public or private sector and individual or institution, the mythology is uniform in content and form. It infects individual nuclear scientist who cannot escape the imposed world view and mindset. many of them become dependent on corporate connections, most academic nuclear science and engineering programs live from grants-in -aid associated with nuclear industry. Some form of conflict-of-interest disclosures for professional consultants inside or outside

the university might allay suspicions on all sides. As it stands, academic nuclear scientists and engineers often adopt public-policy postures without revealing their corporate connections, 7. Karl Mannheim's injunctions against attempting to understand the modes of thought of scientists "as long as their social origins are obscured"⁸ applies to the nuclear group.

Nuclear associations, corporate and academic, together with international institutions [what about national government supported AECL] make up a unique establishment. They act in relative autonomy that is largely derived from the very broadly accepted cult of the expert. But the relationship between accepted and imposed social goals and the elitist accommodation which enables their fulfillment is reciprocal. It offers power in all its forms — economic, professional, and status-oriented — but ultimately it is political power. The common medium of exchange is power of all kinds.

The public role of these individual actors, within different slots of functional responsibility set in a broad organizational structure, becomes fused with the institutional role. Alvin Weinberg's call for the creation of a "nuclear priesthood" is much more revealing than he intended. For the nuclear establishment has much of the character of a church and a faith, in fact a fundamentalist vision. And very much like the fundamentalist movements, the nuclear establishment incorporates into its paradigm a set of homogeneous beliefs that constitute essentially a nuclear mythology. The myths rest on a second false assumption and on flawed reasoning. In this paper we will describe the scientific basis behind nuclear energy and then examine both the assumptions and fallacies underlying the arguments used to promote nuclear energy. Many of the methods and analysis of the nuclear establishment were done in preparation of a 1975 book (Knelman, 1975) "Nuclear Energy: the Unforgiving Technology" The mode of analysis was the study of official documents and general writings of the establishment and its supporters including hundreds of technical papers, advertising and public relations.

Technological basis of nuclear energy

In all the world there are only two major fissionable elements, one natural, Uranium -235, and the other synthetic, Plutonium -239. Both are capable of the fissioning of the nucleus yielding nuclear energy, either under engineered conditions in a civil nuclear reactor or explosively in an atomic bomb. Both these elements are related, Plutonium 239 being a product of the non-fissionable isotope of uranium - Uranium -238, by the capture of a neutron, a process taking place within a reactor. All civil reactors produce plutonium which is a portion of the exhaustible fuel rods or high-level waste (HLW). In fact, therefore, all atomic weapons are directly or indirectly the product of nuclear reactions involving uranium. Without uranium there would be no weapons grade fissionable material.

Natural uranium i.e. uranium as it occurs naturally in or on the earth or in small proportions in the oceans is composed of two isotopes elements of identical chemical behaviour and differing only in the number of certain

fundamental particles in their nuclei. these two isotopes are Uranium 235 and Uranium 238. Only the Uranium 235 under ordinary circumstances is fissionable. The two isotopes are present in a precise ratio i.e. 0.7 % u-235 and 99.3% U-238 or in 1000 kilograms of natural uranium there is 7 kgs of U-235 and 993 Kgs of U-238. Most commercial reactors require a fuel which is some 5% U-235. The Canadian reactor, CANDU, uses natural uranium. In order to increase the percentage of U-235 in the natural uranium, the isotopes must undergo a degree of separation. This is termed enrichment. the product of an enrichment plant is a nuclear fuel of U@35 content anywhere from 5-90% the latter being used in weapons and termed weapons grade uranium. What is left over from the enriched uranium is the U-235 also known as depleted uranium

As safeguards evolved, they focused totally on guarding against the covert or the clandestine diversion of the U-235 isotope and the operations such as enrichment to produce weapons grade material. Thus, IAEA was entrusted to control, audit, monitor and account for U-235 in its passage through the nuclear fuel cycle. the rationale was that it was the U-235 that was the most significant material in the development of atomic weapons.

Thus, bilateral and international safeguards are predominantly based on accounting for the U-235 in the nuclear processing cycle supported by treaties requiring importers of uranium to agree not to divert materials for the production of weapons. However, the above safeguards have been ineffective in preventing proliferation for several reasons. Even where bilateral treaties exist, there is no failsafe method to prevent diversions from the civil nuclear fuel cycle, particularly in the case of the five nuclear weapons states — US., UK, France, USSR and China, where the civil cannot neatly be separated from the military. But there is another more subtle way in which civil nuclear activities contribute directly to the production of nuclear weapon. and this "loophole" arises in large part from the general integration of the nuclear fuel cycle and military nuclear weapons production both from uranium of the "front" end of the cycle and plutonium -239, the only other fissionable weapons grade material, at the back end. In fact, the two major ways of producing plutonium is based on the mining and processing of uranium in the civil fuel cycle.

Canada is a very important player in the proliferation issue, being the major exporter of uranium in the Western world, currently exporting some 31% of the total.

In 1978, at a United Nations Special Session on Disarmament (UNNOD I), Pierre Elliot Trudeau made a seemingly brave proposal i.e. to "suffocate" the arms race by the strict control of uranium plus a nuclear freeze. Although, at UNSSOD II in 1982, Trudeau diluted his proposal to a level of ineffectiveness, he had really given the game away in 1978 by acknowledging that the nuclear arms race could be suffocated by strict control of uranium production and export.

For there is a strange phenomenon: all the major uranium mines in the world are civilian mines. They produce uranium under civilian auspices, are regulated by civilian laws for civilian purposes, export uranium of civilian uses, and are protected by bilateral or multilateral treaties or through the Nuclear Non-Proliferation Treaty administered by the International Atomic Energy Agency (IAEA) of Vienna.

Nevertheless, although the military does not operate mines, the military arsenals of the world have grown six-fold since 1970, having mysteriously obtained the critical materials, Plutonium -239 and Uranium-235.

All uranium, whether it is for a civilian nuclear power reactor (where it has to be enriched to approximately three percent of the U-235 component) or for bomb purposes (where it has to be enriched to more than 90%), must pass through enrichment facilities. For example, Canadian uranium travels to Paducah, Kentucky to be enriched.

Here a curious phenomenon takes place. It is called fungibility. "Fungibility" is a better word. Uranium from various sources is bulked together to achieve a feedstock level commensurate with the size of the plant so it can operate efficiently. Thus, Canadian uranium would be bulked with domestic uranium from the United States, Australian uranium and so on. The output consists of two streams. One stream is the enriched uranium. The other is depleted uranium, consisting mainly of the U-238 isotope.

This is the key to focus on temporarily. Depleted uranium, which is mainly U-238, is not safeguarded. We don't demand its return. We have a Nuclear Cooperation Treaty with the United States ?? contains a tragic flaw because the depleted uranium goes into several weapons processes. It becomes "target " rods in Savannah, Georgia and Hanford, Washington where it is bombarded with neutrons to manufacture plutonium. so, our Canadian U-238, depleted uranium, is used in the manufacture of plutonium. Plutonium is used to make atomic weapons and triggers for thermo-nuclear weapons.

Strangely, we also have the same arrangement with Britain and France, because they too apply the principle of fungibility. But we've also discovered that on the outskirts of the Latvian city of Riga, there is a very large former Soviet enrichment facility. Several Western European countries that purchase Canadian uranium for enrichment for civilian reactors had it processed in the Riga enrichment plant because it was competitive in price with the two Western European consortia. the Former Soviet Union kept the depleted uranium.

Depleted uranium is also manufactured into a casing for thermo-nuclear weapons. In a thermonuclear explosion, at some ten million degrees Celsius, U-238 will fission. Also, all the metal parts of a thermo-nuclear bomb use U-238 as a material of construction; under the immense neutron flux of an explosion, U-238 fission's lead to 50% of the; bomb's yield. So, a thermo-nuclear weapon that is designated as one megaton gets 500 kilotons of power from the depleted uranium, which is not safeguarded.

We can therefore say with confidence that there is a little bit of Canadian uranium — or a lot in some cases — in every thermo-nuclear weapon in the American arsenal, in many of the atomic weapons of the French and British arsenals and surprisingly, of the former Soviet Arsenal (now Russia)

This is tragic because it is possible to prevent this. It is possible for a major supplier like Canada to require that our uranium be segregated and the U-238 fraction returned. this would prevent the current violation of our treaty with the United States and other weapons states. Incidentally, Saskatchewan is to uranium what the Persian Gulf is to oil. The Cigar Lake property is the

most astounding geological structure in the world. It's called an "elephant" in geological jargon. It's of uranium ore, seventy times as rich as the richest uranium body elsewhere in the world. There are three hundred million recoverable pounds, representing about ten billion dollars of current value there. This accounts for this province's behaviour re uranium, it is a uranium republic within Canada. And as we have explained all the current weapons production with its huge social and environmental costs is integrated with or piggy-backs on the military. The military provides huge subsidies to enrichment facilities. And curiously while the US. has large stock piles of uranium, it only draws its weapons materials from operating enrichment plants. Thus, despite all disclaimers or outright denial, the fact is that civil nuclear fuel cycle provides the materials for nuclear weapons. In France, Russia and China, civil and military nuclear power operations are integrated. In the US. a single government department the Department of Energy (D.O.E.) operates both.

As we have noted in several parts of this book, there are active plans to proceed from an uranium based fuel cycle to plutonium in civil nuclear reactor operations. Because of this huge secondary source of nuclear fuel, some countries (such as Japan) are fueling their civilian nuclear power reactors with what is the most dangerous element in the world Plutonium 239. In addition, a US. Russia consortium is working on the recycling of plutonium in nuclear warheads as they become available from arms treaties.

There is a general law of all technology which states that as technological traffic increases, controls designed to mediate unwanted impacts continue to lag behind, giving use? to inevitable accidents, the classical example being the automobiles. As traffic in plutonium increases, we will have hijackings and we will have transportation accidents. Plutonium is more expensive [than Uranium]. It commands a higher price on the black market than heroin. Moving into the plutonium economy is truly a fearful prospect. It is one of the most toxic substances in the world when inhaled as a microscopic particle, as small as one millionth of a gram. Yet the father of the Canadian Deuterium Uranium reactor (CANDU), Dr. Bennet Lewis (19), once referred to the waste fuel rods as a "plutonium mine" a resurrection of Dr. Strangelove.

We are at an absolutely critical stage. The last review of the nuclear non-proliferation treaty (NPT) will be in 1995. That's when the 25 years of that regime are over. Meanwhile, last March, for the first time, the 1963 partial Test Ban Treaty, through Article 2, was able to get the requisite one-third vote of its 112 members to call for a conference to move from a partial test ban to a comprehensive test ban.

The achievement of a comprehensive test ban would be perhaps the single most effective current step in slowing down the arms race. So, it is incredibly important. Moreover, the entire integrity of the non-proliferation regime rests upon the obligation of the nuclear weapons states, as stated in Article 6 of the NPT, to negotiate in all seriousness for the cessation of the nuclear arms race. To a significant degree this has begun with the signing of STAR II. But the problem is that, in the case of the US quantity has been replaced by effectiveness, and strategy to the convention obligation? of tactical use of nuclear weapons in regional conflict (see Chapters 3 and 5).

Unfortunately, Canada's policy in the past has not supported a comprehensive test ban (CBT), having voted against many key resolutions in the UN General Assembly. In fact, Canada had been playing the part? lead in a naked accommodation of the US which was firmly opposed to CBT. We are not encouraged by the Clinton administration. Although they have, for now, deferred renewed testing. There were riders on this deferral which are not promising. So subtle and pervasive is the support of nuclear conventional energy systems that US "aid" agencies are required by law in technology transfer of electrical generation be powered by fossil fuels. This technological imperialism

Wasting our world

One of the most unscientific words in the languages of the world is "permanent." But one would hardly expect the nuclear faithful of IAEA to use the term "impermanent waste disposal." Yet nothing but impermanence is permanent in our world. And in particular no technological work can be permanent. Again, what has been permanent since the beginning of the nuclear age is the mindset of nuclear proponents. "Mindset" is an interesting word in that it appropriately demonstrates the collective rationalizations of the nuclear establishment. It is a set of views so firmly set in the collective mind as to be incapable of independent unbiased judgment. According to Dr. John G. Kemeny, chairman of the commission that investigated the Three Mile Island accident, in effect, concluded that it was the nuclear mindset set in its "belief that nuclear power plants are sufficiently safe grew into a conviction...The commission is convinced that this attitude (the mindset) must be changed to one that says nuclear power is by its nature potentially dangerous..." and to prevent accidents in the future will require "fundamental changes" ...in the attitude of the nuclear Regulatory Commission and, to the extent that the institutions we investigate are typical, of the nuclear industry" (Report of the President's Commission on the Accident at Three Mile Island, October, 1979 p.9). On the other hand, Harold M. Agnew, president of the General Atomic Company and former director at Los Alamos has written.

Harold M. Agnew (19) President of the General Atomic Company and former director of Los Alamos wrote:

"The experience at Three Mile demonstrated to the satisfaction of all technically qualified people.... reactors offer no significant threat to the health and safety of the general public" (Scientific American, June 1981). Thus, we can conclude that two commissions, one appointed by the US president and one by the NRC, both of which disagreed with Agnew could not have been composed by "technically qualified people." Thus, the nuclear establishment rejects independent expertise out of hand as much as it does public "ignorance" [source?] and fear. Indeed a second commission also composed of independent experts concluded that the TMI accident was a result of the "attitude of complacency" and without "fundamental changes", the accidents "only narrowly averted at Three Mile Island are likely to recur" (US N.R.C. Commission of Inquiry on the Three Mile Accident, June 19980, p. 90). the source of such accidents is the mindset of the nuclear establishment, shared so implacably by IAEA and AECL. And keep in mind that the source of our

accusation are themselves acknowledged and independent nuclear experts. Also judge all of this in the context of an article in Forbes Magazine which called nuclear power " the largest managerial disaster in business history, a disaster on a monumental scale" (s. Chase, "Nuclear follies" Forbes 1/2. 85). Given this background we will analyze the waste problems in the nuclear fuel cycle.

The nuclear waste issue illustrates a number of fallacies of the nuclear establishment. foremost is the fallacy of technological omnipotence. The assumption behind the notion of permanent disposal of HLW deep in a stable geological formation begs several questions. The first is the idea that anything we do technologically can be permanent particularly when we are dealing with the lithosphere over some 100,000 years and when we must first disturb the geological structure by digging a very deep hole. AECL has dug a deep hole near Lac du Bonnet in Manitoba which is totally inappropriate for such so-called "permanent" disposal. For one thing you must, in all events, avoid water.

Walt Patterson, a superb nuclear critic described this AECL research project as follows:

A drunk has lost his keys and is discovered by a police officer crawling around a street light. When questioned the drunk admitted that he had lost his keys in front of a dark building, a block away. when asked why the drunk was then searching around the street light, he said

"you see, officer, the light is better here," and as Dr. Martin Resniicoff, an expert on geological waste disposal has put it "the earth does not stand still"

The association of nuclear wastes with toxic wastes is invalid from a stability point of view. theoretically, toxic chemical wastes, can be broken down by chemical means, a characteristic of all chemicals. [is there not a long residual life of the chemicals as well]

Nothing can break down the toxic radioactive elements in nuclear waste that is nothing except the natural disintegration characteristic of their half-lives. A single gram of plutonium 239 exceedingly carcinogenic if inhaled as a small particle in the lungs, has a half-life of some 24,000 years. If you have disposed. of 1 Kg of plutonium 239, in 240,000 years you will have 1gm remaining, a very potent hazard. Iodine 129, another fusion product has a half-life of 17 million years. WE must be certain therefore that the earth does not move and that no acts of God can be permitted.

Still another propaganda ploy is to point to the relatively small volume of high-level nuclear waste often comparing it to wastes from coal generation. This is an example of a false comparison and a deliberate key exclusion. The US Geological Survey has calculated that of all the nuclear wastes projected in the 1970's to be in place ;by the year 2000, the amount of water that would be required to dilute them to legal "acceptable" levels, would amount to double the total fresh water in the entire world. [date]. Thus, no water whatsoever can be tolerated to contact disposed nuclear waste. But the point is, that it is not the volume of waste alone that defines the problem but the toxic density of that waste. It is a half-truth to mention the volume without admitting the toxicity.

Beyond the issue of high-level wastes, IAEA deliberately excludes the environmental and health hazards of the front end of the nuclear fuel cycle i.e. the mining and refining of uranium and the disposal of these wastes. Even at the excessively underestimated figure of 3000 deaths per year from radon exposure from tailings, this adds up to 240 million deaths over the lifetime of these tailings in the US and 180 million deaths over the same 80,000 years period in Canada. But we have not included in these estimates deaths from radium which is bio mobile and bioconcentratable and moves through ecosystems and food chains. Every time the nuclear advocacy groups and institutions talk about the small hazards of operating nuclear power plants and omit the hazards of the total fuel cycle they are lying. They are withholding significant to themselves but certainly to the public has the right to know. Admittedly, these are mainly lies of omission (see the pamphlets of G. Edwards CCNR, Carte Postal 236, Succursale Snowdon, Montreal P.Q, H3X374 for material on these wastes and these hazards)

Excess deaths from lung cancer has been demonstrated among uranium miners, in fact those exposed has a 50% mortality from lung cancer. The principal culprit was eventually found to be radon gas, one of the decay products or radon daughters of uranium. In fact, a 1982 study published by the Atomic Energy Control Board (Ottawa) (AECB) revealed that we could expect over 200 out of every thousand uranium miners would die from lung cancer i.e. more than 20 %. Once mined, tailings release some 10,000 times more radon than the unmined ore. As much as 150,000 tons of radioactive debris is lying about the town of Port Hope in open ravines accessible to the townspeople, even children. Entire towns and subdivisions have been built on tailing sin Canada and the US despite the deadly hazard of radon. Standards set by AECB for homes in Elliot Lake were later acknowledged to lead to some 54 cases? lung cancer per thousand. These huge quantities of unmanaged low-level wastes were quite correctly described in a Wall Street Journal article of Feb.,26 1986 as " an ecological and financial time bomb.: Even at a modes t estimated cost of \$10/ton to contain these tailings with in some permanent barrier would lead to astronomical costs i.e. 1 1/2 billion in Canada that these tailings could lead to between 3000 and 30,000 excess cancer deaths per year for their lifetime of some 80,000 years. Almost every pamphlet of the nuclear establishments, national and international, relies on the difference in fuel requirements between a nuclear and a fossil fuel plant, In almost every pamphlet of the nuclear establishment, national and international, rather than fulfilling their responsibility to the community by revealing the environmental, social and economic costs of tailings, the nuclear establishment concentrates on the comparative costs between a nuclear and fossil fuel plants.

...

IAEA's claim that nuclear power is safe is apparently not even believed by the most hard -headed assessors in the world: the expert actuaries of the major insurance companies, whose calculation of risk is the basis for rates. IAEA has apparently not been able to persuade the major insurance companies of the complete safety of nuclear power. No single or consortium of insurance companies in the world will insure a nuclear power plant against the worst-case accident. [insert evidence of nuclear plant insurance policy, if possible,

The insurance has to be subsidized by governments at a small fraction of the potential cost. In Canada the nuclear "liability" act limits such liability to \$75 million whereas the cost of the above accident could be \$7 billion or \$7,000 million. [note somewhere how nuclear is continually separated, when convenient, or when advantageous from either toxic or hazardous waste and often separate acts and statutes are required]

Although the nuclear establishment including IAEA argues that the nuclear industry is mature and safe, they also argue that limited liability arises because there is an insufficient experience to justify full liability. This insurance subsidy is only one of the federal subsidies provided to the nuclear industry. Low-interest loans in the billions of dollars are another.

Low interest loans in the billions of dollars are another. Another subsidy is their disproportionate share of federal Research and Development money. And beyond this there is the huge commercial/trade and promotional subsidies which AECL obtains that any private industry would have to cost.

At present nuclear power costs some 10 cents per KWH. The author has estimated that it would cost at least 20 cents without all the open and hidden subsidies. One cost that is never factored in is the economic costs of environmental degradation caused by failed systems of waste disposal, and the entire unresolved waste disposal issue could involve enormous costs at present totally unpaid except for expensive and questionable experiments.

The nuclear establishment in almost every major document, attempts to foreclose dissidence by invoking the power of authoritative voices in an attempt to capture the acquiescence of the public and the politician. In fact, they deliberately cultivate the cult of expertise in their pursuit of policy control. There is an inherent paternalism and elitism in this posture. The experts are the only people able to understand and thus must be trusted and entrusted by the public and the government respectively. We now intend to deal with the extremely serious issue of proliferation.

[NOTE THAT THERE IS SUCH BLIND FAITH THAT OFTEN THOSE WHO ATTEMPT TO REVEAL THE FLAWS IN THE NUCLEAR PROPONENTS' ARGUMENTS ARE PERCEIVED TO BE THE ONES THAT ARE MISLEADING THE PUBLIC AND GOVERNMENTS. THERE IS A PREVALENT BELIEF THAT IF THE USE OF NUCLEAR POWER WERE AS SERIOUS AS OPPONENTS CLAIM, THEN NO GOVERNMENT WOULD BE FOOLISH OR INSANE ENOUGH TO CONTINUE TO PERMIT THE PROLIFERATION OF THE USE OF NUCLEAR CIVIL REACTORS. NOTE ONE OF THE REASONS THAT THE PUBLIC AND GOVERNMENTS MIGHT BE OBLIVIOUS TO THE DANGERS OF THE DISPOSAL OF NUCLEAR WASTES IS THAT IN THE US AT LEAST MUCH OF THE WASTES IS DEPOSITED ON NATIVE LANDS (SEE NOTES FROM PUBLIC POLICY AND ENVIRONMENTAL LAW CONFERENCE, EUGENE MARCH 1993)

To illustrate the differences between the assurances of the nuclear establishment of the disposal of radioactive wastes and the reality of nature and extent of the disposal of radioactive wastes, we might examine the task of Sandia National Laboratories and its Marker Project (technology Review July 1992). In this project, a team of experts consisting of anthropologists, linguists, artists, astronomers, psychologist etc. have been hired to design a long-lasting permanent marker for nuclear waste disposal sites. The team has hit on a granite stone of some six tons or more to prevent

removal), carved in an irregular manner to 'inhibit' recycling by future generations for structural purposes. Then came the issue of the message on the marker which must be universal, the entire marker to last some 100,000 years or more. The idea was to use pictographs, a sort of nuclear comic strip, supported by highlighting a complete periodic table indicating which radioisotopes are buried in that place (the regular periodic table does not include fission products that do not exist naturally) and a million or so inscribed glass objects. Then came the question of the mood of the marker i.e. either one of extreme dread and danger or something simple that would not be interpreted as a form of "black art." To base our civil energy requirements on the uncertainty of archaeological futures is nothing short of ridiculous. [In other words, they have based the future safety of humanity on symbols of artistic creation based on contemporary not universally accepted iconography; In the artistic and archaeological tradition, symbols even as recent as a century escape interpretation ... is nothing short of ridiculous.

We will now turn to analyze several publications of AECL which predictably are a boring repetition of all the devices we have analyzed above and illustrate the full message of nuclear mythology. We will be analyzing documents prepared for two international conferences held in 1992, one being UNCED '92 and some advertising campaigns of AECL.

The Canadian Picture

The AECL background briefs for UNCED '92 were repeated in a glossy expensive form that AECL prepared for Globe '92, and international environmental conference held every 2 years in Vancouver, Canada. These background briefs covered such disparate areas as tourism, forestry, industry and energy and provided a glowing message of the incredible (not credible) advantage of nuclear power. Essentially their message was the same time-worn story, supporting the expansion of electrical supply, generated of course by atomic energy on the assumption that electrical demand is an essential correlate of economic health. Thus, according to AECL, an increase in electrical consumption leads to an increase in economic activities, the typical supply-side promotion that excludes demand management and downplays conservation and efficiency. AECL then describes all the side-benefits of nuclear technology in assisting industry, controlling pollution and assisting safety procedures. In the background brief on Manufacturing and Processing they conclude.

It is interesting that in proceeding from one to the next background brief, how nuclear power is assigned relative virtue in one, the energy brief, "from an environmental standpoint, all clean energy is relatively clean , a modest statement to "nuclear power which known to be safe, environmentally sound and cost efficient, (forestry brief), a lapse into absolutism let alone begging of the question of "known to be." It is known to be by the faithful.

AECL is very conscious of image and spends a great deal of public funds in the promotion of nuclear energy. This task is assigned to a special [propaganda branch], suitably armed with nukespeak, the Corporate Public Affairs Branch. A central theme that is promoted is to allege that there is a

direct functional relationship between energy supply and demand and economic health and viability with no intervention or mediation of conservation and efficiency. This is the essential theme of the supply pushers. It is always accompanied by an indiscriminate graph illustrating the "historical relationship between electricity demand and Gross Domestic Product, GDP/capita. Thus, no distinction is made between efficient energy users such as Western Europe and Japan and wasteful consumers like Canada and the US. They never fail to compare coal generation and nuclear generation, associating coal with all the evils of pollution from acid rain to global warming. They never fail to assert that nuclear power is clean and safe, that high level wastes (waste fuel rods) are all highly concentrated and completely with perfect safety. They show no shame in endlessly citing the following statement which is repeated in countless documents. "All the used nuclear fuel in storage in Canada after 30 years of commercial operation would fill one Olympic-size swimming pool. By the year 2000 it will fill only three such pools" One would have thought, given their large promotional budget, that the advertising hacks of AECL, would be aware that repetitions lose their appeal in time, particularly when it is not even a half-truth in terms of its exclusions. They continually assert that they "see no realistic alternative to nuclear energy" associating that with the maintenance of economic growth and more recently sustainable development. Their summary on nuclear energy in the background brief on energy stated. "In a relatively short period of time, the nuclear industry has come a long way in using high technology and human expertise to produce energy safely at a relatively low cost to the consumer while inflicting minimum damage to the environment " All of these statements are categorical lies or at best half-truths and paid for with public funds. We ask the reader to refer back to the previous sections where we have dealt with two major issues — waste and proliferation in order to judge for themselves.

Again, to indicate how strong the Canadian commitment is to nuclear power, in Canada's National Report for UNCED '92, it states "New, cleaner technologies such as solar energy may help, but the hard fact is that to a large extent we will have to rely on either thermal, hydro, or nuclear energy in the future." One might note that this statement suggests that solar is cleaner than nuclear, a point that one can be sure was not intended. On the other hand, the quoted statement is an open defence of the status quo, since the above report goes on to justify current Canadian energy policy, with its strong support of fossil fuels as protecting "jobs and economic wealth. especially important in some regions of Canada"; this is a typical tunnel vision assumption that the status quo i.e. oil and gas in Alberta and hydroelectric capacity in Quebec are the only sources of jobs and wealth, when in fact conservation and efficiency are far more labour and far less capita-intensive. At less cost we can create more jobs. So not only does Canadian policy rule out the future role of renewables, but it downgrades the most effective short to medium term energy options i.e. conservation and efficiency. And to add to this folly of policy, Canada's energy uses per unit GDP is the worst in the OECD and in the past two decades Canada and the US have radically diminished their support for renewables while pouring billions into fossil fuels and nuclear power.

....

Nuclear Culture

The nuclear lobby has evolved into a global sub-culture independent of creed or country. This sub-culture is manifested by homogeneous world view, and iron-cast mindset, a universal language, cosmetic and euphemistic, and a set of persistent myths. This collectivity of perception leads to an uncritical, almost theological support of nuclear power. It removes the required separation between the regulators and the managers, the operators and the owners. It lends itself, and itself leads, to a remarkable convergence of interests between government, industry and science, a unique combination designed to accommodate the economic order. Centralization in the production and distribution of electrical power reinforces the centralized uses of political power. Thus, vested and invested interests develop a set of highly polemicized and rationalized thoughts, i.e. Nukethink, and which this author has described as the conspiracy of the like-minded." Nuclear power is also the perfect toy for the technological personality. It reinforces the macho, manipulative, elitist and aggressive psychological, political, technological and economic structures, resting on a common ideology of progress.

The following is a partial glossary of Nukespeak terms.

Dose Receptors	Humans exposed to radiation
prompt criticality	
significant events	
anomalies	
abnormal occurrences	
postulated loss mechanisms	Accidents
Normal aberration	
plant transients	
unnecessary ignition source	
sunshine units	Measurement of strontium-90 (can cause bone cancer)
Diversion path analysis	
Alarm thresholds	
Alarm levels	
Plausible technical explanation	Proliferation products
Material unaccounted for (use acronym MUF)	
Health effects	Cancer or genetic malformations
Events of Rapid disengagement	Explosion
Events of rapid oxidation	Fire
Residue area	Waste dump
plutonium mine	spent fuel

leave-or-retrieve decision	reprocessing or disposing
concentration and containment ultimate solution	Waste management
questionable integrity	leaking storage tanks

Semantic pollution

Semantic pollution is a pernicious form of thought control. A dominant form is commercial pornography, the deliberate use of natural images i.e. a pristine scene, the earth as viewed from space, a primeval forest, untouched wild places, set in a context of product advertising. Most of the major polluting corporations are using this kind of advertising. But the nuclear establishment, private and public, is the worst of the pornographers. By false contexts, corporate advertising attempts to sanitize and cosmeticize its products. A particularly pernicious example is found in a glossy AECL brochure distributed at the international conference Globe '92., held in Vancouver, Canada. [Visual Misrepresentations is also, in a magazine ad using a picture from the Carmanah to advertise the "clear air" provided by the nuclear industry]

In the picture of the above ad, the scene is one of natural beauty. A woman in her thirties with two beautiful young children talks about nuclear power. She admits having been anti-nuclear as a student but now as a mature woman concerned with the future of her family, now believes the salvation to air pollution is nuclear power. The caption reads " It means clean air for this planet." Let us be clear about the true meaning of this ad. Firstly it associates an anti-nuclear position with radical youth and being pro-nuclear with maturity and wisdom Secondly it makes an incredible claim i.e. that nuclear power can save the air pollution problem on a planetary level i.e. it can replace all sources of air pollution in the entire world. This is the perennial claim of the extremist nuclear ideologue. It means a totally electrical world. it means all transportation modes — cars, trains, trucks, airplanes etc. must all be electrically powered. All energy supply must become electrical. As for the non-energy sources of air pollution, including all manufacturing emissions. The claim covers these as well, a patent impossibility even by the impossible dream of these nuclear fanatics. It means completely revolutionary developments in battery operated motive power. and all of this technocratic dream is proposed in an economic and political vacuum let alone all the unresolved problems of nuclear power such as waste disposal, proliferation, thermal pollution, routine emissions and inevitable accidents in a non-perfectible world. this ad is the essence of semantic pollution.

A few years earlier, in 1988, the Canadian Nuclear Association (CNA) which is a consortium of some 100 corporate, government and professional members involved in nuclear programs in Canada, has launched a multi-million-dollar advertising campaign. Three of these ads appeared in Maclean's Magazine on January 9, April 10 and an ambitious 16-page supplement on June 12, 1989. I will be the major function of this section {article} to analyze these ads. it should be noted that among the leading members of CNA are crown corporations such as Atomic Energy of Canada Limited (AECL) and the

Canadian Mining and Energy Corporation (CAMECO). This means that public funds have contributed to this "public acceptance campaign." The timing of these ads is no accident and is clearly revealed in the content. The current vogue for environmental concern, publicized by the Report of the UN World Commission on Environment and Development (WCED), "our Common Future" and of course, UNCED '92 and the real threats to the biosphere of climate change and ozone depletion has spurred the global nuclear establishment to rediscover hope, so dampened in the shadow of Chernobyl. They have rediscovered a favorite hobby horse, the environment, and decided to ride it with abandon. CANDU, our domestic reactor, a technological sacred cow which has consumed billions of dollars in public subsidies while maintaining its status as a permanent "loss leader", is now perceived, at last, as a potential winner. {But prior to the above analysis it would be valuable to understand the anatomy of the nuclear establishment, its world view, its mindset and its values. Insights accrue from an examination of the writings of George Orwell. The Canadian nuclear lobby is also an excellent model of what this author has labeled "the conspiracy of the like-minded. [repetition]}

The advertising campaign: soft soap for a hard sell

With this background in mind, we may now turn to the CNA advertising campaign, which embodies the principles of Nukethink more than Nukespeak, the latter reserved more for the technical language of nuclear power. This campaign with the help of some of the top PR groups in Canada was a combination of disinformation and outright deception,

The first of the CNA ads appeared in Maclean's Magazine of January 9th, 1989. The primary title of this one-page ad was "What's in Store", while the secondary title at the bottom carried the pious dedication "Seeking to Generate a Better Understanding." The techniques used in this ad was "naturalization", whereby the fearful is converted to the familiar. The on-site storage pools of used fuel bundles were referred to as "far from recreational" and to "be treated with respect"; "respect" is a curious choice of a word. One suspects that the almost pure nuclear scientist who was being quoted, a Dr. Eva Rosinger, might with a little prompting, have said — will you respect me afterwards? Dr. Strangelove is a common character in the nuclear establishment and not above the fondling the artifacts of nuclear power. We were then fed a perennial dish of deceit, i.e. "The total amount in Canada (of high-level waste (HLW), by the year 2000 would fill only three Olympic-sized swimming pools"; the deceit lies in obscuring the excessive toxicity and enormous life-times of HLW. It is the combination of quantity, toxicity and duration that measures the potency. In fact, if these three pools were released to the environment and dispersed, they would pose a totally unacceptable hazard. The record of the nuclear industry in the mismanagement of uranium tailings is a national disgrace and provides no confidence in their promises. [yet we ban alcohol advertising and place warnings on cigarettes].

This ad then proceeds to the question of the "permanent storage of HLW in "stable geologic formations", i.e. "Today, after many years of research, we understand enough to say with confidence that used nuclear fuel can be safely and permanently disposed in this way"; this is the nuclear swan song of faith. It is not a statement of science where only doubt is permanent, and

uncertainty certain. keep in mind that they are talking about an experiment which cannot be conducted in reality, i.e. taking 250,000 years, and they are judging the outcome in advance. This is the tragedy of promises based on self-fulfilling premises. In fact, many independent experts question the viability of this proposal. To ten turn around and base a huge expansion of nuclear power on a question promissory note due in 250,000 years is unacceptable public policy. WE can easily defer such choices for at least 35 years by a national conservation/efficiency program. One should also note that this very same promise is not new, but has been made over and over again, i.e. what was claimed to be a non-problem is a problem that won't go away.

The January 9th and ended with the new propaganda prescription that is the major theme of the entire blitz, i.e. linking the genuine public concern with global environmental problems to this alleged salvation technology; "Nuclear energy offers an environmentally clean and efficient method of electricity production — it does not contribute to acid rain or the greenhouse effect"; this claim is relatively true. But as indicated in the previous chapter it is a part truth, in part plants require supporting generating plants for peak loads and nuclear energy offers its own unique collection of unacceptable risks. Conservation/efficiency programs will purchase the time needed to examine alternative options to both fossil fuels and nuclear power. and while we have no choice but to search for viable solutions to the disposal of nuclear wastes, civil and military, and to the nuclear legacy of proliferation, we must not permit the validity of that search to justify the further growth of nuclear power without solutions to these problems at hand [the search for solutions to dispose safely of the existing waste would be perceived to be a short term investment without the possibility of continuing to use the discovery — the incentive is not there. In the "environment industry," a term constantly used at globe 92, the perpetuation of the hazard must be a precondition for the developing the environmental technology.... rectification of error syndrome. a new package the polluting industry coupled with the corresponding environmental industry. Perhaps the industry along with the academic researchers have to be persuaded that to develop techniques for dealing with current existing wastes an area that should be funded by government would be of worth in itself.]

The second ad we will review appeared on April 10, 1989, and is dedicated to the "Rewards of Research"; it included a glossy picture of Dr. Helena Lindquist, and AECL research scientist at Chalk River, Manitoba. This focus on women is deliberate since they have identified by the PR gang as a critical target group to influence. Apparently, the designers of this disinformation campaign hope the public has a short memory. Dr. Linquist is quoted as saying, "Scientists can never take for granted what they will learn from their next experiment..." a statement in sharp contrast to taking for granted that the waste disposal problem is solved before the experiment has begun, one incidentally to cost \$1.7. billion and not to be completed until 2020.

To illustrate the ignorance of these nuclear admen/adwomen, they state " --the nuclear industry has not forgotten its research origins. "The real research origins were Canada's role in the Manhattan Project. In fact that is the fateful connection that persists and has led Israel, South Africa, Pakistan and India to produce the bomb and Brazil and Argentina posed to do so see Bulletin of Atomic Scientists, December, and June, 1988).

....

**6.1.2.1.2. Update 1994: CANDU reactor sales: Canadian “success story”
Who pays the price of Canada/China “CANDU ” “SUCCESS STORY”**

“It is difficult to match the success”! (Prime Minister Chretien, CBC, November 8, 1994)

By Fred Knelman and Joan Russow

For whom is the sale of the CANDU a success story; it is not a success story for future generations who will have to deal with the nuclear waste that our generation leaves behind!

Neither is it a success story for the disenfranchised groups of society who offer their land for deposit of nuclear waste because their poverty and misery give them no choice, nor

for the Chinese people who live near or downstream from the reactor sites, or who live in the shadow of radiation leaks and of more catastrophic accidents.

Future Generations will have to face an eternity of diabolic vigilance by a “nuclear priesthood.” One of the most senior pro-nuclear scientists in the US, Alvin Weinberg (1972) described a “nuclear priesthood” being delegated as guardians of atomic fuel into perpetuity.

We nuclear people have made a Faustian bargain with society. On the one hand we offer — in the catalytic burner — an inexhaustible source of energy. But the price we demand of society is both a vigilance and longevity of our social institutions to which we are unaccustomed. There must always be intelligent people around to cope with eventualities we have not thought of ... Reactor safety, waste disposal, and the transport of radioactive materials are complex matters about which little can be said with absolute certainty. Is humanity prepared to exert the external vigilance needed to ensure proper and safe operation of its nuclear system? (Social Institutions and Nuclear Policy, Science. Vol. 177, pp27-34, 1972).

Through industry-driven commitments, Canada has pursued an historical role of placing the commercial aspects of nuclear reactor sales of the CANDU above its oft-avowed support for the non-proliferation of nuclear arms. More recently Canada failed to protest further nuclear tests by China in order to protect a multibillion-dollar sale of CANDU reactors.

It is inevitable that China will extract plutonium from waste fuel to manufacture weapons; given that the five nuclear weapons states are immune from inspection under the non-proliferation Treaty.

Canada is a very important player in the proliferation issue, being the major exporter of uranium in the Western world currently exporting some 31% of the total.

The US. draws its weapons materials from operating enrichment plants. Thus, despite all disclaimers or outright denial, the civil nuclear fuel cycle provides the materials for US nuclear weapons. In France, Russia and China, civil and military nuclear power operations are integrated making it impossible to be certain that no civil materials are used for military purposes.

In fact, all the major uranium mines in the world are civilian mines. They produce uranium under civilian auspices and are regulated by civilian laws. They export uranium for civilian uses, and are safeguarded by bilateral or multilateral treaties or through the Nuclear Non-Proliferation Treaty administered by the International Atomic Energy (IAEA) in Vienna.

Canada's decision to sell two CANDU reactors to China is in direct violation of its international commitments on nuclear proliferation

As early as 1968, the 160 countries including Canada made a commitment to move to nuclear disarmament."

Article VI of the 1968 Treaty on the Non-Proliferation of Nuclear Weapons signed by more than 160 states, calls for "negotiations in good faith on effective measures relating to cessation of the nuclear arms race at an early date and to nuclear disarmament.

In 1972, in Stockholm, Canada, and the rest of the global community made a commitment to eliminate nuclear weapons and weapons of mass destruction:

Humans and their environment must be spared the effects of nuclear weapons and all other means of mass destruction.

States must strive to reach prompt agreement, in the relevant international organs, on the elimination and complete destruction of such weapons.

The CANDU produces more plutonium than its rivals, making it attractive for various purposes, including breeder and weapons programs.

China has a good record for seriously considering and researching renewable energy sources. By encouraging China to embrace more nuclear energy, Canada is inevitably discouraging China's renewable initiatives. At the New York Prep Com for UNCED, the global community agreed to the following commitment to the development of renewable sources of energy:

"cooperate to increase the availability of capacity, capabilities and relevant technologies-...--in developing countries for utilizing and producing environmentally [safe and] sound renewable energy resources, such as solar, wind, geothermal, hydropower and biomass, ..." (Agenda 21, 9.9 g Atmosphere)

THERE IS NOW INCONTROVERTIBLE EVIDENCE THAT THE COMBINATION OF ENERGY CONSERVATION, EFFICIENCY AND THE DEVELOPMENT OF ECOLOGICALLY SAFE AND SOUND RENEWABLES CAN ELIMINATE THE NEED FOR NUCLEAR POWER. SINCE NUCLEAR POWER POSES UNACCEPTABLE PROBLEMS THERE MUST BE A MORATORIUM OF ITS USE FOLLOWED BY A PHASE-OUT.

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4Y4

6.2. RESOURCE AND SPECIFIC RESOURCE EXTRACTION ISSUES
6.3. TOXIC AND HAZARDOUS NUCLEAR WASTE PRODUCTION
INDUSTRIES

ALTERNATIVE PROPOSAL:

FRAMEWORK FOR ESTABLISHING ENFORCEABLE MANDATORY
MANDATORY STANDARDS AND TECHNICAL REGULATIONS FOR
PREVENTING THE DIMINUTION OF ECOSYSTEMS AND THE
DISCHARGE OF CONTAMINANTS INTO THE ECOSYSTEM. *CRITERIA*

by Joan Russow, Chair, International Affairs Caucus, BCEN
in consultation with

Delores Broten, Director, Reach for Unbleached
Dr. Keith Heidorn, meteorologist, specializing in air quality and atmospheric
issues.
Dr. Fred Knelman, Chemical Engineer
David White, Chair, B.C. Sierra Club Victoria Group

NOTE: THIS ALTERNATIVE PROPOSAL HAS BEEN SET UP SO THAT IT
IS POSSIBLE TO COMPARE THE ORIGINAL JULY 14 DRAFT WHICH IS
WRITTEN EITHER IN PLAIN OR ITALICS (PLAIN) WITH THE
ALTERNATIVE WHICH HAS BEEN WRITTEN IN BOLD

LEGEND:

Plain text: text circulated prior to October 20 th meeting, with changes that
were agreed to by the full working group at the October 20, and text from the
July 14 draft that were excluded from the October draft.

*Italics: Sections or sentences, which should be left out, from the July 14 and
October 20 th draft*

**BOLD IN UPPER CASE: COMMENTS ABOUT THE DRAFT OR PREVIOUS
OUTLINE**

Bold: suggestions for changing the draft

**Underlined bold: additions from other international documents
or other documents**

NOTE 18 POINT NUMBERS REFER TO THE ORIGINAL TEXT

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ALTERNATIVE PROPOSAL:

FRAMEWORK FOR ESTABLISHING ENFORCEABLE MANDATORY STANDARDS AND TECHNICAL REGULATIONS FOR PREVENTING THE DIMINUTION OF ECOSYSTEMS AND THE RELEASE OF CONTAMINANTS INTO ECOSYSTEMS. *CRITERIA*

Background considerations for Vision Statement (see also in relation to “Back casting)

Individuals rights to a safe environment must be considered. Analysis of technology cannot take place merely in the context of how much money is spent and lost, or even in a context that includes discussion of the value of life and health. It must also take into consideration the rights of individuals, something that cannot be put on the balancing scale or declared as a bargaining chip in rule-making negotiations.

There are many reasons that [ministry of Environment] must promote prevention. control technologies perpetuating the use of toxic substances result in continue releases of toxic [and hazardous, including nuclear] substances to the environment, intentional and accidental, while substitution of [safe] substances eliminates those releases. Even if one environmental medium is protected ;by end-of -the-pine controls, toxic releases and exposures are generally shifted to other media. [Note: example of closed system technology, mentioned below]. Workers are exposed to toxic substances and face the risks of chemical accidents.”

In order to truly protect human beings, including the most sensitive human beings in both current and future generations, and plant, animal life, and property, we must first recognize the limits of human knowledge. We have learned the hard way that pollutants once thought to be of little concern, can turn out to be extraordinarily damaging. Human being did not anticipate problems like stratospheric ozone depletion, hormone mimicry, egg-shall thinning, and too many other environmental impacts to list. Indeed, the lessons we have learned in this way have been a major reason that our society has come to recognize the need to prevent pollution, whenever possible, rather than merely limit, manage, or control it.

In fact, we cannot know or predict with any certainty the impact of our ongoing pollution. Human beings and animals are exposed to a wide array of toxic exposures[and hazardous wastes, including nuclear wastes] which make it difficult or impossible to reach conclusions about which exposures may be causing which impacts. Moreover, it is impossible to predict the results of synergistic and additive impacts of multiple exposures. Many impacts may be subtle ones, involving numerous steps, such as illnesses caused by immune system suppression associated with toxic [or hazardous exposures...

Our inability to understand the impacts of continued toxic exposures does not mean that exposures are not causing problems. In addition to the many examples we now have of documented impacts linked to toxics previously thought to be safe, there are now a number of disturbing trends in human populations that cannot be explained by other factors . These include steady increases in the rates of various cancers and dramatically reduces average male sperm counts, for example.

Weak action elsewhere should not be used to justify inaction or weak action here with respect to identifying emission units and with respect to setting actual standards ...

(From Submission to the Director, Industrial Toxics Project by Carol Dansereau, Washington Toxics Coalition May, 1994)

Under the Act, Ecology is to prevent injury not only to human beings, but also to “plant, animal life, and property.” It is to protect the public welfare and to prevent air pollution problems that “interfere with the enjoyment of life, property or natural attractions

Definitions

Adverse effect

means any effect that causes, has caused or contributed to or is likely to cause or contribute to significant damage to [the ecosystem, or loss or reduction of biodiversity, or elimination of carbon sinks] or loss of use of the environment and includes pollution and the effects of an environmental accident (BCEPA).

Ambient criteria, or environmental quality criteria

refers to levels of contaminants in the environment that must be zero use, production, and release in all cases where a toxic substance is persistent or bioaccumulative. It also applies when a substance will generate persistent or bioaccumulative toxic byproducts or breakdown products during its productions, use or disposal (zero Toxics Alliance Statement of Principles) that must not be exceeded to protect the [ecosystem — water, air, sediment, soil or biota) and] the use of the air, water or soil, human health and the health of the environment. *The criteria have no legal standing for enforcement purposes.*

The Framework of mandatory standards and technical regulations will have legal standing so that the mandatory standards and technical regulations will be enforceable, and will give incentive to the development of BEST,

Ambient air or water quality

refers to the overall or general condition of air or water in a region outside the zone of influence of discharges in contrast to local conditions which may be related to a specific source of contamination. (Water Management Division, Principles for Preparing Water Quality Objectives in B.C, 1986)

Authorization

means a permit, approval, licence, pollution prevention plan, operational certificate, order, certificate, pest management plan, certificate of compliance, conditional certificate of compliance, approval in principles (BCEPA)

Bioaccumulation

means the increase in levels of toxic substances in an organism over time due to continued exposure. This can only happen if the substances do not break down quickly and are essentially stored in some part of the organism. (Fox). Bioconcentration of a biologically active contaminant as it moves up the food chain should also be considered under “bioaccumulation”. DDT in water could be present in ppb but as it moves up food chain in the top consumer it could appear as parts per million or even greater.

Biodiversity”

is defined as “the variability among living organisms from all sources including, *inter alia*, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part; this includes diversity within species, between species and of ecosystems (Convention on Biological Diversity, UNCED, 1992)

Carbon sinks

can be organic as in old growth forests or inorganic as in sedimentary rock

sinks and reservoirs of greenhouse gases, including biomass, forests and oceans, as well as other terrestrial, coastal and marine ecosystems. (Framework Convention on Climate Change, 1992)

Contaminant

is any solid liquid gas, odor, heat, sound, vibration radiation or combination of any of them resulting directly or indirectly from human activities that may cause an adverse effect. (draft regulation for clean Air Program, 1990)

Criteria (objective?)

means numerical limits or narrative statements with respect to substances which provide policy direction on a provincial basis in the setting of objectives and standards. (BCEPA)

Discharge

the release into the air, land, water, soils, and sediment of substances

Ecosystem

is defined as "Ecosystem" means a dynamic complex of plant, animal and micro-organism communities and their non-living environment interacting as a functional unit. (Convention on Biological Diversity, UNCED, 1992)

Environment

means the components of the earth and includes:

- (a) air, land, water, sediment, soils
- (b) all organic and inorganic matter, including living organisms such as humans and non-humans
- (c) the interacting ecological systems that include components referred to in subclauses (a) and (b)

Minor amendment

means an amendment to a permit or approval for any of the following purposes:

- (a) a change of ownership or name;
- (b) a change of legal address or mailing address;

Major amendments

any amendment to a permit or approval which is not a minor amendment, as defined (Public Notification Regulation, May 1994)

THE CHANGES BELOW SHALL ALL BE DESIGNATED AS MAJOR AMENDMENTS; TOO MUCH DISCRETIONARY POWER GIVEN TO MANAGER

- c) a decrease in the authorized quantity of the discharge, emission, or stored material;

- (d) and increase in; the authorized quantity of the discharge, emission or stored material that does not exceed 10% of the authorized quantity.
- (e) a change in the authorized quality of the discharge, emission or stored material such that, in the opinion of the manager, the change has or will have less impact on the environment;
- (f) a change in a monitoring program
- (g) a change to the works, method of treatment or any other condition of a permit or approval such that, in the opinion of manager, the change has or will have less impact on the environment. (Public Notification Regulation, May 1994)

Objective

means numerical limits or narrative statement with respect to substances which provide policy direction for application in specified regions, airshed or watersheds used in the setting of standards.

Persistent

means the property of a substance to resist degradation or decomposition in the environment (Fox)

Pollutant

includes not only chemicals but also heat, light and electro-magnetic radiation thermal discharges

Polluting substance

means any substance alone or in combination with other substances that causes or is capable of causing pollution if it were to escape into the environment

Pollution

means the presence in the environment of a substance or an activity that

- (a) substantially alters the environment,
- (b) impacts on the functioning of the ecosystem substantially or may impair the equitable and ecologically sound use of the environment *impairs the usefulness of the environment or*
- (c) *cause a standard to be violated (BCEPA)*

or contributes to the diminution of the ecosystem by extracting substances that could cause the lessening of the functioning of the ecosystem

Pollution prevention

means to avoid the creation of polluting substances or to eliminate the release of these substances to the environment through *a hierarchy of activities*:
The following is a list of prevention measures that should be addressed concurrently:

1. Applying the principles of pollution prevention such as the precautionary and the anticipatory principles

2. The prevention of the use, generation and release of any substance into the environment in such a manner or quantity as to cause pollution (Pollution Protection Act)
3. The adoption of BEST — technologies that emphasize "protecting, conserving and sustaining the environment from the beginning, and thus avoiding the cycle of rectification of error.
4. The adoption of the "cautionary principle," which can be expressed as follows:
Every proponent of an intervention in the ecosystem must demonstrate that the intervention will not cause harm to the environment or will not create ecologically unsound wastes
5. the elimination of the use of polluting substances
6. The substitution of polluting substance with non-polluting substances that themselves may not become a polluting substance through concentration imbalance
7. The elimination and reduction in the generation of polluting substances
8. The elimination of, and reduction in, the generation of polluting by products;
9. the reduction and phasing out of non-renewable resources in the extraction of resources, the production of substances, and the disposal of wastes
10. exclusion of substances of acute toxicity

Pollution prevention means to avoid the creation of polluting substances or to eliminate the release of these substances to the environment through a hierarchy of activities including the:

- (a) avoidance, elimination or substitution of polluting products;*
- (b) reduction in the use of pollution products;*
- (c) elimination of, and reduction in, the generation of polluting by products;*
- (d) reuse and recycling of polluting by-products;*
- (e) recovery of energy from polluting by-products; and if necessary,*
- (f) treatment and containment of pollution residual by-products;*
- (g) remediation of polluting residual by-products.*

Product stewardship

means the responsibility of producers for demonstrating that the introduction of a substance or activity will not have harmful ecological consequences *sound environmental stewardship of products* from the point of design or extraction to the point of final use and/or disposal. (Municipal Waste Reduction Branch)

Significant amendment

(see above under minor amendment)

Substance

means any product, by-product or waste

Sustainability

means the preservation/protection of nature and the equitable and ecologically sound use, *development and protection* of natural and physical resources

which enable people to meet their needs and the needs of the ecosystem without compromising the ability of future generations to meet their needs and the needs of the ecosystem, and includes the following considerations.

(a) the maintenance and enhancement of the life-supporting capacity of the environment,

(b) *the efficient management of natural and physical resources.*

the preservation of ecological heritage

(c) *the use, development or protection of natural and physical resources in a way which provides for the social, economic and cultural needs and opportunities of present and future residents,*

the preservation/protection of nature and the equitable and ecologically sound use of nature in consultation with indigenous representatives from the inherent indigenous governmental bodies in the areas

(d) where the environment could be *is* modified by human activity, and where there could be a possibility of irreversible damage, the adverse effects of irreversible change are fully recognized then the activity shall not proceed

and avoided or mitigated to the extent practicable.

(e) the use, development or protection of renewable natural and physical resources so that their ability to yield long term benefits is not endangered. (BCEPA) through ecologically unsound and unsafe practices, and through culturally inappropriate practices.

Toxicity

is the potential or capacity of a material of being harmful to the health of a living organism. (Fox)

NOTE THAT TOXICITY SHALL BE THE GENERIC TERM AND WOULD INCLUDE DISCHARGES THAT WOULD NORMALLY BE ADDRESSED UNDER HAZARDOUS AND ATOMIC WASTES

Zero use 1.

zero use, production, and release of persistent and /or bioaccumulative toxic substances in the environment, workplace and home. Zero does not mean below some arbitrary level, or even beneath the level of detection. Zero means Zero. (Zero toxicity Coalition, July. 1994)

PART 1

PURPOSE:

purpose

The purpose of this policy is to establish a framework for setting province-wide discharge criteria and standards designed to protect the environment, to integrate environmental, economic, social considerations and to ensure that sustainability is achieved to ensure that sustainability is achieved [Deleted October]

[The purpose of this policy is to establish a framework for setting province-wide criteria and standards by integrating environmental and economic decision-making to the mutual benefit of both.] October 18. (Note that in this suggestion for the purpose “environmental and” had been crossed out.)

Comprehensive protection of the environment and public health including the most sensitive members of the population.

October 20 version of purpose:

The purpose of this policy is to establish a framework for setting province-wide discharge criteria and standards designed to protect the environment and to promote sustainability by integrating environmental, economic and social considerations.

proposed by October Committee meeting: Joan Russow, did not concur with purpose of statement of purpose for the following reasons

1. it did not include a commitment to prevention
2. it did not ensure that the ecosystem shall be given primacy
3. it was not broad enough to include the essence of the following components:

- To establish a framework for the setting of province-wide enforceable mandatory standards and technical regulations designed to ensure the preservation and protection of the environment and the equitable and ecologically sound use of resources, for present and future generations, taking into consideration the advice of indigenous representatives from the inherent indigenous governmental bodies in the area [The standards and technical regulations must be mandatory and emphasis prevention through elimination and toxic use reduction rather than emissions reduction (added February 20)]
- to extend this framework to address not only the discharge of substances into the ecosystem but also the diminution of the ecosystem through extractive practices that could cause the reduction or loss of biodiversity or the elimination of carbon sinks. The substances discharged could be toxic or non-toxic. Toxicity has been defined as the potential or capacity of a material of being harmful to the health of a living organism (Fox) (biosphere). Non-toxic substances can through impacting on the non-living environment cause environmental degradation which subsequently causes harm to the biosphere (Agents of ecological degradation). For example, CFC's are not deemed toxic yet through causing depletion of the ozone layer cause harm to living organism. In addition, there are substances that are themselves naturally occurring and harmless but become harmful to the environment when through anthropogenic activity they are increased or decreased in proportional

concentration (re concentrated substance—created through imbalance in biogeochemical cycles).

- To ensure that the bearing of unacceptable risks by disadvantaged groups and individuals, particularly in the guise of job creation is discontinued. For example, in Meadow Lake Saskatchewan, the native community has accepted the use of their land as a permanent disposal site for nuclear wastes from the US military
- to apply principles that will enable the setting of high mandatory standards and technical regulations and that will encourage the development and implementation of prevention technology— ecologically sound technology or environmentally benign technology (Best Ecologically Safe/Sound Technology/Techniques—BEST). BEST is based on the true invocation of International principles, such as the precautionary principle, anticipatory principle, environmental assessment principle, life cycle analysis principle, responsible care principle, cradle to grave principle, polluter pay principle, recognition of inherent worth of nature principle. BAT in contrast to BEST may not necessarily be benign or ecologically sound. In the event that there is no BEST which can prevent the release of persistent or bioaccumulative toxics then the extractive or productive activities which produce the product or substance process should be changed; the activities and product phased out/outlawed, or the demand for the product reduced through public education. In this case, the industry involved shall be assisted in the conversion to alternative processes or products involving BEST.
- to ensure that proposed technologies that appear to be ecologically sound such as closed-circuit technologies are evaluated in the context of the full life cycle analysis within the environmental context. The environmental context involves examining the potential impact of supplemental industrial activities, as well as “cross-Media Impacts” in the relevant impact area. Often a technology will be presented as being ecologically sound because it is closed circuit; however, it could be that, because of the reliance on other resources such as water, the problem could be compounded by the presence of contaminants in the water through the activities of adjacent industries. For example, in a proposed closed-circuit operation the required water is drawn from a source contaminated by the precursor elements to the formation of dioxins; the proposed closed-circuit operation by using catalysts such as copper and nickel along with heat, could cause dioxins to be formed and emitted through the air. It would consequently not be enough to claim that a system is a closed system to justify as an appropriate technology, if the closed system itself is dependent upon potentially adverse transformation processes within the larger environmental context.
- to ensure that a mass balance calculation—a measurement of all of the input material/ a measurement of all the output including the finished products and emissions is carried out.
- to ensure that industry will be held responsible for past ecological harm and past health effects caused through contaminated discharge, and that when in documents there is a provision for carrying out a “clean-up of major long

standing environmental and work place health problems” it will apply to past damage to the environment and to the workforce, as well as to past off-site damage to the ecosystem and to human health.

- to ensure that the setting up of Provincial Task Forces to assess past health effects of contaminated discharge does not affect a person’s rights to sue industry for the health effects caused from the contaminated discharge and emissions.
- to ensure that obligations are undertaken in good faith, that the reduction in contaminants will be in areas where they will have impact, and to ensure the implementation of the “greatest impact reduction principle.” Often when regulations are put in place for reduction, governments follow the path of least resistance. For example, in the reduction of CFC’s the regulations are applying for the reduction in production to refrigerators and car air conditioners (R12) and not applying to industrial uses(R12).
- to ensure that the public is presented with the real alternatives: the convenience product and contaminants in the ecosystem, and health impacts or less convenient product and no contaminants in the ecosystem and no health impacts.
- to ensure that compliance with high enforceable mandatory standards and technical regulations, and that adoption of BEST, will not place B.C. industry at a disadvantage because of an “uneven playing field.”
- to ensure that there is a provision for the transference of funds from federal and provincial discretionary budgets, such as the federal military budget to assist industry in its compliance, and conversion to BEST.
- to undertake to assist industry in the phasing out of ecologically unsound practices and substances and in the conversion to ecologically sound practices and substances.
- to reevaluate federal and provincial (Ministry of Employment and Investment) “commercial assistance” designed to bolster employment in ecologically unsound industries through the purchase of “equity shares”, “fee concessions” the “job Protection Act” (1991) or “job Protection Commission” (1992). Often government funding is designated for attempted mitigation of the adverse environmental effects rather than through the development of BEST.
- to similarly assess the value of maintaining the production of a product through an ecologically unsound process in one province when a similar product can be produced in an ecologically sound way in another province. For example, Flax stalks — ideal for the production of paper, are being burned in Saskatchewan, while B.C. continues to reduce biodiversity in the forests and to pollute the waters in the production of paper.
- to reassess current government targets in the light of recent zero emissions recommendations, and in the light of the recent EPA findings.

- to consult with non-vested interest (i.e. financial interest) members of the public with a wide range of expertise and experience during all levels of the development of the framework, including the determination of the terms of reference and thought all states and stages of the process of developing the Framework.
- to take into consideration when evaluating BEST, the land base from which the resources are extracted such as the extraction of resources from indigenous territories beyond the treaty frontier.
- to ensure that the ecosystem is given primacy through ecological preservation and equitable and ecologically sound use of resources, and that indigenous representatives from the inherent indigenous governmental bodies in the area are consulted.
-
- to ensure that the ecological rights of present and future generations are protected

1. GUIDING PRINCIPLES FOR SETTING MANDATORY PROVINCE-WIDE CRITERIA FOR STANDARDS AND TECHNICAL REGULATIONS RELATED TO DISCHARGE EMISSIONS AND DIMINUTION OF THE ECOSYSTEM.

1. COMPLYING WITH INTERNATIONAL OBLIGATIONS

1.1.

Under the Convention of Treaties, Canada is bound to not create situations in which it would be impossible to fulfill treaty obligations; in many cases current practices in B.C. will result in the impossibility of fulfilling treaty obligations. Also, under the Convention of the Law of Treaties, Canada is bound, unless specifically mentioned, not to invoke internal law to justify nonperformance of a treaty obligation.

1.2. ADHERENCE TO PREVIOUSLY AGREED TO INTERNATIONAL PRINCIPLES

Note that in the draft of July 14, many of the principles (2,3,4,5, 7 and 8) are all essentially the rephrasing of previously agreed-to international principles; and consequently the listing of them (as was done in the July 14 Draft) separately from the commitment to international agreements could be misleading.

International customary law has established that principles enunciated in international Conventions, Protocols, Declarations, Covenants, and Resolutions shall be reflected in the law and practice of each State. This international customary law principle has been expressed in numerous international documents for over 20 years. An example of the enunciation of the principle can be found in the UN Resolution 37/7. and reads as follows:

The principles set forth in the present Charter shall be reflected in the law and practice of each State, as well as at the international level (UN Resolution 37/7 World Charter of Nature)

If there is a conflict between international, national, bilateral and regional agreements, the most stringent environmental provisions shall prevail.

NOTE: IN THE FOLLOWING SECTION THE SECONDARY NUMBERS REFER TO THE SECTIONS IN THE JULY 14 TEXT.

2 COMPLYING *APPLYING* WITH THE PRECAUTIONARY PRINCIPLE

1.2.1• PRECAUTIONARY PRINCIPLE:

The precautionary principle has been enunciated in international documents since at least the 1972 United Nations Conference on Humans and the Environment (Stockholm Convention), where it appeared in a rudimentary form; it was then reinforced in the 1982 UN Resolution 37/7, the World Charter of Nature, and then re-enunciated throughout the UNCED documents.

The precautionary principle as enunciated in the July 14 document is as follows:

[*APPLYING*] COMPLYING WITH THE PRECAUTIONARY PRINCIPLE

where there are threats of serious or irreversible damage, the lack of full scientific certainty shall not be used as a reason for postponing measures to prevent environmental degradation

The precautionary principle shall be complied with all potentially harmful emissions, contaminants, agents of pollutants, or re concentrated substances—created through imbalance in biogeochemical cycles

1.2.2. COMPLYING WITH THE ENVIRONMENTAL ASSESSMENT REVIEW PRINCIPLE

ENVIRONMENTAL ASSESSMENT REVIEW PRINCIPLE:

The essence of this principle can also be traced through the 1972 Stockholm Convention, and the UN Resolution 37/7, as well as in the UNCED documents, where it is enunciated in the following way:

ASSERTION OF THE AVOIDANCE OF ACTIVITIES PRINCIPLE

Activities which are likely to cause irreversible damage to nature shall be avoided (UN Resolution 37/7 World Charter of Nature)

Introduce appropriate procedures requiring environmental impact assessment of its proposed projects that are likely to have significant adverse effects on Biological diversity with a view to avoiding or minimizing such effects, and where appropriate, allow for public participation in such procedures (Article 14, 1A, Convention on Biological Diversity)

3. preventing the adverse effects of substances on the environment through adherence to the prevention principle and “reverse onus “principle

PREVENTION PRINCIPLE

Mandatory standards and technical regulations will be developed to prevent adverse effects of substances on the ecosystem including the adverse effects on the health of human and non-human species.

Adverse effects include, but are not limited to, toxicity, bioaccumulation, bioconcentration; persistence, *destruction* [depletion] of the stratospheric ozone layer, reduction of carbon sinks, increased greenhouse gases, increased human-induced climate change *and global climate change* , reduction or loss of biodiversity, as well as heat, light and electro-magnetic radiation, atomic radiation, thermal discharges, hormone mimicry, egg-shell thinning

Adverse effects include the above environmental effects and effect and impacts on human health

The environment includes wildlife, aquatic life, human health and natural resources.

NOTE: DEFINITION OF ‘ENVIRONMENT” IN DEFINITION SECTION
Environment

means the components of the earth and includes:

- (a) air, land, water, sediment, soils
- (b) all organic and inorganic matter, including living organisms such as humans and non-humans
- (c) the interacting ecological systems that include components referred to in subclauses (a) and (b)

Adverse effects include the above environmental effects and effect and impacts on human health

The environment includes wildlife, aquatic life, human health and natural resources.

REVERSE-ONUS PRINCIPLE

ENUNCIATION OF THE "CAUTIONARY" PRINCIPLE (REVERSE - ONUS)

Every proponent of an intervention in the ecosystem must demonstrate that the intervention will not cause harm to the environment or will not create ecologically unsound wastes
[NOTE THAT THE HONORABLE SHEILA COPPS, THE MINISTER OF ENVIRONMENT OF CANADA HAS CALLED FOR THE IMPLEMENTATION OF THE REVERSE ONUS.]

1.2.4. • SUBSTITUTION ECOLOGICALLY SOUND ALTERNATIVES

In the international document there is a commitment to develop ecologically sound alternatives. In particular, in Agenda 21 (UNCED) alternative ecologically sound practices have been advocated in the following way in the following sections:

there are often alternatives to toxic chemicals currently in use. Thus, risk reduction can sometimes be achieved by using other chemicals or even non-chemical technologies. The classic example of risk reduction is the substitution of harmless or less harmful substances for harmful ones. Establishment of pollution prevention procedures and setting standards for chemicals in each environmental medium, including food and water, and in consumer goods, constitute another example of risk reduction (19.45 Toxic chemicals)

Reduce over-dependence on the use of agricultural chemicals through alternative farming practices, integrated pest management and other appropriate means (19.50, Toxic chemicals)

utilizing and producing environmentally [safe and] sound renewable energy resources, such as solar, wind, geothermal, hydropower and biomass (9.9g Atmosphere, Agenda 21)

consider undertaking pilot projects that combine environmental protection and development functions with particular emphasis on some of the traditional environmental management practices or systems that have a good impact on the environment (13.21.a Fragile ecosystem, Agenda 21)

4. Utilizing BEST Technology (Best Ecologically Sound Technology) *Utilizing Best Available Techniques and pollution prevention*

There is no guarantee that the Best Available Technology will be ecologically sound. The BAT may be the best available but it may not be good enough. It is important to support and promote the development of and the use of BEST. In the event that there is no BEST technology which can prevent the release of persistent or bio accumulative toxics then the extractive or productive activities which produce the product or substance process should be changed; the activities and product phased out/outlawed, or the demand for the product reduced through public education. In this case, the industry involved shall be assisted in the conversion to alternative processes or products involving BEST.

Presumably, if there is a commitment to develop alternatives, there will be a concomitant responsibility to relocate funding from the current practices of mitigating of ecologically unsound practices to the development of BEST.

{A BEST AVAILABLE TECHNIQUE IS THE MOST ECOLOGICALLY SOUND PROCESS OR METHOD OF OPERATION THAT ACHIEVES THE PRODUCTION OBJECTIVES}

THIS PRINCIPLE WAS INCLUDED BECAUSE IT ENSURES THAT THE CRITERIA ARE TIED TO PRACTICAL MEASURES.]

POLLUTION PREVENTION MEANS TO AVOID THE CREATION OF POLLUTING SUBSTANCES OR TO ELIMINATE THE RELEASE OF THESE SUBSTANCES TO OUR [THE] ENVIRONMENT THROUGH A HIERARCHY OF ACTIVITIES INCLUDING THE:

Pollution prevention means to avoid the creation of polluting substances or to eliminate the release of these substances to the environment *through a hierarchy of activities including*

- (a) Through avoidance, elimination or substitution of polluting products and byproducts
- (b) *reduction in the use of pollution products;*
- ((C) ELIMINATION OF, AND REDUCTION IN, THE GENERATION OF POLLUTING BY-PRODUCTS*
- d) *reuse and recycling of polluting by-products;*
- (e) *recovery of energy from polluting by-products; and if necessary,*
- (f) *treatment and containment of pollution residual by-products;*
- (g) *remediation of polluting residual by-products.*

[THIS PRINCIPLE WAS INCLUDED BECAUSE IT ENSURES THE CRITERIA ACCOMMODATE CHANGES IN PRODUCTION TECHNOLOGIES AND METHODS, NOT JUST POLLUTION CONTROL TECHNOLOGIES AND METHODS.]

5 ENSURING ENVIRONMENTAL AUDITS AND TAKING INTO ACCOUNT ALL ECOLOGICAL CONSEQUENCES

The need to start with a practical example such as the pulp and paper industry to test the application of environmental audits etc. (suggested at the October 20 meeting)

Weighing and evaluating environmental and economic costs and benefits {OPTIMIZING ENVIRONMENTAL AND ECONOMIC COSTS} AND BENEFITS] MEANS ACCOUNTING FOR ALL COSTS INCURRED IN PRODUCTION PROCESSES

[THROUGH] FULL COST METHODS, WE WILL BE ABLE TO PRIORIZE AND THEREBY EVALUATE ECONOMIC COSTS IN RELATION TO ENVIRONMENTAL BENEFITS]

1.2.5. • PRINCIPLE OF INCLUSION OF ECOLOGICAL CONSEQUENCES IN ANALYSIS OF COSTS

In international documents there is the recognition of the importance of environmental audits, and of the taking into consideration of ecological consequences:

Governments,...should develop procedures for monitoring the application of the cradle to grave approach, including environmental audits (Agenda 21, 20.20 e)

Ensure that relevant decisions are preceded by environmental impact assessments and also take into account the costs of any ecological consequences (Agenda 21, 7.42)

Background for incorporating ecological consequences and environmental audits within full cost methods.

The costs to the environment of continuing with ecologically unsound practices rather than the cost to industry to introduce ecologically sound practices shall be considered.

It is equally important to ensure that, in carrying out an environmental assessment on a particular substance or activity that could have potential adverse environmental effects, other ecologically sound alternative practices shall also be assessed

If the precautionary principle is to be applied in the assessment of costs, the full environmental costs have to be taken into consideration, as well as the full economic costs of monitoring and enforcement of legislation to regulate ecologically unsound practices, and the projected economic costs and environmental costs of accidents, and restoration if accidents occur. If the "ecological costs are horrendous", no economic benefits will justify the costs (suggested at the October 20 meeting)

Assessment of full economic costs of ecologically unsound practices and of Full economic benefits of prevention:

- The introduction of ecologically unsound practices has inordinate, extensive, unexpected short-term and long-term economic costs, including the following:
 - the cost of monitoring, investigation, enforcement, and conviction.;
 - the costs of subsidies—taking research dollars from developing ecologically sound alternatives;
 - the costs of inappropriate funding for attempts to rectify previous errors;
 - the costs to displaced disenfranchised indigenous peoples;
 - the costs of rehabilitation of ecologically devastated sites;
 - the costs of loss of biodiversity; costs of loss of resources— destruction of fish habitat;
 - the costs of health impacts on employees.

• Financial benefits associated with toxics use reduction can include reduced raw material costs, reduced effluent and emissions monitoring and control costs, reduced energy use, reduced water use, reduced liability ... (from submission to Department of Ecology by Carol Dansereau, Director, Industrial Toxics Project, Washington Toxics Coalition, May 4, 1994)

- Companies may be unaware of the benefits or may opt to limit short-term investments despite longer term savings. Thus, in the absence of regulations, they might continue to avoid very reasonable available technologies that protect the environment better by preventing pollution (from submission to Department of Ecology by Carol Dansereau, Director, Industrial Toxics Project, Washington Toxics Coalition, May 4, 1994)
- It is incumbent upon society and government to strive towards high standards so that the segment of industry (prevention-technology or techniques industry—BEST industry) dedicated to developing ecologically sound alternatives will be at an economic advantage
- The technique of assessing the complexity of the multiple costs must be used. This technique could be extended to reevaluate the totality of spending including the excessive costs of maintaining the military (11 billion), when the money from the military could be transferred to assist in the conversion to an ecologically sound and equitable society.
- A full life-cycle analysis of the economic and environmental costs through time and space of each substance and activity shall be carried out.
- The independent assessment of full economic costs shall be carried out by the Auditor General's office
- The establishment of the highest possible mandatory standards, legal enforcement mechanism, and support structures for ensuring that prevention techniques are economically feasible.

Assessment of full environmental and human health impact costs of inaction or non-prevention

- ecological and equitable “back casting” — “going to the future though the present “moving from vision to measures to implement the vision — must be supported. If the vision is to adopt a prevention and precautionary approach to interventions into the ecosystem, anything that detracts or deters from that vision should be seriously questioned, and the justification of the continuing the questionable practices should come under serious scrutiny. In other words, if unacceptable present and future ecological consequences are likely to occur, the activity shall not proceed and the substance shall not be used.
- the enunciation of an “ecological imperative” as part of a long-term complex solution
- “The difficulty of assessing environmental impacts cannot be used as an excuse for ignoring them. (from submission to Department of Ecology by Carol Dansereau, Director, Industrial Toxics Project, Washington Toxics Coalition, May 4, 1994)
- The presence of ecological irreversible consequences shall be deemed to be beyond an acceptable risk, and thus not subject to the usual means of quantification. In this event, the anticipatory, precautionary, and reverse onus principle shall apply, and the activity or substance shall be banned or phased out
- Ecological, and equitable consequences, and health impact consequences must be examined in full complexity through time and space
- in the event that the activity or substance has been proven to have caused environmental degradation, or to be able to cause long term ecological

consequences, the activity or the use of the substance shall be banned or phased out.

- No economic benefit shall be used to justify the violation of ecological rights— right to a safe environment and the right to an ecological heritage, and the integrity of the ecosystem. Economic benefits must be seen in the context of ecosystem primacy; otherwise long-term future ecological and humanitarian rights— right to food, safe water, health care and shelter will be compromised
- In determining whether the [technology] emission limitation is sufficient to protect health, welfare and the environment, {governments] must consider all known and suspected impacts, including but not limited to mutagenicity, teratogenicity, neurological damage, development damage, immune suppression, organ damage, reproductive impairment, and hormone mimicry.
- Assessment of impacts on plants, animals and other non-human aspects (biodiversity) of the environment.
- Procedures to ensure that an environmental assessment review of any practices or substances that could contribute to the loss or reduction of Biodiversity shall be in place
- Assessment of full costs of violating the rights of the disenfranchised shall be carried out. The groups bearing the greatest impact from ecologically unsound practices are usually the disenfranchised in society —the poor and the members of minority groups.

6. Striving to ensure that the provincial targets in British Columbia shall draw upon the highest possible equitable and ecological standards
B.C. is in the unique position to become a leader in developing the highest possible equitable and ecological standards and technical regulations, and in promoting the highest possible level playing field in Canada, North America and internationally.

7. Ensuring that the non-transference of substances or activities, harmful to the environment or human health to other parts of Canada or to other states.

This principle was globally adopted at the Earth Summit:

- **COMMITMENT TO NON-TRANSFERENCE OF HARMFUL SUBSTANCES AND ACTIVITIES**
States should effectively cooperate to discourage or prevent the relocation and transfer to other States of any activities and substances that cause severe environmental degradation or are found to be harmful to human health (Rio Declaration, UNCED)

This principle shall never be qualified by the provision that the recipient state is willing to accept the harmful substances or activities. The reluctance to adhere to the principle of “Extraterritoriality” shall not be used as an excuse for not transferring these harmful substances and activities.

8 Enforcing the polluter pay principle

Enforcing the Polluter Pay Principle to ensure that those who may release polluting substances into the environment pay the full-cost of environmentally safe handling, treatment, disposal, and remediation; in addition, permits shall be suspended and canceled, if the polluter has caused serious irreversible ecological damage.

This principle, as stated, focuses primarily on treatment and disposal options and may not necessarily assist in the development of province-wide criteria

1.2.8. POLLUTER-PAY PRINCIPLE

In different section of Agenda 21, the polluter Pay principle is advocated:

- POLLUTER PAY PRINCIPLE

' Governments should include in national planning and legislation an integrated approach to environmental protection, driven by prevention and source reduction criteria, taking into account the 'polluter pays' principle, and adopt programmes for hazardous waste reduction, including targets and adequate environmental control (20.20 b Hazardous Wastes, Agenda 21)
" Governments should ...(b) apply the 'polluter pays' principle, where appropriate, by setting waste management charges at rates that reflect the costs of providing the service and ensure that those who generate the wastes pay the full cost of disposal in an environmentally safe way (21.42 b Solid wastes, Agenda 21)

THIS PRINCIPLE WAS SEEN AS REDUNDANT

9. Adherence to anticipatory principle

1.2.9. ADHERENCE TO THE ANTICIPATORY PRINCIPLE

In the international documents' different aspects of the anticipatory principle are enunciated: proceeding with doubt, prevention and avoidance of costly subsequent means:

- ENUNCIATION OF THE PRINCIPLE OF DOUBT

Activities which are likely to pose a significant risk to nature shall be preceded by an exhaustive examination; their proponents shall demonstrate that expected benefits outweigh potential damage to nature, and where potential adverse effect are not fully understood, the activities should not proceed (World Charter of Nature)

- PREVENTIVE APPROACH PRINCIPLE

A preventive approach, where appropriate, is crucial to the avoiding of costly subsequent measures to rehabilitate, treat and develop new water supplies. (18.45 Fresh water, Agenda 21)

" undertake measures to prevent soil erosion and promote erosion-control activities in all sectors. "(13.16 Fragile ecosystem, Agenda 21)

- CRADLE-TO-GRAVE APPROACH

taking into account the cradle-to-grave approach to the management of hazardous wastes, in order to identify options for minimizing the generation of hazardous wastes, through safer handling, storage, disposal and destruction (20.20 e Hazardous wastes, Agenda 21)

- MONITORING CRADLE TO GRAVE APPROACH

Governments, in collaboration with industry and appropriate international organizations, should develop procedures for monitoring the application of the cradle to grave approach, including environmental audits (20.20 e Hazardous wastes)

- FULL LIFE CYCLE CARE

"promote efficient use of materials and resources, taking into account all aspects related to life cycles of products. (19.15 e, Toxic Chemicals, Agenda 21)

"risk reduction involves broad-based approaches to reducing the risks of toxic chemicals, taking into account the entire life cycle of the chemicals. (19.45, Toxic chemicals, Agenda 21)

- CULTURE OF SAFETY

"to promote a 'culture of safety" in all countries, especially those that are disaster-prone, the following activities should be carried out: (7.60, Disasters, Agenda 21)

- RESPONSIBLE CARE

Industry should be encouraged to (19.51 Toxic chemicals)
"develop application of a 'responsible care' approach by producers and manufacturers towards chemical products, taking into account the total life cycle of such products (19.51 b. Toxic chemicals, Agenda 21)

- UNACCEPTABILITY OF INSUFFICIENT OR OUTDATED CRITERIA OF ACCEPTANCE

Governments, in cooperation with relevant international organizations and programmes, should carry out national reviews, as appropriate, of previously accepted pesticides whose acceptance was based on criteria now recognized as insufficient or outdated and of their possible replacement with other pest control methods, particularly in the case of pesticides that are toxic, persistent and/or bio-accumulative. (19.55 b Toxic chemicals, Agenda 21)

- ANTICIPATORY PRINCIPLE

Mindful of the need and importance to develop anticipatory policies and of preventing, mitigating and monitoring significant adverse environmental impact in general and more specifically in a trans-boundary context (Convention on Environmental Impact Assessment in a trans-boundary Context, 1994)

We will apply the anticipatory Approach as a pro-active measure to ensure that substances and processes which are harmful to the environment are prevented from entering the environment.

The anticipatory approach is referenced in some documents; however, a clearly articulated definition is still needed to describe how this approach could be used in establishing province-wide criteria.

One aspect of the anticipatory principle is to determine in advance before extracting resources whether the extraction causes environmental harm or is culturally inappropriate to indigenous peoples whose territory is beyond the treaty frontier.

THIS PRINCIPLE WAS UNCLEAR AND SEEN AS A VARIATION ON THE PRECAUTIONARY PRINCIPLE

1.2.10. INTERGENERATIONAL EQUITY PRINCIPLE

In the July 14 draft reference is made to the responsibility to future generation in the section on “sustainability” in definitions. The obligation to future generation has been enunciated as a principle for over twenty years, and should be incorporated as a principle in the establishment of the Framework. This obligation to future generation can be traced in the following way:

In the United Nations Convention for the Protection of Cultural and Natural Heritage:

Each State Party to this Convention recognizes that the duty of ensuring the identification, protection, conservation, presentation and transmission to future generations of the cultural and natural heritage referred to in articles 1 and 2 and situated on its territory, belongs primarily to that State. (United Nations Convention for the Protection of Cultural and Natural Heritage, 1972)

In the Stockholm Convention of 1972, the requirement to preserve our environmental heritage and the requirement to save a representative sample of natural ecosystems for future generations were being recognized:

The natural resources of the earth including the air, water, land, flora and fauna and especially representative samples of natural ecosystems must be safeguarded for the benefit of present and future generations (Principle 2)

Man has a special responsibility to safeguard and wisely manage the heritage of wild life and its habitat which are now gravely imperiled by a combination of adverse factors (Principle 4),

In UN Resolution 37/7, World Charter of Nature, 1982

Reaffirming that man [humans] must acquire the knowledge to maintain and enhance his ability to use natural resources in a manner which ensures the preservation of the species and ecosystems for the benefit of present and future generations, (UN Resolution 37/7, 1982)

In the Convention of Biological Diversity

"to conserve and sustainably use biological diversity for the benefit of present and future generations (Biodiversity Convention, UNCED, 1992)

and in the Framework Convention on Climate Change:

" to protect the climate system for present and future generations"

The principle of considering the need to preserve ecological heritage for future generations, because of its continued inclusion in international documents, has become a principle of international customary law.

1.2.3. ADDITIONAL INTERNATIONAL PRINCIPLES NOT REFERRED TO IN THE JULY 14 DRAFT

ACKNOWLEDGMENT OF URGENCY OF CONSERVING NATURE

Humans can alter nature and exhaust natural resources by their actions or the consequences and, therefore, must fully recognize the urgency of maintaining the stability and quality of nature and of conserving natural resources World Charter of nature)

ENSURING THE INHERENT WORTH OF NATURE

ensuring that every form of life is unique, warranting respect regardless of its worth to man [human], and to accord other organisms such recognition's (World Charter of Nature)

ACCEPTANCE OF NEED FOR MORAL CODE OF ACTION IN RESPECT OF NATURE

ensuring that every form of life is unique, warranting respect regardless of its worth to man [humans], and to accord other organisms such recognition's, man [human] must be guided by a

moral code of action (UN Resolution 37/7) World Charter of Nature)

RECOGNITION OF INTERCONNECTEDNESS WITH NATURE

Humankind is a part of nature and life depends on the uninterrupted functioning of natural systems which ensure the supply of energy and nutrients (World Charter of Nature).

COMMITMENT TO NON-TRANSFERENCE OF HARMFUL SUBSTANCES AND ACTIVITIES

States should effectively cooperate to discourage or prevent the relocation and transfer to other States of any activities and substances that cause severe environmental degradation or are found to be harmful to human health (Rio Declaration, UNCED)

AFFIRMATION OF POSITIVE-DUTY-TO PROTECT-INDIGENOUS-LANDS PRINCIPLE.

recognition that the lands of indigenous people and their communities should be protected from activities that are environmentally unsound or that the indigenous people concerned consider to be socially and culturally inappropriate (16.3. ii, Agenda 21)

1.2.4. ADDITIONAL PRINCIPLES THAT SHOULD BE INCORPORATED INTO THE DRAFTING OF THE FRAMEWORK

ENUNCIATION OF THE PRIMACY OF THE ECOSYSTEM PRINCIPLE

Ensuring that in all decisions made about the environment that the ecosystem be given primacy

RECOGNITION OF LIMITS TO GROWTH PRINCIPLE

There are real limits to consumption, population and pollution. Although their precise quantification is uncertain, there are implications of their imminent approach (Knelman)

PRINCIPLE OF COOPERATION WITH AND NON-DOMINATION OVER NATURE

Humanity's role is to understand and work with the rest of nature, not control, manage, dominate or conquer it

NON-QUANTIFIABILITY OF ECOLOGICAL VALUES

Ecological values are of a class not readily quantified particularly in economic units but must be taken as a given, in that all life is dependent on sustaining the biosphere, the exclusive life-support system (Knelman)

No pecuniary payment of costs for environmental destruction can ever fully redress the loss to the environment, the

prevention of pollution and environmental destruction should be reaffirmed by using "prevention technologies"

ENUNCIATION OF THE "CAUTIONARY" PRINCIPLE (REVERSE - ONUS)

Every proponent of an intervention in the ecosystem must demonstrate that the intervention will not cause harm to the environment or will not create ecologically unsound wastes [NOTE THAT THE HONORABLE SHEILA COPPS, THE MINISTER OF ENVIRONMENT OF CANADA HAS CALLED FOR THE IMPLEMENTATION OF THE REVERSE ONUS.]

NON-INTRODUCTION OF HAZARDOUS PRODUCTS IN THE ENVIRONMENT PRINCIPLE

the onus of proving the non-hazardous nature of the product will be on the proponent of this new type of product [after a full life cycle analysis of all the potential environmental harm has been done by non-vested interest (i.e. financial interest) parties]

INCLUSION LEGISLATIVE PRINCIPLE

ensuring that every activity or substance that could prevent the protection, conservation and sustainability of the environment will be included under this Act, regardless of whether the activity or substance is presumed to be covered under another Act (proposed, February 19)

NON-PROSECUTION FOR ADVOCATING PURPOSES OF THIS FRAMEWORK OF MANDATORY STANDARDS AND TECHNICAL REGULATIONS PRINCIPLE

ensuring that no citizen will be prosecuted for advocating or acting to promote the purposes of the framework

COMPENSATION NOT JUSTIFICATION FOR NON-FULFILLING OF DUTY PRINCIPLE

ensuring that compensation can never be used as reason for not exercising the duty to protect, conserve and sustain the environment

COUPLING-AVOIDANCE PRINCIPLE ON-ACCEPTANCE-OF- "ENVIRONMENT-INDUSTRY"-BEING- COUPLED-WITH-THE-TOXIC- WASTE-PRODUCTION- INDUSTRY-PRINCIPLE

The coupling of a "clean-up environment" industry with a toxic waste producer shall not be used to justify the continuation of the production of toxic waste

SOLUTION-WORSE-THAN-PROBLEM-AVOIDANCE PRINCIPLE

The advocating of a "solution" that is potentially worse than the problem to be addressed shall be avoided. For example, the civil

nuclear power industry is promoting nuclear energy as the solution to climate change

1. 3. COMPLYING WITH PREVENTION PRINCIPLES IN NAFTA

NON-RELAXATION OF STANDARDS TO ATTRACT INVESTMENT

The Parties recognize that it is inappropriate to encourage investment by relaxing domestic health, safety or environmental measures. Accordingly, a Party should not waive or otherwise derogate from, or offer to waive or otherwise derogate from such measures as an encouragement for the establishment, acquisition, expansion or retention in its territory of an investment of an investor. If a Party considers that another Party has offered such an encouragement, it may require consultations with the other Party and the two Parties shall consult with a view to avoiding any such encouragement.
(NAFTA Article 1114 ss 2)

1.4. COMPLYING WITH SIGNIFICANT FEDERAL PRINCIPLES CAUTIONARY OR "REVERSE ONUS" PRINCIPLE

The proponent of an intervention into the ecosystem shall demonstrate the safety of the intervention rather than the opponent of an intervention, being required to demonstrate, harm (Proposed by The Federal Minister of Environment

5. ROLE OF TARGETS AND GOALS IN THE FRAMEWORK OF MANDATORY STANDARDS AND TECHNICAL REGULATIONS

Given that provincial and municipal goals and targets may not have taken into consideration pollution prevention, the goals and targets, consequently, shall be reassessed in the light of recent EPA findings and in the light of the precautionary, anticipatory principle, and other principles such as those advocated by the Zero Toxics Alliance in their Statement of principles from July 26, 1994: .

Zero Toxics Statement of Principles from the "Zero Toxics Alliance Statement of Principles" 7/26/94

1. ... zero use, production, and release of persistent and /or bioaccumulative toxic substances in the environment, workplace and home. Zero does not mean below some arbitrary level, or even beneath the level of detection. Zero means Zero.

2. ... elimination and reduction of the use, production, and release of other toxics substances in the environment, workplace and home.

3.the goal of zero use, production, and release applies in all cases where a toxic substance is persistent or bio accumulative. It also applies when a substance will generate persistent or

bioaccumulative toxic byproducts or breakdown products during its production, use or disposal

4. ... advocat[ing] programs that achieve ...goals through reformulation of industrial processes associated with toxics use and production. Limiting discharges and shifting toxics from one environmental medium to another do not protect people or the environment

5. ...reject[ion] of risk assessments which claim that exposures to toxic substances are safe

In addition, serious consideration shall be given to “bioconcentration”: For example, the discharge of mercury was deemed to be at an acceptable level. The mercury, however, was taken up by small organisms becoming more highly concentrated as it moved up the food chain; biopathways must always be examined.” (Knelman).

4.5 We will strive to ensure that provincial and municipal targets and goals are achieved within the prescribed time frame.

- 25% reduction in the use of pesticides by the Year 2001; achieved by promoting integrated pest; management and reducing or eliminating certain pesticide uses.*
 - 50% reduction in the rate toxic wastes are generated by industry, business, institutions, municipalities and the public by the Year 2000*
 - 50% reduction (per capita) in municipal solid waste by the Year 2000*
-

6. COMPATIBILITY OF FRAMEWORK WITH POLLUTION PREVENTION HIERARCHY

Pollution prevention means to avoid the creation of polluting substances or to eliminate the release of these substances to the environment

The setting up of pollution prevention in the form of a hierarchy will weaken the resolve to address the urgency of the problem of pollution. There should be high pollution prevention mandatory standards and technical regulations in place to drive industry to develop BEST. Industry, if given the opportunity, will probably take the path of least resistance and opt for the lowest rung in the hierarchy.

The Framework of enforceable mandatory standards and technical regulation shall be based on the principles of pollution prevention: The following is a list of prevention measures that should be addressed concurrently:

1. Applying the principles of pollution prevention such as the precautionary and the anticipatory principles
2. “The prevention of the use, generation and release of any substance into the environment in such a manner or quantity as to cause pollutio”n (Pollution Protection Act)

3. The adoption of BEST — technologies that emphasize "protecting, conserving and sustaining the environment from the beginning, and thus avoiding the cycle of rectification of error.

4. The adoption of the "cautionary principle" ENUNCIATION OF THE "CAUTIONARY" PRINCIPLE

Every proponent of an intervention in the ecosystem must demonstrate that the intervention will not cause harm to the environment or will not create ecologically unsound wastes

5. the elimination of the use of polluting substances

6. The substitution of polluting substance with non-polluting substances

7. The elimination and reduction in the generation of polluting substances

8. The elimination of, and reduction in, the generation of polluting by products;

9. the reduction and phasing out of non-renewable resources in the extraction of resources, the production of substances, and the disposal of wastes

10. Exclusion of substances of acute toxicity

5.7. We will ensure that the province-wide criteria are compatible with the pollution prevention hierarchy.

Pollution prevention means to avoid the creation of polluting substances or to eliminate the release of these substances to the environment *through a hierarchy of activities including:*

(a) avoidance, elimination or substitution of polluting products;

(b) *reduction in the use of pollution products;*

(d) *reuse and recycling of polluting by-products;*

(e) *recovery of energy from polluting by-products; and if necessary,*

(f) *treatment and containment of pollution residual by-products;*

(g) *remediation of polluting residual by-products.*

10. Ensuring consistency

Ensuring consistency means that point source discharges, no matter where they are located in the province will be equally affected by the criteria.

The criteria must ensure acceptable ambient environmental conditions all across B.C. No particular area should be penalized due to a pre-existing high-quality environment

- In no way shall the requirement to ensure consistency be used as a justification for the relaxing of province-wide standards and technical regulations. There must be tough standards that stand the test and everyone has to follow.
- No proposal to relax standards or technical regulations shall be used to attract industry [see principle enunciated in NAFTA. (re: relaxation of standards to attract industry)]
- the argument that in a pristine environment that has not yet been polluted by industrial activity shall be able to have emission standards relaxed is inherently invalid and should be discounted. In other words, a licence to pollute could be given to industry in a pristine area because the area is not yet officially been designated as being polluted.

- Polluting industries that have been regulated under statutory law, shall not through redefinition of practice be excluded from the previous regulations [Current situation in Delta where a plant with “industrial ? ” air emissions is redefined as a recycling plant and thus the regulations related to “industrial.... ” is deemed inapplicable.

PART 2:

THE PROCESS FOR DEVELOPING PROVINCE-WIDE FRAMEWORK FOR ESTABLISHING ENFORCEABLE MANDATORY STANDARDS AND TECHNICAL REGULATIONS FOR PREVENTING THE DIMINUTION OF ECOSYSTEMS AND THE DISCHARGE OF CONTAMINANTS INTO ECOSYSTEMS. *CRITERIA*

The process for developing province-wide framework for establishing enforceable mandatory standards and technical regulations *criteria* can; be divided into two *three* levels depending on whether the substance should be eliminated, or capped or based *on the importance and weighting of the guiding principles*.

Public consultation with non-vested interest (i.e. financial interest) members of the public with varying types and levels of expertise and experience is also essential to the process and *is* shall be included in all levels of criteria development — including the formulation of terms of reference and throughout all stages and states of the process.

THE PROCESS FOR DEVELOPING PROVINCE-WIDE CRITERIA CAN BE DIVIDED INTO THREE [STAGES] BASED ON THE IMPORTANCE AND WEIGHTING OF THE GUIDING PRINCIPLES [NATURE OF THE SUBSTANCE BEING REGULATED]. PUBLIC CONSULTATION IS ALSO ESSENTIAL TO THE PROCESS AND IS INCLUDED IN ALL LEVELS OF CRITERIA DEVELOPMENT.

1. Criteria for Elimination

In certain cases, it may be is necessary to eliminate specific substances in B.C. *these actions may be a result of international agreements, federal legislation*. The elimination of specific substances depends on the nature, extent and the level of adverse effects and consideration of the precautionary and prevention principles. **For example, MOX, DELETED OCTOBER]** Uranium, CFCs, Halons, pesticides, uranium mining, atomic wastes from nuclear activities....

Guiding Principles Applied: precautionary principles. prevention principles such as anticipatory principle, polluter pay principle, environmental assessment review principle, life cycle analysis principle, previous international, federal and provincial environmental obligations under environmental agreements, nature, extent, level of adverse effects; BEST Prevention Technology. Public consultation with non-vested interest (i.e.

financial interest) members of the public with a wide range of expertise and experience

Zero Toxics Statement of Principles from the “Zero Toxics Alliance Statement of Principles” 7/26/94

1. ... zero use, production, and release of persistent and /or bioaccumulative toxic substances in the environment, workplace and home. Zero does not mean below some arbitrary level, or even beneath the level of detection. Zero means Zero.
2. ... elimination and reduction of the use, production, and release of other toxics substances in the environment, workplace and home.
3.the goal of zero use, production, and release applies in all cases where a toxic substance is persistent or bioaccumulative. It also applies when a substance will generate persistent or bioaccumulative toxic byproducts or breakdown products during its production, use or disposal/
4. ... advocat[ing] programs that achieve ...goals through reformulation of industrial processes associated with toxics use and production. Limiting discharges and shifting toxics from one environmental medium to another do not protect people or the environment
5. ...reject[ion] of risk assessments which claim that exposures to toxic substances are safe

Guiding Principles Applied: precautionary principles. prevention principles such as anticipatory principle, polluter pay principle, environmental assessment review principle, life cycle analysis principle, previous international, federal and provincial environmental obligations under environmental agreements, nature, extent, level of adverse effects, provincial targets and goals revised in the light of pollution prevention and in the light of the Zero toxics statement of principles, and BEST.

2. Criteria for Setting a Province-wide pollutant Cap

Provincial compliance with international agreements *may require* requires the imposition of a provincial cap on certain pollutants. **For example, discharges of SO₂ and CO₂ [DELETED IN OCTOBER]**

There is a need to interpret what would constitute compliance with international agreements. For example, under the Framework Convention on Climate Change, Canada and B.C. have undertaken to reduce CO₂ emissions. Yet in B.C., the government is contributing to the increase in CO₂ emissions by constructing non-alternative transportation means —highways, and eliminating carbon sinks through permitting the logging of old growth forests.

Emissions trading and similar mechanisms may be applied to determine the distribution of the cap.

Guiding Principles Applied: precautionary principles. prevention principles such as anticipatory principle, polluter pay principle, environmental assessment review principle, life cycle analysis principle, previous international, federal and provincial environmental obligations under

environmental agreements, nature, extent, level of adverse effects and public consultation with non-vested interest (i.e. financial interest) members of the public with a wide range of expertise and experience, and an independent assessment of BEST.

Criteria for Sector Specific Pollutants(s)

Emission or discharge levels are *may be* necessary for specific pollutants (providing that these pollutants are neither bioaccumulative, of acute toxicity, nor persistent in which case zero emissions shall apply) within a given sector or across a number of sectors. For example, BOD and suspended solids from sewage treatment plants [EVEN IN THIS CASE THE EMPHASIS SHOULD BE ON NOT TREATING SEWAGE AS WASTE BUT AS A RESOURCE]

Guiding Principles Applied: precautionary principles. prevention principles such as anticipatory principle, polluter pay principle, environmental assessment review principle, life cycle analysis principle, previous international, federal and provincial environmental obligations under environmental agreements, nature, extent, level of adverse effects, provincial targets and goals revised in the light of pollution prevention and in the light of the Zero toxics statement of principles.

DESCRIPTION OF METHODS AND TECHNIQUES

IN THE FIRST DRAFT "OUTLINE OF THE FRAMEWORK FOR SETTING PROVINCE-WIDE DISCHARGE CRITERIA AND STANDARDS" IT WAS STATED THAT THE ASSESSMENT OF BAT TECHNIQUES WOULD ENTAIL THE FOLLOWING RELIANCE

(a) techniques or technologies which have been proven successful and used under similar conditions in the province or other comparable jurisdictions for at least one year. the US EPA BACT/LAER Clearinghouse will be considered a valid information source for proving the success of technologies applicable to British Columbia.

A. Best Available Techniques (BAT)

IN MY SUBMISSION CRITICIZING THE OUTLINE I STATED:

A. PROBLEM: POLLUTANTS OCCUR OVER A FAR GREATER PERIOD THAN ONE YEAR. IT IS IMPOSSIBLE TO STATE THAT TECHNIQUES OR TECHNOLOGIES CAN BE DEEMED 'PROVEN SUCCESSFUL' AFTER ONE YEAR. THE ANTICIPATORY PRINCIPLE THAT WAS ENUNCIATED IN AGENDA 21 WOULD HAVE TO APPLY HERE. FOR EXAMPLE ANYTHING WITH BIOLOGICAL [impacts] WOULD HAVE TO GO THROUGH SEVERAL GENERATIONS BEFORE A GENETIC MUTAGEN WOULD SHOW UP. EVEN WITH NESTING EAGLES, THE FIRST FEW YEARS OF DDT DID NOT AFFECT THE EAGLES; IT ONLY SHOWS UP LATER.

I NOTE IN THE RECENT DRAFT THAT THE SECTION RELATED TO THE ONE YEAR PERIOD HAS BEEN LEFT OUT; I WOULD PRESUME, HOWEVER, THAT THE YEAR PERIOD IS STILL AN UNSTATED CRITERION OF BAT.

in addition, if BAT still poses unacceptable risks, even the BAT should not be considered “Best” or “available.” BAT is usually based on the past when the search for better technology has stopped. There appears to not always be incentive to strive for better technology. Often, as mentioned by many participants at Globe 94, the incentive to strive for the best technology is thwarted by Government’s failure to establish high mandatory standards. Often the data to support BAT is derived from non-arm’s length research by industry and traditionally if the BAT technology is not deemed economic or if it is considered to interfere with an industry’s competitive advantage then it is not advocated as being feasible. An example of this is the European developed “Green Fridge” that has been vigorously opposed by the producers and recyclers of CFC’s in North America.

I WOULD PROPOSED INSTEAD OF BAT THE CONCEPT OF “BEST” (Best Ecologically Safe/Sound Technology—BEST). BEST is based on the true invocation of International principles, such as the precautionary principle, anticipatory principle, environmental assessment principle, life cycle analysis principle, responsible care principle, cradle to grave principle, polluter pay principle, recognition of inherent worth of nature principle. BAT in contrast to BEST may not necessarily be benign or ecologically sound. In the event that there is no BEST technology which can prevent the release of persistent or bioaccumulative toxics then the extractive or productive activities which produce the product or substance process should be changed; the activities and product phased out/outlawed, or the demand for the product reduced through public education. In addition, the concept of BEST must contain within itself incentive to still develop a better technology

BEST will adhere to the confluence of principles related to prevention.

BAT will be the guiding principle, that sets the framework for establishing the criteria. {DELETED, OCTOBER} In determining whether a set of processes, facilities {DELETED, OCTOBER} and methods of operation constitute the best available techniques in general or in individual cases, consideration will be given to:

(a) adherence to the pollution prevention hierarchy. (a) adherence to the pollution prevention hierarchy.

(b) techniques or technologies which have been proven successful and used under similar conditions in the province or other comparable jurisdictions. The US EPA Bact/LAER , Clearinghouse and alternative proposals of ecologically safe and sound technologies as well as indigenous practices advocated by indigenous representatives from the inherent indigenous governmental bodies in the area will be considered a valid information source for proving the success of technologies is applicable to B.C., and providing these technologies are BEST.

(c) the economic feasibility of the techniques or technology (see full cost methods, {LEFT IN THEN DELETED] including the assessment of ecologically safe and sound alternatives and indigenous practices). If there is a best ecologically sound technique or technology available (BEST), and the current practices in the province are part of what has been described as a sunset industry engaged in ecologically unsound practices, BEST shall be adopted, and industry given support in the transition phases. For example, the

full cost principle —the assessment of ecological consequences and the cost of monitoring ecologically unsound practices would encourage the adoption of the “Green Freeze”, rather than the promoting of the continued dependence on the use of ozone depleting substances.

Consideration will be given to innovative technologies if these technologies fulfill the confluence of prevention principles and are thus BEST. *economic, social, technical and environmental justification exists.*

If follows that the “best available techniques” for a particular process or method of operation will change with time in the context of technological advances, economics and social factors as well as changes in scientific knowledge and understanding.

BEST must always strive to incorporate innovative solutions that will make the technology even more sensitive to the ecosystem.

B. Full Cost Methods (See reference to ecological consequences, see #5)

Full costs methods are a range of techniques in economics and finance which can be used to integrate environmental values into the total costs of a project to ascertain its “true” viability. These methods included full cost accounting, social costing and cost/benefit analysis. including the assessment of the costs of ecological consequences, and impact on native rights. Environmental value refers generically to the worth of the environment whether or not some price is attached to it.

It is equally important to ensure that, in carrying out an environmental assessment on a particular substance or activity that could have potential adverse environmental effects, other ecologically safe and sound alternative practices are also be assessed.

If the precautionary principle is to be applied in the assessment of costs, the full environmental costs have to be taken into consideration, as well as the full economic costs of monitoring and enforcement of legislation to regulate ecologically unsound practices, and the projected economic costs and environmental costs of accidents, and restoration if accidents occur.

“Ecological values are of a class not readily quantified particularly in economic units but must be taken as a given, in that all life is dependent on sustaining the biosphere, the exclusive life-support system” (Knelman)

Prior to consideration of the granting of authorization, all currently identified pollutants that are bioaccumulative [bioconcentration] or persistent shall be phased out. (see zero toxicity principles). For those not yet identified, the precautionary, anticipatory and cautionary principles must apply. Consequently, every proponent of an intervention in the ecosystem must demonstrate that the intervention will not cause harm to the environment or will not create ecologically unsound wastes.

Facilities are required to obtain an authorization to discharge polluting substances into the environment. This section will outline the procedure for setting standards from the province-wide criteria.

Setting Standards for Existing Facilities

Existing facilities must comply with the framework of enforceable standards and technical regulations.

by the regional manager will use the province-wide criteria and the pollution prevention planning process to set the standards for an existing facility. The minimum value for a standard in an authorization will be the province-wide criteria.

For existing facilities, the regional manager may provide flexibility in meeting these standards by negotiating a timeline for implementation within the context of the pollution prevention planning process.

The environmental impact of the existing operation, its economic viability, and what measures the facility will undertake to meet; the province-wide criteria will be detailed in the pollution prevention; plan. In some cases, scheduled phase-out or downsizing of the facility may also be considered.

Setting Standards for Existing Facilities Undergoing Major Modification (s),

When there are major modifications of existing facilities, the facilities, as a minimum, will be required to meet existing province-wide enforceable standards and technical regulations based on established principles drawn from international documents. An updated pollution prevention plan that will meet province-wide enforceable standards and technical regulations based on established principles drawn from international documents will have to be in place.

A review of the permit will be required. As part of this review, an updated pollution prevention plan must be submitted. The regional manager will use the same process as described above to set the permit standards for the upgraded facility.

Setting Standards for New Facilities

New facilities, as a minimum, will be required to meet existing province-wide *criteria* enforceable standards and technical regulations based on established

principles drawn from international documents. In designing new facilities careful long-term planning and operational flexibility must be included to facilitate meeting future international agreements and provincial discharge criteria. The basic assumption should be that allowable discharge levels will always go downward; therefore, the facility should be designed with the potential for upgrading its operations.

CHAPTER 7

Interdependence and integration of issues: peace, environment, equity and human rights: towards a global solution

- Focus: Population, "Cairo 94

- Redefinition of development in equitable and ecological terms

- Focus: Population

7.1. International agreements related to Population related issues

Readings:

Reserve library:

Collection of readings on Population

5. the natural growth of population continuously presents problems on the preservation of the environment, and adequate policies and measures should be adopted, as appropriate, to face these problems. UNCHE

Principle 16

Demographic policies, which are without prejudice to basic human rights and which are deemed appropriate by Governments concerned, should be applied in those regions where the rate of population growth or excessive population concentrations are likely to have adverse effects on the environment or development, or where low population density may prevent improvement of the human environment and impede development. (UNCHE)

1. General Principles

1. Nature shall be respected and its essential processes shall not be impaired (WCN)

2. The genetic viability on the earth shall not be compromised: the population levels of all life forms, wild and domesticated, must be at least sufficient for their survival, and to this end necessary habitats shall be safeguarded (WCN)

8. In formulating long-term plans for economic development, population growth and the improvement of standards of living, due account shall be taken of the long-term capacity of natural systems to ensure the subsistence and settlement of the populations concerned, recognizing that this capacity may be enhanced through science and technology. (WCN)

11 (e) Areas degraded by human activities shall be rehabilitated for purposes in accord with their natural potential and compatible with the well-being of affected populations (WCN)

POVERTY, POPULATION, PRODUCTION AND CONSUMPTION

The time has come for a massive attack on mass poverty. Poverty, environment and population can no longer be death with — or even thought of — as separate issues; they are interlinked in practice and must be linked in policy formulation. (WCED)

Unless poverty is alleviated, there is little chance that we will be able to stabilize world population, which has grown by 500 million since the Commission last met (WCED)

Human resource development, which is essential for sustainable development, itself requires effective population management through programmes that recognize the linkages between poverty and population growth. Such programmes deal with population growth through an integrated approach which includes the education and enhancement of the status of women, and improved public health, as well as family planning. (WCED)

As a minimum step, all countries must provide opportunities for couples to exercise freely their human right to determine the number and spacing of their children. (WCED)

The vast difference in resource use between the rich and the poor is incompatible with sustainable development. A global partnership must start with a commitment by the industrial countries to reduce sharply the burden they impose on the carrying of the Earth's Ecosystems. (WCED)

4. the issue is not merely one of population size but the distribution of resources, sustainable development can only be pursued if demographic development is in harmony with the changing productive potential of the ecosystem (WCED)(UNA)

6. Growth has no set limits in terms of population or resource use beyond which lies ecological disaster...but ultimate limits there are, and sustainability requires that long before these are reached the world must ensure equitable access to the constrained resources and reorient technological efforts to relieve the pressure. (WCED)(UNA)

POPULATION

33. The high rates of population growth in almost all developing countries may represent a real mortgaging of their social and economic development. It is becoming imperative for those involved politically and culturally at national and international levels to be effectively called on to help to raise public awareness and mobilize political and popular commitment and the necessary financial and technical means to take a conclusive step towards the formulation and implementation of appropriate demographic policies. The World Conference on Population and development planned for 1994 ought to be the opportunity for working out and adopting policies and programmes aimed at achieving global demographic objectives. (Group of Fifteen GOF)

Women's Rights, Population Policies and Health

Knowing that the major causes of environmental degradation are industrial and military pollutants, toxic wastes, and economic systems that exploit and misuse nature and people, we are outraged by suggestions that women's fertility rates (euphemistically called population pressures) are to blame, (WAG)

Recognizing that this analysis, if unchallenged, lays the ground work for these-emergency of top-down, demographically-driven population policies and programs that are deeply disrespectful of the basic human rights of women as guaranteed in the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) (WAG)

Knowing that it is the number of people plus their consumption of resources plus their wastes that determine their environmental impact, we note that a person in the industrialized world has a far greater negative impact on the environment than a person living a poor country, (WAG)

Aware that the right to reproductive health and choice is a basic human right of all individuals, we point out that the World fertility Survey estimates

that there are 500 million couples who wish to plan their family size but have no access to the means to do so, (WAG)

Fearful of the threat to women's lives by the HIV pandemic and recognizing that women's ability to protect themselves from AIDS and other sexually transmitted diseases and to determine when-and-if to have children is a prerequisite for women's health, self-determination, and empowerment, (WAG)

We condemn any attempt to deprive women of reproductive freedom or the knowledge to exercise that freedom. (WAG)

We demand women-centred, women-managed comprehensive reproductive health care and family planning including the right to prenatal care, safe and legal voluntary contraceptive and abortion, sex education and information (WAG)

We urge governments, multilateral and donor agency to increase investments in comprehensive reproductive health services and to include men as beneficiaries of family planning education and services. Family support services should include child care and parental leave. (WAG)

We call on policy-makers to recognize that raising the economic, health, education, and social status of women are essential to ending environmental degradation. (WAG)

We call for recognition of the existence of a global, environmentally induced cancer epidemic and demand removal for the environment of carcinogenic substances, which have particularly adverse effects on women and children. Particular attention in medical research and treatment should be paid to women's cancers: breast, ovarian, cervical, uterine, and vaginal. Research and remedial action should also focus on the effects on health of toxic chemicals, nuclear wastes, radiation, pesticides and fertilizers. (WAG)

We demand that all governments systematically alert their citizens to the danger of AIDS and provide them with the information on how to avoid contamination. (WAG)

We ask the World Health Organization, International Labour Organization, national governments, public health groups, corporations, and unions to increase efforts to eliminate environmental occupational hazards in factories, offices, and on the land. (WAG)
(Women's action agenda)

Whereas the Montreal Accord did not address the required changes in the three key elements of development -- aid, trade and technology - which would assure ensure that such development in the South did not commit the errors of the past but would be consistent with the conservation of the environment and natural resources and would avoid the twin penalties of pollution and depletion. The time has come to make the decisions to combine the forces of the North and South in an operationalized plan of mutual benefit to sustain the earth's burgeoning population while moving rapidly to implement policies and programs which would stabilize population. and while moving towards limiting growth and over-consumption the next decade will determine whether we can avoid the inevitable tragedy of a global environmental crash. To do so we must alter our present course. The security of the planet is at stake. (RFB)

Whereas while the population issue is complex and contentious, we should recognize that poverty is possibly the major factor in high population growth.

We also know that the transfer of [humanitarian not exploitative] development from the North to the South is necessary to achieve population stabilization. But in order to avoid the potential ecological disasters that might occur, we must make certain that the forms of development transfer are environmentally benign and that the North be further obliged to cut back its much larger share of the burden of global pollution, and to cut back on its over-consumptive practices. [The great bonus] we would derive from this combined attack on the equity/environment problems [would be to lay] the basis for a durable world peace. (RFB)

As we suggested in the preamble, the North and the South must become partners in the transfer of a form of development that leads to the conservation of the environment, population stabilization and consumption reduction in both global regimes. {This is the only way in which all of us will win} The north for example, must be prepared to trade massive reductions in the use of fossil fuels in exchange for the South preserving the rainforests while at the same time transferring forms of development to the South that are environmentally benign, and that are socially equitable, and undertaking to seriously address over-consumption. This is the essential type of global trade-off [cooperation] that can prevent impending environmental disasters [continued inequity and impending environmental disasters]. } To facilitate this trade-off [cooperation], the International Equity Fund(IEF) dedicated to a global anti-poverty mission must be established and the only major source of discretionary funds which rests in the radical reduction of the military budgets (the realization of the peace dividend) must be activated. (RFB)

NOBEL LAUREATE STATEMENT TO UNCED 92 (NLSU)

By the nuclear age peace foundation and the Whistler Foundation on Sustainable Environment

EXHIBIT

1992 NOBEL LAUREATE DECLARATION

Nuclear Age Peace Foundation and Whistler Foundation for a Sustainable Environment.

“The primary goal of the summit will be to lay the foundation for a global partnership between developing and developed countries based on mutual need and common interest, to ensure the future of the planet. This partnership will undoubtedly require the mutual solution of the population and over-consumption issues. Equity and environment problems are linked and must be solved together. Further the only major source of the discretionary funds necessary for addressing these issues rests in the radical reduction of the military budget of the Nations of the World” Dr Fred Knelman, Vice President of the Whistler Foundation For a Sustainable Environment; and Dr David Krieger, President of the Nuclear Age Peace Foundation.

NOBEL LAUREATE DECLARATION TO UNCED 92

We, the undersigned Nobel Laureates, urge all nations and peoples to unite in the great cause of creating a secure and sustainable Earth.

This important conference, Earth Summit, links two key issues of sustainability – environment and development – and offers a unique opportunity to find global solutions to problems threatening our common future

Recognizing that we all inhabit one earth and share a common responsibility to posterity, we urge you to act decisively

- to protect and preserve the integrity of the biosphere, that sustains all life by establishing adequate global regulations, penalties and enforcement mechanisms to prevent human induce global warming, depletion of the ozone layer, destruction of forests and fisheries, pollution of air and water, irreversible loss of species, and release of hazardous substances into the environment.
- to establish a time –table for phasing our fossil fuel and nuclear energy and for the rapid development of solar and other forms of non-polluting energy, and for more efficient energy use;
- * to end hunger and poverty in the world by the transfer of adequate resources and environmentally sound technology required for this task;
- * to demand an immediate end to all nuclear weapons tests.
- * To prevent further proliferation of nuclear weapons and other weapons of mass destruction by establishing effective international controls.
- * To develop international regulations regarding nuclear waste disposal and nuclear power plant operations
- *To initiate a global program of population stabilization
- *To promote a global educational campaign to encourage resource conservation, recycling and environmental protection; and
- *To bring protection of the environment under the rule of international law, establishing appropriate regulation, criminal penalties and methods of enforcement, witching the structure of the United Nations and other international organizations

Signed: Gerd Binnig, The XI Dalai Lama, Leo Esaki, Val L. Fitch, Herbert A. Hauptman, Dudley Herschbach, Gerhard Herzberg, David H. Hubel, Jerome Karle, Gregory S. Kavka, Klaus von Klitzing, Leon M. Lederman, Yuan T. Lee, Wassily Leontief, Bernard Lown, Mairead Corrigan Maguire, Barbara McClintock, J.E. Meade, Sinon van der Meer, Bruce Merrifield, Marshall W. Nirenberg, Linus Pauling, John Polanyi, Carlo Rubbia, Abdus Salam, Claude Simon, Herbert A. Simon, George D. Snell, Roger W. Sperry, Henry Taube, Jan Tinbergen, Archbishop Desmond Tutu, George Wald, Elie Wiesel, Robert W. Wilson.

COMMENT

Post UNCED COMMENT

"The primary goal of the summit was to lay the foundation for a global partnership between developing and developed countries based on mutual need and common interest, to ensure the future of the planet. This partnership will undoubtedly require the mutual solution of the population and overconsumption issues. Equity and environment problems are linked and must be solved together. Further, the only major source of the discretionary funds necessary for addressing these issues rests in the radical reduction of the military budgets of the Nations of the World" — Dr. Fred Knelman, Vice President of the Whistler foundation For a Sustainable Environment; and Dr. David Krieger, President of the Nuclear Age Peace Foundations. (NLSU)

- to initiate a global program of population stabilization; (NLSU)
Although they comprise only 20 % of the World's population, they consume two thirds of the metals and three fourths of the energy produced the world over. (CA)

Forests disappear, deserts grow, thousands of millions of tons of fertile soil end up in the oceans every year. Numerous species face extinction. Over-population and poverty lead to desperate efforts for survival, even at the expense of nature. (CA)

2. As long as 20% of the world's population devours 80% of the world's resources and energy, military force will be used to maintain this inequitable situation. Poverty and hunger generate tensions and pressures which can only be perpetuated by military oppression. Militarization, originating in economic exploitation and in all forms of domination including patriarchal systems, destroys the Earth and the various forms of life on it. Militarism, during periods of war and peace, has an immensely negative impact on the environment, as it uses up the natural and human resources needed for economic and social development. (NGO MED)

- **Linking of population and overconsumption**

"The growth of world population and production combined with unsustainable consumption patterns places increasingly severe stress on the life-supporting capacities of our planet. ." (5.2, Demographic dynamics)

["Health and development are intimately interconnected. both insufficient developments leading to poverty and inappropriate development resulting in over-consumption, coupled with an expanding world population, can result in severe environmental health problems in both developing and developed nations."] 6.1 Health

Desertification affects about one sixth of the world's population, 70% of all drylands, amounting to 3.6 billion hectares, and one quarter of the total land areas of the world. The most obvious impact of desertification, in addition to widespread poverty, is the degradation of 3.3 billion hectares of the total area of rangeland, constituting 73 per cent of the rangeland with a low potential for human and animal carrying capacity decline in soil fertility and soil structure on about 47 per cent of the dryland areas constituting marginal rainfed cropland; and the degradation of irrigated cropland, amounting to 30 % of the dryland areas with a high population density and agricultural potential. (12.2. Desertification)

- **Extent of environmental damage from waste accumulation**

" The environment is threatened in all its biotic and abiotic components: animals, plants, microbes and ecosystems comprising biological diversity; water, soil and air, which form the physical components of habitats and ecosystem; and all the

interactions between the components of biodiversity and their sustaining habitats and ecosystem. With the continued increase in the use of chemicals, energy and non-renewable resources by expanding global population, associated environmental problems will also increase. Despite increasing efforts to prevent waste accumulation and to promote recycling, the amount of environmental damage caused by overconsumption, the quantities of waste generated and the degree of unsustainable land use appear likely to continue growing.” (16.22 Biotechnology)

- **Increased impact of population growth and industrialization**

" Rapid urban population growth and industrialization are putting severe strains on the water resources and environmental protection capabilities of many cities (18.67, Fresh water)

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POPULATION

The earth is finite. Its ability to absorb waters and destructive effluent is finite. Its ability to provide food and energy is finite. and we are fast approaching many of the earth's limits. Current economic practices which damage the environment, in both developed and underdeveloped nations, cannot be continued without the risk that vital global systems will be damaged beyond repair. (WSWH)

Pressures resulting from unrestrained population growth put demands on the natural world that can overwhelm any efforts to achieve a sustainable future. If we are to halt the destruction of our environment, we must accept limits to that growth. A World Bank estimate indicates that world population will not stabilize at less than 12.4 billion, while the United Nations concludes that the eventual total could reach 14 billion, a near tripling of today's 5.4 billion. But, even at this moment, one person in five lives in absolute poverty without enough to eat, and one in ten suffers serious malnutrition. (WSWH)

3. We must stabilize population. This will be possible only if all nations recognize that it requires improved social and economic conditions and the adoption of effective, voluntary family planning. (WSWH)

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Acting on this recognition is not altruism, but enlightened self-interest: whether industrialized or not, we all have but one lifeboat. No nation can escape from injury when global biological systems are damaged. No nations can escape from conflicts over increasingly scarce resources. In addition, environmental and economic instabilities will cause mass migrations with incalculable consequences for developed and undeveloped nations alike. 3. WE must stabilize population. This will be possible only if all nations recognize that it requires improved social and economic conditions and the adoption of effective, voluntary family planning. (WSWH)

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even at this moment, one person in five lives in absolute poverty without enough to eat, and one in ten suffers serious malnutrition. (WSWH)

Developing nations must realize that environmental damage is one of the gravest threats they face and that attempt to blunt it will be overwhelmed if their populations go unchecked. The greatest peril is to become trapped in spirals of environmental decline, poverty, and unrest, leading to social, economic and environmental collapse. 3. WE must stabilize population. This will be possible only if all nations recognize that it requires improved social and economic conditions and the adoption of effective, voluntary family planning. (WSWH)

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No more than one or a few decades remain before the change to avert the threats we now confront will be lost and the prospects for humanity immeasurably diminished (WSWH)

5. We must ensure sexual equality, and guarantee women control over their own reproductive decisions (WSWH)

To achieve sustainable development and a higher quality of life for all people, states should shall reduce and eliminate unsustainable patterns of production and consumption (Principle 8)

[We agree to alter [unsustainable] patterns of production and consumption to ensure the eradication of poverty and to end the abuse of Earth.] **The fundamental principle which calls for limiting growth shall be internationally adhered to. Current patterns of overconsumption shall be reduced and eventually eliminated, and efforts shall be made to stabilize population**

To achieve sustainable development and a higher quality of life for all people, states should shall reduce and eliminate unsustainable patterns of production and consumption (Principle 8)

Development activities that benefit the few while compromising the biological inheritance, and quality of life of the many must be condemned as being inherently and ethically wrong

" An expansionist world-view is presently engulfing us in a lose/lose situation for environment and humankind alike. (Taylor, 1991)

" Excessive population growth has outstripped the capacity to provide these basic requirements. (Fendall, 1991)

" Technology and population pressure make human beings a leading cause of habitat destruction and fragmentation throughout the world. "
(Fenton, 1991)

"For the first time in the history of the earth, one species is causing a mass extinction and has the rest of the living world in its grasp. We are permanently altering the course of evolution in ways we cannot foresee. (Scudder, 1991)

NGO TREATY ON POPULATION, ENVIRONMENT AND DEVELOPMENT (PED)

Preamble

Women's empowerment to control their own lives is the foundation for all action linking population, environment and development (PED)

We reject and denounce the concept of control of women's bodies by governments and international institutions. We reject and denounce forced sterilization, the misuse of women as subjects for experimental contraceptives and the denial of women's free choice (PED)

We affirm and support women's health and reproductive rights and their freedom to control their own bodies. We demand the empowerment of women, half of the World's population, to exercise free choice and the right to control their fertility and to plan their families (PED)

The international community must address problems arising from the relationship between population, environment of the fact that one-quarter of the world's population — predominantly in the industrialized nations — consumes over 70% of Earth's resources and is responsible for most of the global environmental degradation

Demands and Commitments

Birth rates decline when women's social, economic mechanism operating within the prevailing world order and within each country which create and perpetuate poverty, inequality and marginalization of people in the South — and increasingly in the North — must be transformed.

Militarism, debt and structural adjustment and trade policies being promoted by corporations and international financial and trade institutions such as the IMF, the World Bank and GATT are degrading the environment, impoverishing the majority of the World's people and perpetuating the inequality of the existing world order. WE condemn these policies and call for the immediate adoption of alternative policies and call for the immediate adoption of alternative policies based on principles of justice, equity and sustainability. (PED)

Nuclear testing and toxic waste dumping are poisoning the environment, threatening food security and causing sterility, births defects and disease. WE demand an end to environmental hazards that deprive women and men of their right to health and healthy children. (PED)

Patterns of consumption and production in the North and among the privileged of the South which are the main threat to the survival of life on Earth, must be changed in order to halt the squandering of natural resources and the exploitation of human beings. (PED)

We condemn and call for an immediate end to policies and programs, whether by governments, institutions, organizations or employers, that attempt to deprive women of their freedom of choice or the full knowledge or means to exercise their reproductive rights, including the right to interrupt unwanted pregnancies. WE denounce and reject the violence against women, who are victims of racial and class discrimination and suffer from extreme poverty, who are subjected to coercion, sterilization abuse, experimental drugs, and lack of proper medical care and information about health risks and alternatives. (PED)

We pledge to expose and oppose any coercive population control programs support or conducted by governments, funding agencies, multilateral institutions, corporations and NGOs, and to hold them accountable (PED)

We demand women-centered, women-managed and women-controlled comprehensive reproductive health care, including pre- and post-natal care, safe and legal voluntary contraceptive and abortion facilities, sex education and information for girls and boys, and programs that also educate men on male methods of contraception and their parental responsibilities (PED)

...

Defence We demand that scientific experimentation related to reproduction, particularly in the field of genetic engineering and contraception, be transparent as well as accountable to women's concerns and ethical criteria rooted in the of the human species and human rights. (PED)

We demand that governments honor international law and commitments on reproductive rights, and fulfill their responsibilities in implementing the Nairobi Forward Looking Strategies, the report of the 1984 Conference on Population and the UNCED agreements. We also demand the urgent and full ratification and implementation of the United Nations Convention on the Elimination of all forms of Discrimination Against Women. (PED)

We demand that national and international communities act now to support community-based responses to the AIDs epidemic, and other sexually transmitted diseases, respecting the human rights of those affected.(PED)

These demands embody our commitments, and we pledge to integrate them into our lives and our organizations' practices and policies. WE further pledge to see that these demands are met at all levels, locally, nationally and internationally. And we pledge to work together on this treaty, affirming our solidarity and our cultural diversity (PED)

CHAPTER 8

Interdependence and integration of issues: peace, environment, equity and human rights: towards a global solution

- Redefinition of development in equitable and ecological terms

Focus- Development and Copenhagen Conference on development
8.1. PRE-UNCED RECOMMENDATIONS FROM THE SOUTH

8.1.1. ASEAN AGREEMENT ON THE CONSERVATION OF NATURE AND NATURAL RESOURCES (KUALA LUMPUR, 1985)(Indonesia, Negara Brunei Darussalam, Malaysia, Philippine, Singapore and Thailand. (ASEAN) (ACNNR)

excerpts from Agreement

...

Conscious also that the interrelationship between conservation and socio-economic development implies both that conservation is necessary to ensure sustainability of development, and that socio-economic development is necessary to the achievement of conservation on a lasting basis; (ACNNR)

Recognizing the interdependence of living resources, between them and with other natural resource, within ecosystems of which they are part; (ACNNR)

Wishing to undertake individual and joint action for the conservation and management of their living resources and the other natural elements on which they depend; (ACNNR)

Recognizing that international co-operation is essential to attain many of these goals (ACNNR)

; Convinced that an essential means to achieve such concerted action is the conclusion and implementation of an Agreement;

Chapter 1

Conservation and Development

Article 1

Fundamental Principle

1. The contracting Parties, within the framework of their respective national laws, undertake to adopt singly, or where necessary and appropriate thought concerted action, the measures necessary to maintain essential ecological processes and life-support systems, to preserve genetic diversity, and to ensure the sustainable utilization of harvested natural resources under their jurisdiction in accordance with scientific principles and with a view to attaining the goal of sustainable development. (ACNNR)

2. To this end they shall develop national conservation strategies, and shall co-ordinate such strategies within the framework of a conservation strategies, and shall co-ordinate such strategies within the framework of a conservation strategy for the Region. (ACNNR)

Article 2

Development Planning

1. The Contracting Parties shall take all necessary measures, within the framework of their respective national laws, to ensure that conservation and management of natural resources are treated as an integral part of development planning at all stages and at all levels. (ACNNR)

2) to that effect that shall, in the formulation of all development plans, give as full considerations to ecological factors as to economic and social ones. (ACNNR)

3) The contracting Parties shall, where necessary, take appropriate action with a view to conserving and managing natural resources of significant importance for two or several Contracting Parties (ACNNR)

Chapter II

Conservation of Species and Ecosystems

Article 3

Species — genetic diversity

1. The Contracting Parties shall, wherever possible, maintain maximum genetic diversity by taking action aimed at ensuring the survival and promoting the conservation of all species under their jurisdiction and control (ACNNR)

2. to that end, they shall adopt appropriate measures to conserve animal and plant species whether terrestrial, marine and freshwater, and more specifically (ACNNR)

a) conserve natural, terrestrial, freshwater and coastal or marine habitats; (ACNNR)

b) ensure sustainable use of harvested species; (ACNNR)

c) protect endangered species; (ACNNR)

d) conserve endemic species; and (ACNNR)

e) take all measures in their power to prevent the extinction of any species or subspecies. (ACNNR)

3. In order to fulfill the aims of the preceding paragraph of this Article the Contracting Parties shall, in particular endeavour to

a) create and maintain protected areas; (ACNNR)

b) regulate the taking of species and prohibit unselective taking methods; (ACNNR)

c) regulate and, where necessary, prohibit the introduction of exotic species; (ACNNR)

d) promote and establish gene banks and other documented collections of animal and plant genetic resources (ACNNR)

Article 4

Species — sustainable use

The Contracting Parties shall pay special attention to harvested species, and, to that effect, shall endeavour to (ACNNR)

1) develop, adopt and implement management plans for those species, based on scientific studies and aiming at (ACNNR)

a) preventing decrease in the size of any harvested population to levels below those which ensure its stable recruitment and the stable recruitment of those species which are dependent upon, or related to them; (ACNNR)

- b) maintaining the ecological relationship between harvested, dependent and related populations of living resources of the ecosystem considered; (ACNNR)
 - c) restoring depleted populations to at least the levels referred to in subparagraph (1) of this paragraph; (ACNNR)
 - d) preventing changes or minimizing risk of changes in the ecosystem considered which are not reversible over a reasonable period of time. (ACNNR)
2. Take the appropriate and necessary legislative and administrative measures on harvesting activities in the light of their national interest whereby (ACNNR)
- c) all indiscriminate means of taking and the use of all means capable of causing local extinction of, or serious disturbance to, populations of a species or related species are prohibited (ACNNR)
 - d) such activities are prohibited or strictly regulated at certain periods, seasons or places of importance in the life cycle of the species; (ACNNR)
 - e) such activities may be regulated more strictly, temporarily or locally in order to assist restoration of population levels or counterbalance any threat caused by special circumstances; (ACNNR)
 - f) special measures, such as restocking, are provided for whenever the conservation status of a species so warrants; (ACNNR)

Article 5

Species — endangered and endemic

Article 6

Vegetation Cover and Forest Resources

1. The Contracting Parties shall, in view of the role of vegetation and forest cover in the functioning of natural ecosystems, take all necessary measures to ensure the conservation of the vegetation cover and in particular of the forest cover on lands under their jurisdiction.
- b) regulate mining and mineral exploration operations with a view to minimizing (ACNNR) disturbance of vegetation and to requiring the rehabilitation of vegetation after such operations; (ACNNR)
 - c) set aside areas as forest reserve, Inter alia, with a view to conserve the natural forest genetic resources; (ACNNR)
 - d) in reforestation and afforestation planning avoid as far as possible monoculture causing ecological imbalance; (ACNNR)
 - e) designate areas whose primary function shall be the maintenance of soil quality in the catchment considered and the regulation of the quantity and quality of the water delivered from it; (ACNNR)
 - f) ensure, to the maximum extent possible the conservation of their natural forests, particularly mangroves with a view, inter alia, to maintaining maximum forest species diversity; (ACNNR)
 - g) develop their forestry management plans on the basis of ecological principles with a view to maintaining potential for optimum sustained yield and avoiding depletion of the resource capital. (ACNNR)

Article 7

Soil

1. The Contracting Parties shall, in view of the role in the functioning of natural ecosystems, take measures, wherever possible, towards soil conservation, improvement and rehabilitation; they shall, in particular, endeavour to take steps to prevent soil erosion and other forms of degradation, and promote measures which safeguard the processes of organic decomposition and thereby in continuing fertility (ACNNR)

2. To that effect, they shall, in particular, endeavour to

- a) establish land use policies aimed at avoiding losses of vegetation cover, substantial soil losses, and damages to the structure of the soil; (ACNNR)
- b) take all necessary measures to control erosion, especially as it may affect coastal or freshwater ecosystems, lead to situation of downstream areas such as lakes or vulnerable ecosystems such as coral reefs, or damage critical habitats, in particular that of endangered or endemic species; ... (ACNNR)

Article 8

Water

1. The Contracting Parties shall, in view of the role of water in the functioning of natural ecosystems, take all appropriate measures towards the conservation of their underground and surface water resources. (ACNNR)

2. They shall to that effect, in particular, endeavour to

- a) undertake and promote the necessary hydrological research especially with a view to ascertaining the characteristics of each watershed; (ACNNR)
- b) regulate and control water utilization with a view to achieving sufficient and continuous supply of water for Inter alia, the maintenance of natural life supporting systems and aquatic fauna and flora; (ACNNR)
- c) when planning and carrying out water resource development projects take fully into account possible effects of such projects on natural processes or on other renewable natural resources and prevent or minimize such effects. (ACNNR)

Article 9

Air

The Contracting Parties shall, in view of the role of air in the functioning of natural ecosystems, endeavour to take all appropriate measures towards air quality management compatible with sustainable development. (ACNNR)

Chapter III

Conservation of Ecological Processes

Article 10

The Contracting Parties, with a view to maintaining the proper functioning of ecological processes, undertake, wherever possible, to prevent, reduce and control degradation of the natural environment and, to this end, shall endeavour to undertake, in addition to specific measures referred to in the following article; (ACNNR)

- a) to promote environmentally sound agricultural practice by, inter alia, controlling the application of pesticides, fertilizers and other chemical products for agricultural use, and by ensuring that agricultural development schemes, in particular for wetland drainage or forest clearance pay due regard to the

- need to protect critical habitats as well as endangered and economically important species; (ACNNR)
- b) to promote pollution control and the development of environmentally sound industrial process and products; (ACNNR)
- d) as far as possible to consider the originator of the activity which may lead to environmental degradation responsible for its prevention, reduction and control as well as, wherever possible, for rehabilitation and remedial measures required; (ACNNR)
- e) to take into consideration, when authorizing activities likely to affect the natural environment, the foreseeable interactions between the new activities proposed and those already taking place in the same area, and the result of such interactions on the air, waters, and soils of the area; (ACNNR)
- f) to pay particular attention to the regulation of activities which may have adverse effects on processes which are ecologically essential or on areas which are particularly important or sensitive from an ecological point of view, such as the breeding and feeding grounds of harvested species. (ACNNR)

Article 11

The contracting Parties, recognizing the adverse effect that polluting discharges or emissions may have on natural processes and the functioning of natural ecosystems as well as on each of the individual ecosystem components, especially animal and plants species, shall endeavour to prevent, reduce and control such discharges, emissions or applications, in particular by control such discharges, emissions or application, in particular by (ACNNR)

a) submitting activities likely to cause pollution of the air, soil, freshwater, or the marine environment, to controls which shall take into consideration both the cumulative effects of the pollutants concerned and the self-purification aptitude of the recipient natural environment; (ACNNR)

b) making such controls conditional on, inter alia appropriate treatment of polluting emissions; and (ACNNR)

c) establishing national environmental quality monitoring programmes particular attention being paid to the effects of pollution on natural ecosystems, and co-operation in such programmes for the Region as a whole. (ACNNR)

Chapter IV

1. The Contracting Parties shall wherever possible in the implementation of their development planning, give particular attention to the national allocation of land usage. They shall endeavour to take the necessary measures to ensure the integration of natural resource conservation into the land use planning process and shall, in the preparation and implementation of specific land use plans at all levels, give as full consideration as possible to ecological factors as to economic and social ones, in order to achieve optimum sustainable land use; they undertake to base their land use plans as far as possible on the ecological capacity of the land. (ACNNR)
3. They shall, where appropriate, coordinate their land use planning with a view to conserving and managing natural resources of significant importance for two or several Contracting Parties. (ACNNR)

Article 13

Protected Areas

1. The Contracting Parties shall as appropriate establish, in areas under their jurisdiction, terrestrial, freshwater, coastal or marine protection areas for the purpose of safeguarding

— the ecological and biological processes essential to the functioning of the ecosystems of the Region; (ACNNR)

—representative samples of all types of ecosystem of the Region; (ACNNR)

—satisfactory population levels for the largest possible number of species of fauna and flora belonging to those ecosystems; (ACNNR)

—areas of particular importance because of their scientific, educational, aesthetic, or cultural interest; and taking into account their importance in particular as: (ACNNR)

—the natural habitat of species of fauna and flora, particularly rare or endangered or endemic species; (ACNNR)

—zones necessary for the maintenance of exploitable stock of economically important species; (ACNNR)

— pools of genetic material and safe refuges for species, especially endangered ones; (ACNNR)

— sites of ecological, aesthetic or cultural interest; (ACNNR)

— reference sources for scientific research; (ACNNR)

— areas for environmental education (ACNNR)

They shall, in particular, take all measures possible in their power to preserve those areas which are of an exceptional character and are peculiar to their country or the Region as well as those which constitute the critical habitats of endangered or rare species, of species that are endemic to a small area and of species that migrate between countries of Contracting Parties. (ACNNR)

2. Protected areas established pursuant to this Agreement shall be regulated and managed in such a way as to further the objectives for the purpose of which they have been created. Contracting Parties shall, wherever possible, prohibit within such protected areas activities which are inconsistent with such objectives. (ACNNR)

3. Protected areas shall include

a) National Parks (ACNNR)

i. This expression denotes natural areas that are sufficiently large to allow for ecological self-regulation of one or several ecosystem,, and which have not been substantially altered by human occupation or exploitation (ACNNR)

ii National Parks shall be placed under public control, their boundaries shall not be altered nor shall any portion of any National Park be alienated except by the highest competent authority. (ACNNR)

iii. National Parks shall be dedicated to conservation and to scientific, educational and recreational uses and the common welfare of people. (ACNNR)

b) Reserves

i) This expression denotes areas set aside for the purpose of preserving a specific ecosystem, the critical habitat of certain species of fauna or flora, a water catchment area or for any other specific purpose relating to the

conservation of natural resources or objects or areas of scientific, aesthetic, cultural, education or recreational interest. (ACNNR)

iii Reserves shall be dedicated to the purposes for which they have been created and, in the light of the national interests of the Contracting Parties, any activity inconsistent with such purposes shall be prohibited. (ACNNR)

4. Contracting Parties shall, in respect of any protected area established pursuant to this Agreement (ACNNR)

a) prepare a management plan and manage the area on the basis on this plan; (ACNNR)

b) establish, wherever appropriate, terrestrial or aquatic buffer zones that shall be located around protected areas and which, in the case of marine areas, may include coastal land areas or watersheds of rivers flowing into the protected area; in such buffer zones all activities that may have harmful consequences on the ecosystems that such areas purport to protect shall be prohibited or regulated and activities which are consistent with the purpose of the protected area shall be promoted. (ACNNR)

5. Contracting Parties shall, in respect of any protected area established pursuant to this agreement, endeavour to (ACNNR)

a) prohibit the introduction of exotic animal or plant species; (ACNNR)

b) prohibit the use or release of toxic substances or pollutant which could cause disturbance or damage to protected ecosystems or to the species they contain; (ACNNR)

c) to the maximum extent possible, prohibit or control any activity exercised outside protected areas when such an activity is likely to cause disturbance or damage to the ecosystems or species that such protected areas purport to protect (ACNNR)

6. Contracting Parties shall co-operate in the development of principles, objectives, criteria and guidelines for the selection, establishment and management of protected areas in the Region with a view to establishing a co-ordinated network of protected areas throughout the Region, giving particular attention to those of regional importance. An Appendix containing such principles, objectives, criteria and guidelines shall be drawn up in the light of the best scientific evidence as adapted to the conservation requirements of the Region and shall be adopted by a meeting of Contracting Parties. (ACNNR)

In addition to the establishment of the protected areas referred to in paragraph 3 of this Article, Contracting Parties shall promote, through the adoption of appropriate measures, the conservation of natural areas by private owners, community or local authorities. (ACNNR)

Article 14

Impact Assessment

1. The Contracting Parties undertake that proposals for any activity which may significantly affect the natural environment shall as far as possible be subjected to an assessment of their consequences before they are adopted, and they shall take into consideration the results of this assessment in their decision-making process. (ACNNR)

2. In those cases where any such activities are undertaken, the Contracting Parties shall plan and carry them out so as to overcome or minimize any

assessed adverse effects and shall monitor such effects with a view to taking remedial action as appropriate. (ACNNR)

Chapter 5 National Supporting Measures

Article 15 Scientific Research

Article 16 Education, Information, and Participation of the Public, Training

1. the Contracting Parties shall endeavour to promote adequate coverage of conservation and management of natural resources in education programmes at all levels (ACNNR)
2. They shall circulate as widely as possible information on the significance of conservation measures and their relationship with sustainable development objectives and shall, as far as possible, organize participation of the public in the planning and implementation of conservation measures. ...(ACNNR)

Article 17 Administrative Machinery Chapter VI

Article 18 International Co-operation Co-operative Activities

Article 19 Shared Resources

- c) as far as possible, make environmental assessments prior to engaging in activities with respect of shared natural resources which may create a risk of significantly affecting the environment of another sharing Contracting Party or the sharing Contracting Parties;
- d) notify in advance the other sharing Contracting Party or the other sharing Contracting Parties of pertinent details of plans to initiate, or make a change in , the conservation or utilization of the resource which can reasonably be expected to affect significantly the environment in the territory of the other Contracting Party or Contracting Parties; (ACNNR)

...

Article 20 Transfrontier Environmental Effects

1. Contracting Parties have in accordance with generally accepted principles of international law the responsibility of ensuring that activities under their jurisdiction or control do not cause damage to the environment or the natural resources under the jurisdiction of other Contracting Parties or of areas beyond the limits of national jurisdiction. (ACNNR)
2. In order to fulfill this responsibility, Contracting Parties shall avoid to the maximum extent possible and reduce to the minimum extent possible adverse environmental effects of activities under their jurisdiction or control, including effects on natural resources, beyond the limits of their national jurisdiction. (ACNNR)
3. To that effect, they shall endeavour

a) to make environmental impact assessment before engaging in any activity that may create a risk of significantly affecting the environment or the natural resources of another Contracting Party or the environment or natural resources beyond jurisdiction; (ACNNR)

4. Contracting Parties shall, in particular, endeavour to refrain from actions which might directly or indirectly adversely affect wildlife habitats situated beyond the limits of national jurisdiction, especially habitats of species listed in Appendix 1 or habitats included in protected areas. (ACNNR)

Chapter VII

International Supporting Measures

Article 21

Meeting of the Contracting Parties

Article 22-35 Administration of Agreement

8.1.2. NGO South

The imperative of equity: the missing dimension of UNCED statement of the South Asia NGO summit New Delhi, February

Preamble

South Asia is a region that represents more than one-fifth of the world's human beings. It is today also a region of acute poverty and economic and technological backwardness. But it was not always so.

Less than 300 years ago, it was one of the world's most urbanized and richest regions which attracted traders from all over the world. This wealth was built upon the sustained use of local natural resources which was governed through extensive management systems in which both local communities and the state played critical roles. The extraordinary ecological diversity of the region — ranging from the cold deserts of the Karakoram and Ladakj to the hot sandy desert of the Thar, from the high mountain temperate forests of the Himalaya to the lush tropical forests and vast mangroves of India, Bangladesh and Sri Lanka and from the sharply dissected mountain lands of Nepal and Bhutan to the unending, flood-prone plains of Pakistan, India and Bangladesh — gave rise to an equally extraordinary cultural diversity which embodied within it rich traditions of ecological management and resource use. In large parts of the region, however, colonialism and subsequent centralized interventions completely disrupted and transformed the local economic, ecological and cultural systems and left the region in a state of all round impoverishment.

Economic development of the last four decades also did not take into account either people's own wisdom about their natural resources nor did it hand them back power to manage their environment. the result has been continued exploitation of the resource base without any discipline or care for future impacts. International banks and agencies have consistently pushed and imposed a Western model of development that is unsuited to the ecological and economic needs of the region and have, as a result, exacerbated pressures on local resource base. This model is urban elite oriented and the distribution of resources is at the hand of urban elites and bureaucrats. Therefore, the gap between rich and poor has widened in the past and the process is still continuing. The international monetary system has further pushed the region to the brink of economic chaos through rising indebtedness, imposition of unrealistic conditionalities and declining terms of trade.

The main objective of the UNCED conference is to identify and promote a plan of action that will make this earth a better and safer habitat for all to survive and develop. We strongly urge the conference to develop a truly global agenda that responds to the present and future needs of all human beings on earth. We also urge the conference to develop systems of global ecological and economic management that will be equitable and fair, in which all will have equal access to and capacity to influence the global checks and balances that are sought to be created. A fair and safe world cannot be built by using levers of power that rest largely with the rich and the powerful, whose consumption and production is the main cause of global ecological

destruction in the first place. Sustainability is not possible or desirable without equity and fairness. WE are also firm in our belief that each human society on earth has the capacity to develop its own wisdom and equilibrium and contribute richly to the growth and development of others. An ecologically diverse global habitat demands a multicultural world in which all cultures and societies are equally respected.

It is keeping this in mind that the south Asia NGO Summit has endorsed the following resolution which we urge individual governments, the proposed Rio conference and other NGOs to consider in all seriousness.

The Earth Charter

Both equity and sustainability must be stressed.

We call upon the governments of the world to ensure that the Earth Charter endorses the following basic minimum principles

- 1. The right of all nations to development**
- 2. The right of all human beings to a clean and healthy environment/**
- 3. the right of all human beings to equality in access to and use of the global commons like the atmosphere and oceans**
- 4. the right of all human beings to any information that threatens or affects their health and environment, whether this information exists within or across national borders.**
- 5. the right of all human beings to participate in the governance of their environment on an ongoing basis through participatory democratic institutions, beginning at the community level and going on to higher levels of governance.**
 - a. At the international level, new mechanisms should be created which allow all citizens of the world equal opportunities to participate in global environmental management and should not be used to impose new conditionalities on the South. the North should review the indebtedness of the South which in most cases has become an unbearable burden.**
 - b. all nations at UNCED must take a pledge to develop a new tier of governance within their countries — a tier of community level governance through open, participatory institutions with inalienable rights over their immediate environment to care for, use and manage.**
- 6. the world economic order should be built on the principle that all human beings, and especially the rich, must pay the full ecological costs of their past and present consumption.**

Agenda 21

Action priorities should be set by the poor but only after the rich agree to pay the full costs of their consumption.

The Agenda 21 as it stands today appears to be a donor driven mechanism for aid coordination. It fails to address the need of the developing world. this summit demands that UNCED must move away from a view of global environmental management which sees it as a question of additional aid funds or technology transfer. The Agenda 21 should emerge out to the rights and obligations of all citizens as enumerated in the proposals for the Earth Charter described above. The

South must not ask for aid and charity but for a fair share of the common global resources.

Therefore, we demand that a global consumption tax be levied so that the rich pay for their excessive consumption of past and present world's resources. The tax should be determined and administered by a democratic global institution where every member will have equal voting rights. The revenues so raised should go to poor local communities through a democratic mechanism to manage and improve their environment since it is they who bear the burden of the ecological costs of unplanned development and consumption.

C. FUNDING MECHANISMS:

Reject the GEF and develop an automatic and democratic mechanism. As an instrument for transferring funds to the South for environmental management, the GEF is undemocratic because its decision making mechanism is donor weighted, and it is also immoral in that it places control of financial resources in the hands of nations who have created the problem in the first place. The GEF also falsely differentiates between what is 'global' and 'local' and thereby distorts the priorities of the South. It represents no compensation for the environmental misdoings of the rich, but a continuation of the old aid order. It is like the relief support that the North generally gives to the South after a disaster. We, therefore, forcefully reject the GEF. Instead a new fund should be created at UNCED on the principles enumerated earlier and administered through a democratic and decentralized institutional setup.

D. POVERTY AND ENVIRONMENT;

The south must stress this as a key issue for discussions. the UNCED process has paid inadequate attention to the key question of poverty in the South and its links with environmental degradation. The poor depend heavily on their immediate surroundings to meet their survival needs of food, fodder, fuelwood and water. Over exploitation, expropriation and degradation of land and water resources by powers beyond their control force the poor to the brink of survival. They then lose their ability to withstand natural disasters and , in sheer desperation, are forced to exploit their natural capital beyond sustainable limits.

For governments of South Asia, poverty alleviation has been a stated priority. Yet they have done little to insist that the UNCED address this crucial issue. It is essential that our governments impress upon those of the North that poverty is a consequence and not a cause of environmental degradation. It becomes a cause only in extremely desperate economic conditions, the trigger for which often lies in unequal and ecologically unsound economic strategies. A world in which a large proportion of the population lives in abject and dehumanizing poverty can never be sustainable. Both the national and international causes of poverty must be clearly identified and eliminated if environmental disaster is to be averted and the poor of the world given a fair chance to survive as a matter of human right.

Environmental degradation and poverty in the South are strongly linked to global processes of trade and economic relations. Growing debt and declining terms of international trade for mineral and biomass products make it impossible for developing countries to incorporate the ecological costs of their production. The rich are not even paying a fraction of the ecological costs of their enormous consumption and are being constantly subsidized by the global poor. In addition, the debt crisis has resulted in a situation in which the South today actually transfers US 40-50 billion every year to the North, leaving precious little to invest in environmental management or poverty alleviation through development. The policies of the IMF, World Bank and other North Based financial institutions consistently devalue the natural resources of the South and make them ever cheaper.

At the national level, poverty has increased greatly because of :

- a) constant imports of inappropriate development paradigms, often under pressure from international agencies like the World Bank;**
- b) a steady erosion in the rights of local communities to their environment;**
- c) a widespread failure to develop participatory systems of governance;**
- d) undemocratic and inequitable distribution of resources in the society;**
- and**
- e) widespread corruption and misuse of resources by political systems that are not adequately accountable to the people who vote for them**

If we want to eradicate poverty, then at the international level, the rich must be made to pay the full costs of their consumption through an international consumption tax. Since it is the poor who suffer most heavily from ecological degradation, the revenues thus generated should be made available to local communities, through a democratic and decentralized mechanism which is accountable to the people, to regenerate and manage their environment. An international employment programme which guarantees survival wages to all poor people across the world would cost only US \$30-40 billion every year. But it will not only ensure that nobody goes to bed hungry but also provide an extraordinary opportunity for harnessing the labour power of the poor for the ecological regeneration of their own habitat through afforestation, grasslands development, soil conservation, water conservation etc. Such a global programme should be financed through a global consumption tax on all the world's rich both in the North and the South. The North must take the lead to accept its share of global responsibility.

At the national level, governments must develop systems of participatory governance that ensure that control and management of the environment rests with local communities. Wherever local communities have been involved in the control and management of their resources, it has been possible to protect the environment and regenerate its productivity. We are proud to say that NGOs across South Asia have repeatedly shown through their work that community self-governance has invariably led to improved environmental management. Some of the best examples are those of the Orangi Pilot Project in Karachi in the urban context; the village of Sukhomajri, Nada, Seed, Bhusadia and Ralegan Siddhi in India; and the Grameen Bank in the

flood affected plains of Bangladesh. In Nepal, rural communities continue to manage their fragile Himalayan environment with great care and labour inputs. The enormous labour inputs of the poor in environmental management — such as those of the Himalayan farmers in terracing their agricultural fields — remain an invisible factor in national economic calculations even though their contribution is often far more than official expenditures, whether they result from national funds or foreign aid.

If investments in land, water, minerals and forest resources are to be productive and poverty eliminated, efforts to develop and strengthen democratic and participatory institutions at the grassroots is essential. The nature of effective participatory institutions will be determined by local cultural, social and economic conditions. Experimentation in this area is urgently needed so that appropriate community institutions can be legally empowered to manage local environments.

E GLOBAL WARMING

The Climate Convention should be signed only when equal rights of all to the atmosphere are accepted.

Excessive burning of fossil fuels over the last century has led to a global greenhouse effect which is largely the result of rapid industrialization and heavy energy consumption in the North. In fact, the North has been able to undertake cheap industrialization only because it could encroach upon the ecological space of the south without any compensation. In the process, the North has accumulated an enormous ecological debt. If the North continues emitting greenhouse gases in the same way, the earth's atmospheric processes will be further destabilized. It has been argued by the Inter-governmental Panel on Climate Change (IPCC) that the likelihood of global warming is very high and, if not immediate action is taken, it will be too late to reverse the process of global warming later.

Though caused by the North, the effects of global warming will be borne heavily by the South, which has hardly any financial or technical resources to deal with the problem. With a rise in sea level, South Asia, which has large low-lying areas, will become one of the most affected regions in the world. If the sea level rises by one metre, more than 17.5 per cent of the total land area of Bangladesh will be inundated. Some 40-50 million people will be rendered homeless and infrastructure worth billions of dollars will become useless. Scientists also predict that cyclonic storms will intensify in the Indian Ocean region if sea surface temperatures rise. Increased ice melting in the Himalayas together with changes in rainfall patterns could inundate vast areas of the flood plains of the Gang-Brahmaputra-Barak basins which will multiply the miseries and sufferings of millions of people. As a large proportion of its population lives at or below the poverty line, and remains heavily dependent on a biomass based subsistence economy, south Asia will be devastated by the dislocation brought about by global warming. Poverty and global warming will together form a deadly combination for the poor millions living in coastal, arid and semi-arid areas of the region.

We believe that those who have created the problem of global warming must bear the costs of preventive and corrective action and compensate others for the use of their ecological space. The North must adjust its patterns of production and consumption to mitigate the threat to the earth's atmosphere. It is both its moral and legal responsibility to prevent and repair any environmental damage that is likely to be inflicted upon others. The North must also develop mechanisms to speedily communicate the results of its research on global warming on the South. Developing countries should aim for net zero deforestation through sustained use of existing natural forest and not merely by plantations.

Any management system that is developed to limit carbon dioxide emissions and thus stabilize world climate must be based on the following principles

- a) All of us must learn to live in harmony with nature, that is, reduce our total emissions to a level that is considered to be sustainable in participation with scientists from the South**
- b) All human beings should have an equal right to the total emissions that the atmosphere can bear on a sustainable basis**
- c) The South must be compensated for the atmospheric space that the North has been using to date.**

While we are fully supportive of the firm stand taken by South Asian government thus far in international negotiations relating to the climate convention, we believe that they must insist upon the above principles in all negotiations. Under no circumstances should the governments of South Asia agree to a framework convention which would dilute the above principles and thus mortgage our future. No framework convention should be signed which does not include the basic minimum principle that all human beings have an equal right to the atmosphere. The government must remember that they have to protect the interests of both the present and the future generations of south Asia

The south should not be seen again as holding out the begging bowl for "new and additional resources" or calling for "technology transfer." Instead, the South should demand compensatory measures from the North for errant behaviour as a matter of the South's right over global resources.

F BIODIVERSITY CONVENTION

Refuse to sign the convention until major contradictions are resolved

The proposed convention on Biodiversity does not deal only with the subject of biodiversity conservation. In return for its support for biodiversity conservation the North is demanding access to the world's biological resources, which are largely concentrated in the South. Since the convention is attempting to deal with both these issues, it raises numerous complex issues which must be resolved before any convention is signed.

There can be no doubt that biological diversity needs to be conserved ;both for its own sake — all living species have a right to

exist — and for the benefit of all humankind. In an ideal world, given the fact that people all over already use biological resources from far flung corners of the globe, these resources should be commonly available to all to use and conserve. But the principle of 'common heritage' has been misused by commercial interests in the North to monopolize and plunder the biological resources of the South while restricting access to genetic materials and associated technologies based on these resources. This Northern approach is both unfair and ecologically unsound. While the measures taken under the proposed convention would make access to biological resources easier, the new life forms and technologies emerging from these resources would be strongly privatized through powerful patents under the proposals being pursued in the Uruguay Round. any effort therefore to improve access to the biological wealth of the South would lead to an extremely inequitable situation. It is obvious that we cannot have one set of negotiations that aim to privatize knowledge and biotechnologies while another set seeks to globalize the biological resources on which this knowledge and biotechnology is based.

Recent legal and technological developments in fact threaten the very biological diversity that is sought to be conserved, and also restrict access to biological resources and associated biotechnologies . These include:

- a) Intellectual property rights, both as plant breeders rights and patents on life forms and biological processes;
- b) Commodification of biological resources for purpose of monopoly and profit; and,
- c) Increasing genetic uniformity in cultivated/domestic species.

We also believe that there are strong links between the proposed conventions on climate and biodiversity. Developing countries are being asked to protect forests under both these conventions while the North is not prepared to make any serious commitments on Carbon Dioxide reductions under the climate convention. If developing countries sign the biodiversity convention they will legally bind themselves to a major commitment sought by both conventions without the North committing itself to anything serious in either

Moreover, we question the legitimacy of our governments to negotiate access to biological resources, without consulting and involving in decision-making, the local communities which have customary rights to these resources. it is these communities which have nurtured these resources and have developed a wealth of knowledge and skills related to their use. any process of international negotiation must evolve through an internal process of public debated, in particular involving local communities. This has not been done at all in the case of the Biodiversity Convention.

Current strategies for biodiversity conservation, often emanating from Northern agencies, are extremely anti-people, relying heavily on fences and guards. participatory biodiversity conservation strategies must be developed urgently — an activity that requires enormous experimentation. More of the conventional projectionist approach, resulting from increased global availability of funds through

mechanisms like the biodiversity convention, could severely affect local communities living in biodiversity rich areas.

Considering the fact that all these critical issues have not been satisfactorily resolved, we strongly urge upon our governments and those of the North not to rush into signing a convention which does not satisfactorily address and resolve the above issues. southern governments cannot negotiate away our biological resources — one of our most critical assets — in such a hurry by June 1992, and in the absence of meaningful citizens' participation in the negotiating process and of local communities, especially tribal communities.

8.1.3. Position paper of the Group of Fifteen on the new world order (GOF)

Growth has no set limits in terms of population or resource use beyond which lies ecological disaster...but ultimate limits there are, and sustainability requires that long before these are reached the world must ensure equitable access to the constrained resources and reorient technological efforts to relieve the pressure. (WCED)(UNA)

We, the Heads of State and Government, members of the Summit Level Group for South-South Consultation and Cooperation — known as the Group of Fifteen — being resolved to contribute to the creation of a world that is more just and equitable, hence more peaceful and prosperous and having analyzed the developments in the present situation (GOF)

We, the Heads of State and Government, members of the Summit Level Group for South-South Consultation and Cooperation — known as the Group of Fifteen — being resolved to contribute to the creation of a world that is more just and equitable, hence more peaceful and prosperous and having analyzed the developments in the present situation (GOF)

Declare that:

1. The present period has been characterized by a series of events of worldwide scope and consequence which present, on the one hand, favourable prospects for global peace and prosperity through international cooperation and , on the other, pose complex challenges and uncertainties for all States, but especially for those of the South, with profound implications for the maintenance of international peace and security (GOF)

2. The end of the Cold War and the disappearance of East-West tensions, political developments in Eastern Europe, a movement towards disarmament, the progressive settlement of regional disputes and the emergence of closer regional cooperation, greater political democratization and popular participation in decision-making, and growing globalization and economic interdependence, provide a unique opportunity for the revival of international cooperation for development (GOF)

3. At the same time increasing inter-linkages and growing economic interdependence have made developing countries more vulnerable to external factors especially as most have already undertaken autonomous liberalization of their economies, including their trade regimes and are moving towards deregulation and the opening up to their economies. Simultaneously, the imbalance and uncertainties in the management of the global economic system, with consequential strains on the world trade and payment systems, have acquired an endemic character. Moreover, the gap between the developed North and the developing South continues to grow and the economic and social problems of the developing world, despite some progress during the past few decades continues to be manifold. This has been made more acute by a significant technological revolution that has affected patterns of production, consumption, trade, growth and markets.

Developing countries strongly support a world economic order based on multilateral rules that respect free competition, the market, justice and fair play. The success of programmes of restructuring and economic development however, depend not only on national policies but also on conditions prevailing in the international economic environment. (GOF)

4. The present global changes however, have not led to a renewed focus on Development. Rather, the trend in international dialogue reflects a dominant North-North approach and closer East-West political and economic cooperation. This carries the risk of increasing the marginalization of countries of the South which account for two-thirds of mankind.

(GOF)

5. Sufficient attention needs to be paid to development if the new wave of democracy and the lessening of international tensions is to prevail. Massive and persistent problems of poverty, under-development, unemployment, health and illiteracy are likely to undermine the consolidation of democratic processes and human rights. This in turn generates political and social tensions, the consequences of which could compromise the present trend towards global detente and cooperation and threaten global peace and security. Development, therefore becomes indispensable for sustaining democracy and global peace, all of which should be consciously worked for in a comprehensive and constructive manner. (GOF)

6. Peace is indivisible and security is the right of all and not the privilege of a few. Global security can only be achieved and maintained if just and lasting solutions are found to all conflicts. Global security should, however, be viewed in terms of its multidimensional aspects and be based not only on military imperatives, but on a combination of political, economic and social factors which together could eliminate the risks to global security caused by problems such as underdevelopment, poverty, environmental degradation, terrorism and drug trafficking. (GOF)

7 There is thus a common responsibility for the economic, social and political stability of the world and for the creation of a New World Order that is truly multilateral and non-discriminatory and takes into account the growing interdependence and mutuality of interests among the community of nations. Democracy at the national level should continue to be of paramount importance and democratization among States should become a reality at the international level in order to facilitate the participation of all States in the process of international decision-making. (GOF)

8. The United Nations should play the central role in a collective effort to define the New World Order which should be based on the rule of law and on the principles and purposes of the UN Charter relating to the concepts of sovereignty, equality and universality, and the acknowledgment of national specificities. It must also ensure the fullest respect for the territorial integrity and independence of States.(GOF)

DEMOCRATIZATION, HUMAN RIGHTS AND DEVELOPMENT

12 Democracy, human rights and development are three concepts of the greatest significance and must be addressed in an integrated manner. While it

is important to promote the strengthening of the constitutional State, democracy and pluralism at the national level, with due respect to the sovereignty, territorial integrity and independence of States, it is imperative that democratization among States should become a reality at the international level. (GOF)

13. All States must promote and fully guarantee respect for human rights, taking into account their indivisible nature and the distinctive cultural characteristics of each nation. Civil, political, economic, social and cultural rights are inter-related and should therefore be promoted and defended with equal commitment. It is necessary to further non-selective, non-discriminating international cooperation in the field of human rights, strengthening respect for freedom and concord in the political, legal, economic and social domains. The Right to Development must be recognized and accepted as a fundamental human right. Development is indispensable for the sustainability of democratic processes and the respect of human rights. The observance of human rights should be promoted in an objective manner by the relevant organs in the international system based on the principles of the UN Charter. It is also imperative that Democracy, Human Rights and Development should be the central theme of the World Conference on Human Rights to be held in 1993 (GOF)

DISARMAMENT AND DEVELOPMENT

14. The process of disarmament should be linked to the process of development and the fostering of global security in its most comprehensive form. Developing countries will endeavour to encourage the process of disarmament globally and regionally, conscious of the necessity to channel the maximum resources for developmental purposes. Moreover, real resources being released at present as a result of lower global military spending, should be diverted for the economic and social development of developing countries. The continuing trend towards disarmament resulting from the end of East-West confrontation, the reduction of military expenditures and the progressive reduction of international tensions should make it possible to extract a "peace dividend" in the form of financial and technical resources, for the enhancement of international development cooperation

15. Appropriate structures or bodies should be established to implement this process and the creation of an International Fund within the framework of the United Nations, represents the best way of channeling resources freed as a result of disarmament for the purposes of development. (GOF)

ERADICATION OF POVERTY

16. The fight against poverty should be understood not only in terms of providing assistance with a view to improving the living standards of the poor, but also as a means of reinforcing their economic well-being and long term prospects. Furthermore, the interests of the economically and socially weaker sections of society who fall outside the market process must be safeguarded. It is necessary that a special commitment is made by the international community to initiate urgent measures to alleviate poverty in the least

developed countries. The alleviation of poverty, especially in its most extreme forms, continues to be of prime concern to developing countries and must remain at the centre of national development efforts in the countries of the South and of international development cooperation. (GOF)

ENVIRONMENT AND DEVELOPMENT

30. The threat to the global environment comes mainly from past and present industrialization practices and profligate consumption in the industrialized countries. This has negative repercussions on countries in general, with particularly harmful consequences for developing countries, which are more vulnerable to environmental problems. (GOF)

31. Though firmly committed to the protection, preservation and rational use of the environment, the developing countries nevertheless need to give a fresh impetus to their economies in order to eradicate poverty, and to guarantee viable growth in both economic and environmental terms. The solving of environmental problems should be an integral part of strategies of economic development in order to ensure and consolidate the sustainability of both processes. (GOF)

32. Agreements, programmes and any other global initiative, such as the forthcoming UN conference on Environment and Development, the "Earth Summit", aimed at solving ecological problems and achieving sustainable development, call for concerned international cooperation in all areas, including the transfer of environmentally-sound technology, free and open trade and the availability of new and additional financial resources. International cooperation for the protection of the environment and the enhancement of sustainable development should be based on the principle of equitable and proportional responsibilities among nations, taking into account the existing disparities between developed and developing countries and their respective capacities and resources. The implementation of such cooperation should respect the principle of permanent sovereignty of nations with regard to their natural resources. It should also give due importance to the principle that each country should have the right to determine its own priorities based on its needs and level of socio-economic development. (GOF)

POPULATION

33. The high rates of population growth in almost all developing countries may represent a real mortgaging of their social and economic development. It is becoming imperative for those involved politically and culturally at national and international levels to be effectively called on to help to raise public awareness and mobilize political and popular commitment and the necessary financial and technical means to take a conclusive step towards the formulation and implementation of appropriate demographic policies. The World Conference on Population and development planned for 1994 ought to be the opportunity for working out and adopting policies and programmes aimed at achieving global demographic objectives. (GOF)

...

May, 1992

Algeria, People's Democratic Republic of

Argentina, Republic of
Brazil
Egypt, Arab Republic of
India, Republic
Indonesia, Republic of
Jamaica
Malaysia
Mexico, United States of
Nigeria, Federal Republic of
Peru,
Senegal, Republic of
Venezuela, Republic of
Yugoslavia, Federal Socialist republic of
Zimbabwe, Republic of

8.1.4. the Jakarta message; a call for collective action and the democratization of international relations

Excerpts from The Jakarta Message (JMNAM)

We, the Heads of State or Government of the Non-Aligned Movement, representing the vast majority of humankind, meet in Jakarta, Indonesia, at a momentous juncture in history; a time of profound change and rapid transition, a time of great promise as well as grave challenge, a time of opportunity amidst pervasive uncertainty. (JMNAM)

The collapse of the bipolar structure of the world presents unprecedented possibilities as well as challenges for cooperation among nations. Interdependence, integration and of the world economy are among these new realities. (JMNAM)

The world today is still far from being a peaceful, just and secure place. Simmering disputes, violent conflicts, aggression and foreign occupation, interference in the internal affairs of states, policies of hegemony and domination, ethnic strife, religious intolerance, new forms of racism and narrowly conceived nationalism are major and dangerous obstacles to harmonious co-existence among states and peoples and have even led to the disintegration of states and societies. (JMNAM)

Consistent with its fundamental principles and objectives, the Movement has made many contributions to bringing about improvements in the present international political climate. These have also fully vindicated the validity and relevance of Non-alignment and its basic approach in addressing international problems and developments. (JMNAM)

This new era in international relations has renewed hopes for building a new and equitable international order, for stable peace and common security and for economic and social justice. Such a new order must be firmly rooted in the rule of law, the principles of the United Nations Charter as well as equitably shared responsibility and joint commitment to global cooperation and solidarity. Its structure should be comprehensively conceived and dedicated to peace and justice, to security and development, to democracy both within and among states and to the promotion of the fundamental right and freedoms of individual human beings as well as of nations. we must

ensure respect for the sovereignty of nations and the strict adherence to the principle of non-interference in the internal affairs of other states, which should not be diluted or abridged under any pretext. We shall continue to strive for the democratization of international relations. (JMNAM)

We are committed to the peaceful resolution of disputes in all regions of the world through a sustained process of dialogue and negotiation and encourage the establishment of regional mechanisms towards this end where appropriate. (JMNAM)

We remain unflinching in our support for the legitimate struggle for the legitimate struggle of the Palestinian people to secure their inalienable rights to self-determination and independence and reiterate our demand for the withdrawal of Israel from all occupied Arab lands, including Jerusalem. WE hope that a just and lasting settlement of the question of Palestine on the basis of the principles and resolutions adopted by the United Nations shall soon be reached through the current peace process. (JMNAM)

apartheid and racial discrimination remain particularly repugnant features of the current scene and their abolition can brook no further delay. we reaffirm our solidarity with the people of South Africa in their struggle to establish a united, non-racial and truly democratic South Africa. (JMNAM)

We are heartened by the progress being made in limiting nuclear and conventional armaments. But the disarmament agenda is still unfinished and much more remains to be done. A nuclear-weapons-free world has always been the vision of our Movement. This alone can ensure human survival and is the collective responsibility of all nations. We also urge accelerated efforts on other priority issues, particularly the prohibition of all weapons of mass destruction. (JMNAM)

Today, peace and stability are dependent on socio-economic as much as on political and military factors. Diminishing prospect for economic growth and social advancement, large-scale unemployment, mass poverty and severe environmental degradation endanger peace and stability (JMNAM)

We are deeply concerned over the negative impact of global military expenditures on the world economy. Resources released through disarmament and arms reduction should be re-channelled towards the economic and social development of all countries, and especially of the developing countries. This will, at the same time, facilitate the attainment of security at lower levels of armaments. (JMNAM)

In the economic sphere, inequitable international structures and unequal relations have resulted in deepening disparities and unacceptable injustices which continue to widen the prosperity and technology gap between the developed and developing countries. (JMNAM)

Our movement is committed to wage war on poverty, illiteracy and underdevelopment. We shall seek to advance broad-based and people centred development, including the promotion of human resource development. And we call for the accelerated development of the developing countries based on equitable distribution, growth and stability. (JMNAM)

The progress of Non-aligned and other developing countries remains hampered by an unfavorable external economic environment characterized by inadequate access to technology, unabated protectionism, historically low prices for commodities and raw materials, severely contracted financial flows and the crushing burden of debt and debt servicing resulting in reverse

financial flows to the developed countries and multilateral institutions. In this context, the critical socio-economic situation in Africa, where millions suffer economic and social deprivation, cries out for concerted action. Africa deserves our special attention, (JMNAM)

8.1.5.

Kuala Lumpur declaration on environment and development (KLDED)

Excerpts from the Kuala Lumpur Declaration adopted at the Second Ministerial Conference of Developing Countries on Environment, Kuala Lumpur, Malaysia, 26-29, 1992

3. UNCED is of historic importance and provides the occasion at the highest levels of government to address environment and development in an integrated, comprehensive and balanced manner for the benefit of both present and future generations. WE call for a new global partnership based on respect for sovereignty and the principle of equity and equality among States for the achievement of sustainable development, taking into account the main responsibility of developed countries for the deterioration of the environment, and the need for sustained economic growth and development of developing countries (KLDED)

4. Development is a fundamental right of all peoples and countries. An environmentally sound planet should correspond to a socially and economically just world. An environmentally sound development, and the creation of a supportive international economic environment to achieve this objective, including transfer of new and additional financial resources to developing countries, through distinct and specific mechanisms which are transparent, accountable and with equal representation in decision-making, and modalities for transfer of technology, must be at the centre of the international agenda. In this regard, recognizing the importance of international trade to all countries and the need for far reaching reforms in international economic relations, we call on the developed countries to ensure without further delay a balanced, meaningful and satisfactory conclusion of the Uruguay Round of Multilateral Trade negotiations. WE further emphasize that developed countries should not attempt to impose unilateral restrictions on international trade, in particular, on natural resource-based and other related products on environmental grounds. (KLDED)

7. we stress that sustainable development makes it incumbent on developed countries to take major steps to transform their production, consumption and distribution patterns towards environmentally sound development. For the developing countries, sustainable development implies the right to development with due regard to the ecological processes. (KLDED)

[...]

Agenda 21

10 [...] We further reaffirm our willingness to continue participating in a constructive attitude in the issues yet to be resolved. We are also of the view that the programmes must support national priorities, must form an integrated package, and should not be used as a new form of conditionality in access to development support or any attempts to review national policies or strategies.

WE believe that agreement on the implementation of Agenda 21 programmes will depend on the availability of adequate, new and additional financial resources, and the transfer of technology to developing countries on preferential and concessional terms. (KLDED)

TRANSFER OF TECHNOLOGY

14. We recognize the progress made at the Fourth Substantive Session of the Preparatory Committee Meeting on this subject and strongly stress the need for assured access to, and transfer of technology on preferential and concessional terms to developing countries, taking into consideration that Intellectual Property Rights should not hinder the transfer of technology to developing countries. We further stress that the concept of transfer of technology should not be diluted by referring to it as technology cooperation. We emphasize that modalities should be immediately set up for the transfer of technology, including state-of-the-art technologies, to developing countries consistent with the relevant provisions of the UNGA Resolution 44/228 (KLDED)

STATEMENT OF PRINCIPLES ON FORESTS

15. We emphasize that forest ecosystem and resources are part of the national patrimony to be managed, conserved and developed by each country in accordance with its national plans and priorities into the exercise of its sovereign rights. (KLDED)

16. We call on all countries to give full support to the finalization of a Non-legally-binding Authoritative Statement of Principles on the Management, Conservation and Development of all Types of forests and its adoption at Rio Conference. Considering that the Statement of Principles would provide an adequate and sound basis for the greening of the world, including through reforestation, afforestation, regeneration and sustainable use of forest resources, the negotiations of a legally binding instrument on forest would not be required. (KLDED)

17. We also call on the developed countries to substantially increase their forest cover and to avoid unilateral measures in the name of environmental protection that constitute arbitrary or discriminatory action such as bans and restrictions on international trade of forest and forest related products from the developing countries. (KLDED)

FRAMEWORK CONVENTION ON CLIMATE CHANGE

21. WE urge the developed countries to undertake meaningful and specific commitments on the stabilization and reduction of emissions of Carbon dioxide and other greenhouse gases.

22. We further stress that developed countries should make commitments for the provision of financial resources and transfer of technology to developing countries to enable them to adapt, mitigate and combat climate change and its adverse effects. We also stress that a fund should be established under this Convention for its implementation.

24. We reiterate that the implementation mechanisms of the Convention should fully take into account the sovereign rights of each country to

determine its national policies, plans and programmes for sustainable development. (KLDED)

CONVENTION ON BIOLOGICAL DIVERSITY

25. WE note the progress of the negotiations for a convention on Biological Diversity and reaffirm the sovereign rights of States to use their biological and genetic resources.

26. WE underline the need of the Convention to establish mechanisms to give effect to the rights of countries which possess biological and genetic resources in in-situ conditions. In this context, we reiterate that the Convention on Biological diversity must include legally binding commitments to ensure the link between the access to the genetic material of developing countries and the transfer of biotechnology and research capabilities from developed countries as well as sharing of commercial profits and products derived from the genetic material. (KLDED)

8.2. STATEMENTS FROM GROUPS SUPPORTING THE SOUTH AND CHANGE IN PATTERNS OF DEVELOPMENT

8.2.1. Caracas Declaration

Many people must modify their styles of living and the world community must adopt new and equitable styles of development, based on the care and sustainable use of the environment, and the safeguarding of global life-supporting systems (CD)

8.2.2. Youth Treaty

2. The inequitable relations between North and South (and between power elites and peoples) is a result of the politics of domination and discrimination, applied through the policy of the great powers, which affect the equality of life of the other countries, along with the enormous burden of the external debt. (YT)

It is necessary to alleviate the vast extremes of wealth and poverty, and to eliminate all prejudices, be they racial, nationalist, cultural, religious, gender-based or class-based, as these are causes of social violence. (YT)

We commit ourselves to the sincere respect of each person as an integrated part of humanity. We adhere to the Universal Declaration of Human Rights. (YT)

8.3. PRE-UNCED STATEMENT ABOUT NORTH/SOUTH RESPONSIBILITY

8.3.1. World Commission on Environment and Development

The vast difference in resource use between the rich and the poor is incompatible with sustainable development. A global partnership must start

with a commitment by the industrial countries to reduce sharply the burden they impose on the carrying of the Earth's Ecosystems. (WCED)

ECONOMIC POLICIES, TRADE AND DEBT

Necessary but not sufficient conditions for sustainable development include prices which reflect full environmental costs and implementation of the Polluter Pays principles (agreed among OECD nations as early as 1972). Both of these policies have been agreed to by the Business Council for Sustainable Development, a group of 48 chief executives of companies offering a business perspective to the Earth Summit. (WCED)

Sustainable development can be advanced only by an international trading system which enlarges freedom of market access, especially for developing countries, and incorporates environmental values. If developing nations had free access to the markets of the industrialized world, they would earn revenues several times higher than present levels of official development assessment. Protectionism is a road to disaster and a betrayal of those developing and Eastern European countries which have put their trust in multilateral cooperation. It must be resisted. And environmental concerns must never be used to justify the erection of unilateral trade barriers. (WCED)

The debt burden is retarding and distorting development, and forcing the sacrifice of environmental assets. Further substantial debt relief is urgently needed. The Trinidad terms should serve as the basis for official debt relief for low income countries; a further writing down of commercial bank debt is also unavoidable and overdue. There is value in schemes which facilitate debt relief and provide a link with sustainable development by debt conversion in local currencies. (WCED)

8.4. NGO TREATY ON MILITARISM, ENVIRONMENT AND DEVELOPMENT PREAMBLE (NGO MED) 1992

2. As long as 20% of the world's population devours 80% of the world's resources and energy, military force will be used to maintain this inequitable situation. Poverty and hunger generate tensions and pressures which can only be perpetuated by military oppression. Militarization, originating in economic exploitation and in all forms of domination including patriarchal systems, destroys the Earth and the various forms of life on it. Militarism, during periods of war and peace, has an immensely negative impact on the environment, as it uses up the natural and human resources needed for economic and social development. (NGO MED)

3. There is an urgent need for demilitarization, for the abolition of war and for a lasting world peace. For the sake of present and future generations, equitable social and economic security is essential (NGO MED)

8.5. AGENDA 21 REFERENCES TO SOUTH

Available on disk

8.6. REDEFINITION OF DEVELOPMENT IN ECOLOGICAL AND EQUITABLE TERMS.

- (i) The degree to which a state has been able to integrate with the ecosystem through ecological sound practices causing its human activity to have little deleterious impact on the environment
 - (ii) The degree to which there is an equitable distribution of resources
 - (iii) The extent to which a state respects indigenous peoples and practices, and provides for the rights of indigenous peoples
 - iv) The degree of condemnation, and avoidance of over-consumption
 - (v) the ability to minimize the human impact on the environment through fulfilling fundamental rights and thus reducing population
 - vi) The degree of compliance with the enshrining of positive rights (right to ecologically sound work, to food, to potable water, and health care to shelter) as well as with negative rights
 - (vii) The ability to live within the carrying capacity of the ecosystem and to refrain from contributing to global ecological harm
 - (viii) The degree to which no or little funds are spent on the military and on arms production
 - ix) The degree to which laws are enacted and enforced to protect environment, human rights, equity, justice and peace
 - (x) The degree to which cooperation supersedes competition
 - (xi) The degree to which support is given to alternative non-military preventive measures
 - (xii) Degree to which citizens are listened to, and citizens make decisions within a framework of ecological principles
 - (xiii) the degree to which a state has not accumulated an ecological debt
 - (xiv) the degree to which a state has forgiven economic debt to alleviate poverty
 - (xv) the degree to which there is guaranteed income to provide for fundamental needs
 - (xvi) the degree to which cultural, and racial differences are appreciated and respected
 - (xvii) the extent to which inter-generational equity (in the preserving of ecological heritage and protecting of the environment, and in the guaranteeing of fundamental human needs) is guaranteed
 - (xviii) ...
- (from Russow, Redefinition of Development in Equitable and Ecological terms, presentation at Environmental Law Conference, University of Victoria, 1994)

8.7. DRAFT: RESPONSE TO THE FEARO JANUARY 20 DRAFT FOR STANDARDS FOR CIDA PROJECTS

General Comments:

Since I have not been part of the previous discussions related to the regulations, I am not aware of whether the points that I am raising have

already been addressed. From the discussion paper , January 20 Draft, I sense that these issues have not yet been addressed. In some cases I have typed up the original draft and suggested changes; in other cases I have suggested potentially applicable considerations. In general it is important to apply, in all cases, anticipatory and precautionary principles, international principles , prevention technology and public consultation with non-vested interest members of the public with a wide range of expertise and experience. It is suggested that the environmental assessment review should be carried out on existing projects, and through invoking the precautionary principle governments should not permit any projects or activities which could have potential significant adverse effects.

Legend:

plain text: January 20 Draft

italics: suggested deletions

underlined: references to statements from other documents

Bold: proposed additions

Submitted by Joan Russow

Member, IUCN Commission on Education and Communication

Chair, B.C.E.N. International Affairs Caucus

GENERAL PRINCIPLES UNDERLYING CONSIDERATIONS OF PROJECTS AND ACTIVITIES

- FULFILLMENT OF INTERNATIONAL OBLIGATIONS PRINCIPLE
Whereas Canada must be able to fulfill its international obligations in respect of the environment: (CEPA)

- RECOGNITION OF INHERENT WORTH OF NATURE PRINCIPLE

As agreed to in the World Charter of Nature,

(a) Every form of life is unique, warranting respect regardless of its worth to man [human] , and to accord other organisms such recognition's, man [must be guided by a moral code of action. (1982)

- APPLICATION OF NON-TRANSFERENCE OF HARMFUL SUBSTANCES OR ACTIVITIES PRINCIPLE

States should [Shall] *effectively cooperate to discourage or prevent the relocation and transfer to other States of any activities and substances that cause severe environmental degradation or are found to be harmful to human health (Rio Declaration)*

For years obsolete or harmful products or hazardous (including atomic) , or toxic wastes have been "dumped" in developing countries or within states on the land of indigenous populations. The granting of permission by the sovereign state shall not be a reason to justify the relaxing of standards related to the transference of harmful substances and activities.

- APPLICATION OF ANTICIPATORY AND PRECAUTIONARY PRINCIPLE

The precautionary principle was enunciated in its rudimentary form in the UN Convention on Humans and the Environment (UNCHE, 1972); reasserted in the World Charter of Nature (1982) and reaffirmed in the UN Convention on Environment and Development (UNCED); it could be considered to have become international customary law and thus binding on the international community. It has been adopted in the Rio Declaration and Agenda 21, and in the legally binding documents such as the Convention on Biological Diversity and the Framework Convention on climate change.

A proposed definition from the B.C. documents drawn from the different versions of the precautionary principle in the UNCED documents is Where there are threats of serious or irreversible damage, the lack of full scientific certainty shall not be used as a reason for postponing measures to prevent environmental degradation (proposed wording for BC Pollution Prevention Act)

It is important to recognize that the precautionary principle is essential; unfortunately in the context of the EPA, CEPA and ARET lists the principle followed is usually "the innocent until proven guilty" or the converse of the precautionary principle: if there is not scientific certainty that harm will occur the activities will proceed. what is needed is also an anticipatory principle and a cautionary principle

If the precautionary principle were truly applied the emphasis would be on (1) the "exclusion" and banning of harmful substances which would be in violation of the precautionary principle, anticipatory principle and reverse onus principle, and of experimental newly introduced and potentially harmful substances, waste products and activities;

(2) the reliance on arms-length research;

(3) the transference of funding for research into long term ecologically safe and sound substances, technologies and activities;

(4) the adoption of prevention technologies—doing it right the first time;

(5) the calculation of the true environmental costs of the use of substances and the engaging in activities.

(6) decisions about standards would not be made by an "interest-based" round table or consultative panel with industry involvement as has been done in the current process in drafting the outline, and has also been done in the development of the ARET program.

(7) the standards developed would be mandatory not voluntary as they are in the ARET program

The emphasis must be on invoking the precautionary principle, on eliminating potentially harmful pollutants, and on funding research into ecologically safe and sound alternatives. The government must strive to ban and phase out the use of potentially harmful pollutants, and rather than spend time and money on testing of substances that could with time prove harmful, engage in funding research into ecologically safe and sound alternatives.

(8) the ecosystem shall be given primacy

CAUTIONARY OR REVERSE ONUS PRINCIPLE

Given that the Minister of the Environment, the Hon Shelia Copps has agreed that the reverse onus principle shall apply in Canada, this principle shall also apply to all CIDA supported projects. The principle could be enunciated as follows:

The proponent of an intervention in the ecosystem shall demonstrate the safety of the intervention rather than the opponent of the intervention, having to demonstrate harm.

RESPONSIBILITY OF THE CEEA

As indicated in Section 4 of CEEA, one of the purposes of the Act is to "encourage responsible authorities to take actions that promote conservation and equitable and ecologically sustainable use *sustainable Development* and thereby achieve or maintain a healthy environmental and an equitable distribution of resources. *a healthy economy.*" The interrelationship of conservation, equitable and ecological sound use *trade, economic growth and*

a healthy environment is also a factor in the application of CEAA to projects and activities outside Canada. It is thus important that the POC regulation take into account the necessity of ensuring that the environment is given primacy and that projects and activities should facilitate above all humanitarian equitable and ecologically sound development and not exploitative development. Canadian industry shall not interfere with the development of local prevention technologies that do not generate wastes. *that such broad issues as the competitiveness of Canadian industry, transfer of and cooperation in science and technology, trade flows and the emergence of new international arrangements.*

Finally, it should be noted that attempts at cooperating in this area are being carried out bilaterally and in international fora such as the OECD, the World Bank, and the European Community. *With respect to the international context, special attention must be paid to existing and emerging guidelines and practices for environmental assessment of other countries and multilateral institutions. In short, while environmental issues are being integrated into public policy by most countries, a coherent international approach could be achieved by carrying out a synthesis of the principles that have already been agreed-to internationally (see Russow, J. Content analysis of international principles) has not yet been achieved.*

It is extremely important to be aware of the international principles that have already become binding international obligations. Undoubtedly the international standards may not be high or strict enough; it is however important to be aware of these standards and to use these standards as a minimum.

One of the reasons for establishing international principles, standards and technical regulations is to ensure either that states will not carry out activities in other states that would be unacceptable by the standards in the state where the activity originated, or where the standards are lower in the state of origin than the international. If either one of the above conditions exist, then the activities would be unacceptable to transfer to a recipient state.

International standards are especially important because the transference of ecologically unsound substances or activities to developing states will be justified on the grounds that even though the activities may not satisfy the standards of the country of origin "extraterritoriality" should not be imposed on other states. In other words, the recipient states have the sovereign right to accept what the state of origin would not accept. This approach reinforces the leaked memo of Summers from the World Bank. In this memo, Summers wrote "between you and me, it makes good economic sense to transfer dirty industries to the least developed countries"

What might be deemed satisfactory may be ecologically sound within the Canadian context but may become part of the problem because the technology could be used to replace an existing or emerging technology in the recipient country.

[I have not had the opportunity of seeing the proposed criteria by which these projects and activities are to be judged]

Some suggested criteria:

1. No introduced project or activity should introduce technologies that would interfere with the development of prevention technologies that are endogenous to the recipient state. (This criteria was enunciated throughout the UNCED documents in the form of respect and implementation of traditional practices)
2. No introduced project or activity should introduce technologies that rectify an existing problem in a way that could promote the continuation of another ecologically unsound project or activity (For example, nuclear power introduced as a solution to "Climate Change")
3. The onus of proof shall be on the proponent of the project to demonstrate that the project will not interfere with locally developed projects and activities or with internationally agreed to principles—Reverse Onus Principle.
4. Rather than wait until there is significant public concern that a project or activity could be harmful, it would be important to ensure that the project be put on the "exclusionary list" — the list of projects, substances and activities to be automatically excluded because these projects, substances and activities contribute to toxic, hazardous and atomic wastes
5. The environmental assessment shall be preventive rather than mitigative: that is, there should be a determination about whether the project or activity should be embarked upon at all , rather than about how to mitigate a project or activity after it has been allowed to proceed. (For example, there has not been an environmental assessment review carried out on forest practices to determine the impact of forest practices on the loss and reduction of biodiversity — a requirement of the Convention on Biological Diversity: yet the government of Canada, after the Earth Summit in Rio, provided \$143 million to assist "developing countries to manage their forests)
6. No project should solve one problem by creating another which could be equally or more serious. For example an extensive agroforestry project should not be used to justify the elimination of original growth
7. All projects and activities should follow the practice of co-transfer of technology (North/South and South/North) so that the notion that only the technology from the North is acceptable is discarded.

8. The presumption of "Northern wisdom" as the solution must be discouraged, and the emphasis should be on interchanging of knowledge and technology

9. All projects and activities that promote a new technology should be questioned, and examined by applying the reverse onus principle. In an environmental assessment review a full life cycle analysis should be carried out on environmental implications of introducing this new technology.

10. No technology should be introduced that alter cultural values within the recipient state

11. No project or activity shall be supported if it perpetuates the over-consumptive model of development. In Agenda 21, there was a call to move away from the current model of development. The government of Canada shall recognize that Canada continues to function within a consumptive model of development, and that significant changes must occur within Canada itself so that its contribution to other states will contribute to a global solution rather than a global problem.

12. No project or activity shall be supported that perpetuates the traditional definition of "development"; the concept of development should be redefined to foster the ability to integrate with the environment with the least impact. A developed state would then be one in which the state succeeds in integrating with the environment with the least impact, and in integrating environment and equity. An underdeveloped state would be one that fails to integrate with the environment, and fails to integrate environment and equity.

Suggested criteria for redefining development in ecological and equitable terms:

(i) The degree to which a state has been able to integrate with the ecosystem

through ecological sound practices causing its human activity to have little deleterious impact on the environment

(ii) The degree to which there is an equitable distribution of resources

(iii) The extent to which a state respects indigenous peoples and practices

iv) The degree of condemnation, and avoidance of over-consumption

(v) the ability to minimize the human impact on the environment through fulfilling fundamental rights and thus reducing population

vi) The degree of compliance with the enshrining of positive rights (right to ecologically sound work, to food, to potable water, and health care to shelter) as well as with negative rights

(vii) The ability to live within the carrying capacity of the ecosystem and to refrain from contributing to global ecological harm

(viii) The degree to which no or little funds are spent on the military and on arms production

ix)The degree to which laws are enacted and enforced to protect environment, human rights, equity, justice and peace

(x) The degree to which cooperation supersedes competition

(xi) The degree to which support is given to alternative non-military preventive measures

(xii) Degree to which citizens are listened to, and citizens make decisions within a framework of ecological principles

(xiii)...

(from Russow, Redefinition of Development in equitable and ecological terms, presentation at Environmental Law Conference, University of Victoria, 1994)

12. Research and development funds shall be transferred from The Hazardous, Atomic Toxic (THAT) technologies to preventive technologies — technologies that do it right the first time

13. A significant proportion of the current Military budget shall be transferred to projects and activities that are equitable and ecologically sound

DISTINCTION BETWEEN EXEMPTION, EXCLUSION, AND POTENTIAL INCLUSION, AND INCLUSION .

If the anticipatory, and precautionary principles are to apply any project that could have a significant adverse effect should not even be considered.

If these principles are followed, a long list of projects and activities that should not even be considered could be developed; included in this list would be projects and activities for which there is already substantial evidence that harm could occur, and those for which there is the possibility of significant adverse effects.

"Exclusion" should apply to projects and activities that should be on a list of unacceptable projects and activities that should not even be acceptable; for example the assisting of developing states to "manage" their forests through ecologically unsound technology such as clear-cut logging.

If there is a possibility of significant adverse effects the project and activity should be excluded and not considered

"Exemption" should apply only to projects and activities that are deemed to be completely benign with minimum cultural impact, with prevention technology, supported by both the country of origin and the recipient country and not interfering with locally developed prevention technology;

The only projects and activities that would require an environmental assessment review would be those that have some impact but not any impact that could potentially have significant adverse effects.

"Inclusion" should be projects and activities that may have a little or no effect but that it is important to examine what the effect might be

CRITERIA FOR EXEMPTION OF PROJECTS AND ACTIVITIES

If projects and activities that are likely to have a significant adverse effect are not excluded from consideration then

No projects and activities shall be exempt because the substances or activities would usually be examined under another statute. For example in B.C. Forest practices are not included under the B.C. environmental Assessment Act because they are purported to be examined under the Forest Act or the forest Practice Code

To ensure that projects and activities are equitable and ecologically sound, no projects or activities that have been questioned in state of origin because of their impact on the environment should be permitted to be transferred to a recipient state. Although in Canada many practices continue either without there having been an environmental assessment review or with there having been a less than adequate review. The acceptance of the projects and activities in Canada should not be sufficient to determine that these projects and activities are acceptable enough to be transferred to other states. In many cases ENGOs seriously question practices in Canada. No practices that could be banned or discontinued through the invocation of the precautionary principle[should continue in Canada] shall be transferred outside of Canada. For example the precautionary principle of the Biodiversity Convention could be used to justify the banning of ecologically unsound practices such as clear-cut logging.

EXEMPTION BECAUSE OF NOTWITHSTANDING CLAUSE

Under no circumstances shall existing projects or activities, which could have significant adverse environmental effects, be exempted because of notwithstanding clauses such as section 5? of C113

No notwithstanding clauses such as the clause in C 113 related to national security

EXEMPTION THROUGH PASSING OF ORDERS IN COUNCIL

in no case shall orders in council be issued to bypass the environmental assessment review of existing projects or activities which could have significant adverse environmental effects

EXCLUSION OF PROJECTS AND ACTIVITIES BASED ON PREVENTION PRINCIPLES

DEVELOPMENT OF EXCLUSIONARY LISTS

VI POLICY ISSUES

1. One Regulation or More?

The Canadian Environmental Assessment Act provides for a varying and exclusion regulation for two types of projects and activities outside Canada: projects and activities to be carried out outside Canada and any federal lands; and projects and activities to be carried out under international agreements or arrangements. Many, if not most, projects and activities outside Canada are those involving Official Development Assistance (ODA) funding provided by the Canadian International Development agency. Decisions about projects and activities outside Canada are made in two different ways: by federal authorities acting alone, or in collaboration with international agencies and organizations.

Two types of international agreements are relevant for the purposes of a POC regulation:

- multilateral or bilateral agreements, involving projects and activities whose essential details are specified
- multilateral or bilateral agreements involving a financial contribution for a generally defined purpose involving projects and activities whose essential details are not specified but are to be identified later; or

A third type of international agreement involves general commitments relating to policies or programmes of the Government of Canada that do not involve projects and activities, as defined in CEAA. This type of agreement will not trigger the proposed Projects Outside Canada regulation [WHY?].

Although the Government's original intention was to develop a regulation for ODA projects and activities and then a second regulation for all other projects and activities occurring outside of Canada, given the similarity of issues involved and the desire to minimize confusion, a decision was taken to develop a single POC regulation.

This single POC regulation should also apply to Crown Corporations such as IDRC, EDC, CCC. Enough principles have been established in international documents to indicate international agreement about export support activities.

2. Interaction with other Regulations

[Exclusion or exemption ? : Are projects or activities excluded if they are deemed to be harmless or excluded from the list of projects or activities worthy of consideration because these projects or activities are already deemed to be harmful. I think the term "exempt" should be used for projects and activities that are clearly benign and the term "exclusion", for projects and activities that are clearly harmful (uranium mining, nuclear energy, use of hazardous or toxic materials)]

the regulation-making authority for a POC regulation set out in Paragraph 59 (i) subsections (ii) and (iii) of CEAA authorizes the Governor in Council to

make regulations "varying or excluding , in the prescribed circumstances, any procedure of requirement of the environmental assessment process set out in the Act or the regulations ..." Thus, the Governor in Council is empowered to vary or exclude in the prescribed circumstances Sections 14 to 45 of the Act in the POC regulation.

Once Canadian Environmental Assessment Act is proclaimed, four regulations will come into force. These are the Law List (LL), the inclusion List (IL), the Exclusion List (EL) and the Comprehensive Study List (CSL). *With the exception of the Law List, which deals exclusively with domestic and international legislation, these regulations will apply to projects and activities outside Canada.*

The entries on the Law List Regulation lists international principles from UNCED documents (Agenda 21 , Rio Declaration, Convention on Biological Diversity, and the Framework Convention on Climate Change, Vienna Convention on Ozone, and Montreal, London, and Copenhagen protocols, Basel Convention, Law of the Seas, Universal Declaration of Human Rights, International Covenants of Civil and Political Rights, and the International Covenant on Social, economic and cultural Rights, START, UNCHE, World Charter of Nature; sections of statutes and regulations empowering federal departments, ministers or Cabinet to issue permits or licenses for projects and activities in Canada that could have environmental effects; such projects and activities require an environmental assessment under CEAA.

The Inclusion List Regulation includes physical activities not relating to physical works that are subject to an environmental assessment under CEAA [

The *exclusion* Exemption List Regulation consists of a list of undertakings in relation to physical works that have insignificant environmental effects and thus require no environmental assessment.

The Exclusion List Regulations consists of a list of substances and activities that would be in violation of the precautionary principle and should be excluded from consideration

The Comprehensive Study List Regulations contains a list of major categories of projects and activities likely to have significant adverse environmental effects. If triggered under CEAA, the projects and activities on the list are subject to a comprehensive study according to a process prescribed in CEAA note: as the segment of the industry dealing with preventive and innovative environmental technology thrives on the establishment of high standards with correspondingly high technical regulations, projects that are likely to have significant adverse environmental effects should not be considered by the government of Canada. given that Canada agreed at UNCED to not transfer substances or activities that could be harmful to human health or to the environment. Canada should undertake to promote environmental technologies that do not interfere with the development of local prevention innovative technologies, Canada should contribute to the cleaning up of

previously ecologically unsound practices providing the technology that is used is itself not part of the problem. in no case should an environmental technology that has been used for clean-up be used to justify the continuation or the introduction of ecologically unsound or culturally inappropriate practices.

Another regulation currently under development which, once promulgated, will apply to projects and activities outside Canada relates to minimum federal involvement. Under the eventual minimum federal involvement regulation, certain projects and activities or classes of projects and activities will not be *excluded* exempted from environmental assessment where the responsible authority's involvement in the project is minimal.

Each of these regulations (i.e. LL, II, EI and MFI) can be varied to reflect different situations of projects and activities outside Canada providing at all times internationally established principles will be followed as a minimum

- To ensure that exclusionary lists — lists of substances, projects or activities that shall be reduced or eliminated[in contrast from exemption lists are lists excluding certain projects and activities as being ecologically unsound and consequently not even considered as being necessary for an environmental assessment review] are :

- not developed through consensus with vested interest involvement because vested interests will interfere with the establishment of strong recommendations
- based on research that has been arms-length [note the results of the International Biotesting Laboratory's non-arm's length scandal in the 1970's].
- not voluntary standards but mandatory technical regulations.
- compiled as a result of a full environmental analysis, multimedia, life cycle of all the environmental impacts (toxicity, persistence and bioaccumulation) from the production, modification, processing, refining, and disposal had not been carried out to develop the list.

- to place projects and activities on a "need not apply list" if there is any evidence that a project or activity could potentially significant adverse effects then the project or activity shall not proceed (apply principle from World Charter of Nature)

- to not fund "sunset industries" — industries being phased out because of environmental impact. For example AECL received at least \$150 million for research related to the nuclear industry; Given the impossibility of dealing with atomic wastes, the Canadian government shall not permit the transfer of any activity that could produce atomic wastes. The government must finally be committed to funding research into ecologically safe and sound alternatives focusing on prevention technology

- the government shall not support any projects and activities in recipient countries that perpetuate sunset industries or obsolete ecologically unsound .

EXTENT OF JURISDICTION OF STANDARDS

3. Given that Section 59 (j) of CEEA empowers Governor in council to make regulations outline environmental assessment procedures for Crown Corporations.

The Governor in Council shall make regulations consistent with the recommendations for CIDA for projects and activities that shall apply to all projects and activities of crown corporations even those within the meaning of the Financial Administration Act such as IDRC, the export Development Corporation EDC and the Canadian Commercial Corporation (CCC) Environmental assessment of export support activities shall be developed.

4. Given that subsection 7(2) applies to situations where a federal authority is providing funding for domestic or international projects and activities. An environmental assessment shall be required where a federal authority makes or authorizes financial assistance to a project even where the essential details of the project are not specified before or at the time the financial assistance is provided.

Subsection 54 (2) elaborates on subsection: This subsection requires the federal authority responsible to ensure, to the extent practicable, that the funding agreement or arrangement will require the recipient state to assess those projects and activities which will benefit from the financial assistance once the essential details of the projects and activities have been specified.

EXTENSION OF APPLICATION OF ENVIRONMENTAL ASSESSMENT REVIEW

- projects and activities already existing shall also be subject to an environmental assessment review

GOVERNMENT AS AN INSTRUMENT OF CHANGE THROUGH ADVOCATING PREVENTION

- If the Canadian government is serious about being an instrument of environmental change moving from a reactive to a proactive preventive stance, Canada will have to consider incorporating the following principles:

- to revisit the terms of reference for environmental assessment review basing it on the anticipatory and precautionary principles founded on anticipation and prevention of harm, and on prevention not mitigative technologies

- to acknowledge the urgency of the current environmental situation and of the years of persistent accumulation and indeterminate interaction of pollutants. It is time to move to the anticipatory or "cautionary" principle (Reverse Onus—as recently recommended by the Federal Minister of Environment, Shelia Copps, October, 1994) where there is a shift in the onus of proof from the

opponents of an intervention having to demonstrate harm to the proponents having to demonstrate safety

- To bring about change within industry by rewarding those industries that have devoted all of their time and money to the development of prevention technology [providing these prevention technologies are not used to interfere with the endogenous capacities of receiver countries]

ENVIRONMENTAL FACADE AS PUBLIC RELATIONS

- To ensure that industry does not use the government associated projects and activities to promote an environmental facade that will cover ecologically unsound practices engaged in elsewhere by the industry in other activities
- To ensure if industry is involved that the total activity of the industry is ecologically sound [so many industries have an environmental wing that allows them to be part of the decision making process, while continuing to engage in ecologically unsound projects and activities].

SOURCE OF RESEARCH

- To analyze projects and activities, the government must ensure that the source of the research is arms-length,

PUBLIC INVOLVEMENT

3 Who is the "Public"

While a definition for the term "public" is not provided in CEAA, guidelines will have to be developed to determine who constitutes the "public" for purposes of projects and activities outside of Canada. In developing these guidelines, one will have to consider *consideration will have to be given to* a number of broad issue including: the sovereignty of foreign nations, the spirit and intent of CEAA, the widely differing institutional capabilities and socio-political context of recipient countries, international agreements and arrangement to which Canada is party, timeliness and cost. These suggest the need for a definition rigorous enough to reflect the principles that underline CEAA, yet sufficiently flexible to be relevant in a variety of circumstances providing that the flexibility permits the relaxing of the precautionary principle and the non-transference of harmful substances principle.

- to address the issue of "who is the 'public'" the government could bring together informed and concerned members of the public, drawing upon a wide range of expertise and experience, as well as upon the local members of the community that are concerned about humanitarian development. Canada should under no circumstances In the recipient state In no way should the involvement of the public be based on the promotion of particular vested interests. A distinction could be made between vested interest for individual gain and public concern for the commons. The current round table process

which sets up an arena of competing interests through "multi-stakeholders" rarely brings together the people that have a larger vision of comprehensive solution for the commons.

- To ensure that the "public" is involved in establishing the terms of reference and throughout the project

ROLE OF STANDARDS AS INSTRUMENTS OF CHANGE

Given that the NAFTA indicated a distinction between 'standards' and 'technical regulations' " 'standards are not mandatory but technical regulations are mandatory" standards shall be translated into mandatory technical regulations]

Underlying principle: principles, standards and regulations must drive industry, not industry compromising principles, standards and regulations.

- principle that technical standards shall become increasingly high so as to encourage the development of environmental sound prevention technology.
- to ensure that the technical regulations are so high that no innovative prevention technology will be at a disadvantage [At Globe 94, several innovators working in prevention technology indicated that they were having difficulty promoting their products because the government regulations were not mandatory and were too low. A principle could emerge from this that no innovative prevention technology shall be discourage because the government fails to have mandatory and high standards.]
- to ensure that those who are part of the solution do not become part of the problem, where mitigative technology is used to promote ecologically unsound technology
[Several engineering firms have come up with prevention technology — doing it right the first time; other engineering firms have come up with mitigative technology— attempting to rectify previous errors; this mitigative technology is often used to promote the continuation of the ecologically unsound technology for which the mitigative technology was devised to rectify.]
- to ensure that a full life cycle analysis of substances and activity [as required in Agenda 21] is carried out in a way that would examine the environmental consequences of introducing the activity or substance into the ecosystem; [this would be moving away from the approach in the ARRET program where only the substances and not the waste products were examined] No substances or activities that could impact on the environment shall be permitted.
- to ensure that no projects or activities that are in violation of international obligations are supported; it is not enough to just state that the projects and activities must comply with these principles; the principles need to be enunciated and the way these principles will be fulfilled must be indicated [this would entail closely examining actual international principles and the translation of these principles into action, to determine what would constitute

compliance with these principles, and to establish a list of exclusionary projects and activities based on the application of these principles]

SOVEREIGNTY AND EXTRATERRITORIALITY

- the avoidance of "Extraterritoriality"— the imposition of country of origin standards and technical regulations must not be used as a reason for supporting the transfer of activities

V. THE INTERNATIONAL CONTEXT

As noted previously, the Canadian Environmental Assessment Act provides for a varying and exclusion regulation for two types of projects and activities outside Canada: projects and activities to be carried out outside Canada and any federal lands; and projects and activities to be carried out under international agreements or arrangements. When considering how to ensure that the spirit and intent of CEAA is reflected in the environmental assessment of these categories of projects and activities, both the international context and the realities of Canada's foreign policy objectives, commitments and responsibilities must be taken into account.

Respect for the sovereignty of States is a fundamental principle of international law. In developing and applying the new POC regulations, Canada must avoid any illegal extraterritorial application of its laws, for precisely the same reasons that it has consistently resisted attempts of other States to exercise such extraterritorial jurisdiction in Canada. Thus care must also be taken to avoid action which may be perceived as excessively intrusive. [Re: extraterritoriality: care must also be taken to avoid action which may be perceived as excessively intrusive] This section must not preclude the compliance throughout the world with international principles enunciated in international obligations, as well as those with legally binding Conventions and treaties. Any state that has signed any of the legally binding Conventions such as the Biodiversity or Climate Change is bound by Article 18 of the Vienna Convention Treaty stipulates that if a state has signed a treaty there is an "obligation not to defeat the object and purpose of a treaty prior to the entry into force"

[Re: extraterritoriality: care must also be taken to avoid action which may be perceived as excessively intrusive] Section V in the draft document must not preclude the compliance throughout the world with international principles enunciated in international obligations, as well as those with legally binding Conventions and treaties. Any state that has signed any of the legally binding Conventions such as the Biodiversity or Climate Change is bound by Article 18 of the Vienna Convention Treaty stipulates that if a state has signed a treaty there is an "obligation not to defeat the object and purpose of a treaty prior to the entry into force"

5. THE DEPARTMENT OF EXTERNAL AFFAIRS ACT

The Department of External Affairs Act assigns powers for the Conduct of Canada's external affairs. The Secretary of State for Foreign Affairs is responsible for:

- official communications with other countries and international agencies
- the conduct and management of international negotiations as they relate to Canada
- the coordination of Canada's international economic relations - fostering the expansion of Canada's international trade
- the control and supervision of CIDA
- fostering the development of international law

The Minister of International Trade has a mandate to promote international trade by:

- assisting Canadian marketers
- improving Canadians' access to external markets
- promoting trade relations with other countries
- enhancing overall world trade conditions

VI CONSULTATION ON THE POC REGULATIONS

Consultation with the public on the POC regulations before it is finalized is essential. As with other regulations, the primary mechanism for consultation outside of the federal government on the first four regulations has been the Regulatory Advisory Committee (RAC). Members include representatives of industry associations, environmental groups, aboriginal organizations, and provincial governments. The RAC presented its first report on the four regulations in April 1993. From the perspective of governments and most stakeholders, RAC has been a notable success so far. It should also be used for the POC regulation.

A subcommittee should be created under RAC and report to RAC on the POC regulation. It could include RAC members as well as other individuals who represent constituencies not on the RAC, who have the needed experience and knowledge. The subcommittee would report back to RAC which, in turn would submit its recommendations to the Environment Minister.

VII GUIDELINES FOR DRAFTING A PROJECTS OUTSIDE CANADA (POC) REGULATION

- For purposes of the POC regulation, the definitions included in Section 2 of CEAA will apply
- A single regulation will be established that will vary or exclude in prescribed circumstances Sections 14 to 45 of CEAA for projects and activities outside of Canada
- The POC process will apply to all projects and activities outside of Canada as triggered by CEAA

- Responsible authorities will develop and apply their own administrative procedures for conducting an environmental assessment as required by the POC regulations and CEAA
- A Users Guide explaining how the new POC process works will be prepared for general circulation within a six months of the POC regulations coming into force
- The inclusion, Exclusion and Comprehensive Study List Regulations that will come into force with the proclamation of the CEAA will apply to projects and activities outside of Canada
- The responsible authority will decide at what point in the environmental assessment process the public will be involved.
- Responsible authorities will inform the public and make relevant information available as early as is practicable for projects and activities outside Canada which will require environmental assessment as required by Section 55 of the CEAA
- for projects and activities outside of Canada where the responsible authority is not the Minister for Foreign Affairs, the responsible authority will coincidentally provide the Minister of Environment, the Minister for Foreign Affairs and the Canadian Environmental Assessment Agency with the environmental assessment of projects and activities on the Comprehensive Study list or other projects and activities likely to have potentially significant environmental effects. Where the responsible authority is the Minister for Foreign Affairs, the Minister for Foreign Affairs will provide the Minister of Environment with the environmental assessment as described above. Where the results of comprehensive studies suggest that a project is not likely to cause significant environmental effects, the Minister of Environment will refer it back to the responsible authority for decision.

Where the results of a comprehensive study suggest that a project's environmental effects are 1) uncertain 2) significant even with mitigation or 3) where there are deemed to be significant public concern, the responsible authority may, in consultation with the Minister of Environment and Minister of Foreign Affairs, establish an Advisory Committee to review the project. The mandate and membership of such advisory Committees will be determined on a case-by case basis by the responsible authority, in consultation with the Minister of the Environment, and when applicable the Minister of Foreign Affairs.

In either case, the Minister of Environment's response to the comprehensive study will be public and the responsible authority will decide whether the significant adverse effects of the project that cannot be mitigated are justified in the circumstances.

A Federal responsible authority may use whatever information it deems appropriate in making its decision. Thus, they may use information generated by previous studies, by other countries or international agencies and other

non-Canadian jurisdictions. In the end, the responsible authorities are responsible for this decisions to support or not support a project.

inclusion regulations

Most of my comments relate to what I perceive to be the need to have fundamental principles underlying the principles referred to as GUIDING PRINCIPLES RELATED TO the regulation for projects and activities outside Canada.

States have ...the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other states or of areas beyond the limits of national jurisdiction (principle 1 Rio Declaration)

1. Projects that are conducted outside Canada which are supported financially by the Government of Canada will be subject to the Canadian Environmental Assessment Act. [this should be extended to cover projects and activities that are conducted outside of Canada and extended to companies that are registered in Canada. Too often projects and activities that are conducted by Canadian companies could be in violation of the principles enunciated by

what is needed is a charter based on ecological principles agreed to by the international community and what form the basis of all Canadian development. What is done by

Commitment to non-transference of harmful substances and activities
States should [Shall] *effectively cooperate to discourage or prevent the relocation and transfer to other States of any activities and substances that cause severe environmental degradation or are found to be harmful to human health (Rio Declaration)*

2. Environmental assessment shall *be taken into account as early as is practicable in the decision making process*; be undertaken in all CIDA projects and activities [too often a project is proposed and initiated and is too far along to ensure a preventive review, which will determine whether or not the project should proceed; the review then become a "mitigative" review which minimizes the impacts of the project once it has proceeded. the assessment criteria may not include that would be deemed ecologically inappropriate

4. Environmental assessment of projects and activities outside Canada will be conducted in accordance with generally-accepted principles of respect for the sovereignty of foreign states, international law and the international agreements and arrangement to which Canada is a part. Unfortunately in the name of respecting sovereignty has been used to justify a number of government projects and activities for example for years DDT which was restricted in use in Canada was shipped to India to be used for purposes that would not be permitted in Canada on the ground that they have the sovereign right to determine whether or not they wish to use the chemical we cannot impost our standards on them. similarly with the

Commitment to non-transference of harmful substances and activities
States should [Shall] *effectively cooperate to discourage or prevent the relocation and transfer to other States of any activities and substances that cause severe environmental degradation or are found to be harmful to human health* (Rio Declaration)

The principle has been altered considerably in practice by the notwithstanding clause that unless 3. In the absence of equally strict or higher standards in the receiving State *or express agreement by the receiving State to the contrary, the relevant standards of the State of origin shall apply* the highest or the strictest of the following standards — international standards , state of origin standards or the receiving state standards — shall apply

the onus of proof for the ecological soundness of the project must fall on the proponent of the project.

So that not every project or activity will require an environmental assessment review process a set of exclusionary principles must be established. based on prevention

No project that generates waste that are potentially toxic, hazardous (including atomic wastes) No project or activity that introduces a harmful substance should be introduced

No project that could detract from innovative endogenous technologies should be no matter how safe or ecologically sound the introduced technology might be.

1. Nothing that is proposed should impact on the Conservation and protection of biodiversity
2. No project should contribute to Climate Change

8.8. DRAFT IDEAS RE: PROJECT INDO-CANADIAN INITIATIVES IN SUSTAINABLE DEVELOPMENT

ISSUE 1. One of the shortcomings of UNCED was that there was the perpetuation of the myth that technology transfer should come from North to South. At that time, few people sufficiently entertained the notion that the North could learn from the South and that what was necessary was the interchange or intertransfer of ecologically sound technology.

POSSIBLE RESEARCH AREAS IN INITIATIVES

PROJECT 1 A.

"PREVENTION" TECHNOLOGY AS A MEANS OF ACHIEVING EQUITABLE AND ECOLOGICALLY SOUND DEVELOPMENT.

"PREVENTION TECHNOLOGY COULD BE DESCRIBED AS PRECAUTIONARY RATHER THAN MITIGATIVE, OR AS "DOING IT RIGHT THE FIRST TIME."

- Preservation/nature involvement/ ecologically sound practices

_ Innovative initiatives Case studies:

- E.g. Innovative initiatives in a region in India that could be relevant to Canada

Such as those suggested in publications like "Down to Earth" from the Institute in New Delhi or in Chipko region

- E.g. Innovative initiatives in Vancouver Island such as those related to forest practices by Merv Wilkinson who has been using Selection logging for 50 years

_ Sewage Treatment resource or waste)

- E.g. Innovative initiatives in a region in India and on Vancouver Island where they are working on alternative technologies so that what was formerly consider as waste is now used as a resource

Relevant International principles such as the following

Precautionary principle

" Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation." (Rio Declaration, 1992).

Positive-long-term-research-into-biodiversity- in ecosystems principle

" Long-term research into the importance of biodiversity for the functioning of ecosystems and the role of ecosystems in producing good, environmental services and other values supporting sustainable development with particular reference to the biology and reproductive capacities of key terrestrial and aquatic species, including native, cultivated and cultured species; observation and inventory techniques; ecological conditions necessary for biodiversity

conservation and continued evolution; and social behaviour and nutrition habits dependent on natural ecosystems, where women play key roles. The work should be undertaken with the widest possible participation, especially of indigenous people and their communities, including women. (Agenda 21, 15.5 f,)

Ecologically-unsound-practices-accumulation-impact principle
" Despite mounting efforts over the past 20 years, the loss of the world' biological diversity, mainly from habitat destruction, over-harvesting, pollution and the inappropriate introduction of foreign plants and animals has continued. (Agenda 21, 15.3)

ISSUE 2 :

PROJECT 1 B..

DEVELOPMENT OF CRITERIA FOR IMPLEMENTING INTERNATIONAL LEGISLATION TO ENSURE THAT "SUBSTANCES AND ACTIVITIES" HARMFUL TO HUMAN HEALTH OR TO THE ENVIRONMENT WILL NOT BE TRANSFERRED FROM THE NORTH TO THE SOUTH OR FROM AN INDUSTRIAL AREA TO AN INDIGENOUS AREA OF A COUNTRY.

- Transfer of potentially harmful substances or activities from North to South
- E.g. examination of such transfers from Canada to India
- E.g. examination of such transfers from India to other countries

Case studies

- E.g. Transfer from Vancouver Island - British Columbian logging practices -impact on Chipko et.
- E.g. Transfer from India to other less developed countries ???

_ Transfer of potentially harmful substances or activities from industrial area to disadvantaged or indigenous area on Vancouver Island

Case studies:

- E.g. transfer within India....
- E.g. Pulp mill in Gold river adjacent and on Indian Reserve

_ Sewage Treatment resource or waste)

- E.g. Innovative initiatives in a region in India and on Vancouver Island where they are working on alternative technologies so that what was formerly consider as waste is now used as a resource

Relevant International principles such as the following

Not-transferring-environmentally-harmful-activities or substances principle
States should effectively cooperate to discourage or prevent the relocation and transfer to other states of any activities and substances that cause severe

environmental degradation or are found to be harmful to human health
(Principle 14, Rio Declaration)

Positive-duty-to protect principle

Recognition that the lands of indigenous people and their communities should be protected from activities that are environmentally unsound or that the indigenous people concerned consider to be socially and culturally inappropriate;
recommendations (Agenda 21, 16.3 ii)

Positive-duty-or-responsibility principle

the responsibility to conserve their biodiversity and use their biological resources sustainably, and to ensure that activities within their jurisdiction or control do not cause damage to the biological diversity of other states or of areas beyond the limits of national jurisdiction. " (Agenda 21, 15.3)

ISSUE: 3 Often practices which are considered to be in violation of human rights are condoned because they are justified thought religious or cultural traditions. Can or should the exploitation of women and the assigning of a lesser role to women be justified by cultural norms?

PROJECT 1. C. DEVELOPMENT OF A CONCEPTUAL FRAMEWORK
FOR EXAMINING THIS ISSUE ON VANCOUVER ISLAND AND IN
THE CHIPKO REGION

Relevant International principles such as the following

UN Declaration of Human Rights and discussions and contributions from the South during the Human Rights discussion in Vienna in June 1993.

Legend

Underlined: what has already been agreed to internationally

Bold: what still needs to be done

PUBLIC INVOLVEMENT

3 Who is the "Public"

While a definition for the term "public" is not provided in CEAA, guidelines will have to be developed to determine who constitutes the "public" for purposes of projects and activities outside of Canada. In developing these guidelines, consideration will have to be given to a number of broad issue including: the sovereignty of foreign nations, the spirit and intent of CEAA, the widely differing institutional capabilities and socio-political context of recipient countries, international agreements and arrangement to which Canada is party, timeliness and cost. These suggest the need for a definition rigorous enough to reflect the principles that underline CEAA, yet sufficiently flexible to be relevant in a variety of circumstances.

- to address the issue of "who is the 'public'" the government could bring together informed and concerned members of the public, drawing upon a wide range of expertise and experience, as well as upon the local members of the community that are concerned about humanitarian development. In no way should the involvement of the public be based on the promotion of particular vested interests. A distinction could be made between vested interest for individual gain and public concern for the commons. The current round table process which sets up an arena of competing interests through "multistakeholders" rarely brings together the people that have a larger vision of comprehensive solution for the commons.
- To ensure that the "public" is involved in establishing the terms of reference and throughout the project

[all contained in UNCED documents].

in 1983 the science council of Canada made an important distinction between a "reasoned outcome" and a "negotiated outcome"; the establishment of standards should not be part of a negotiated outcome.

- There must be a continuous vigil on substance. Perhaps given that we do not understand the long term synergistic effects or the long term effect of combinations. Introduction of no new chemicals should become a policy. An assumption is often made that the effects are additive or independent rather than exponential or....
- The problem of limitation of knowledge must be recognized. often scientists are not capable of anticipating impacts because they don't even know what they are looking for and consequently are not able to find it. for example CFCs were initially considered to be non-toxic, not bioaccumulation, and were hailed as the solution. no one would have anticipated the problem with the ozone.

Readings:

Reserve Library:

South Commission (1991). *The Challenge to the South: An Overview and Summary of the South Commission Report.*

Foster, J. 1992 "Let them eat Pollution: Capitalism and the world Environment."
Monthly Review

CHAPTER 9

Creative, alternative instruments to socio-political change

- Literature, poetry, art photography, film

9.1. INTRODUCTION TO ECOLOGY THROUGH FABLES, ART, POETRY

Extracts from Knelman. Ecology Book

The American Town Planner Paolo Soleri, described the two faces of science as follows:

“Scientific abstraction, especially when coupled with power, is a two edged sword. With one edge we cut away the mysteries of the universe. With the other we shed the blood of our kin.”

...

A commoner exists where there is no king,
but a kingdom cannot exist where there are no commoners;
grass exists where there is nothing that eats grass,
but what eats grass cannot exist where no grass is;
water exists where there is nothing that drinks water,
but what drinks water cannot exist where no water is...
(Fulani poem, Nigeria)

....

Science itself is divided between those who protect the status quo and those who ask dangerous questions. Some scientists indulge in what has been called biopolitics that is making what is biologically dangerous, appear safe or acceptable. Thus science which feigns objectivity and neutrality is often infected by political and economic influence. We can generalize about this division within science itself and social conflict.

A Canadian scientist, F. Ronald Hayes, defined biopolitics as “the science of proving that what must be done for political or economic reasons is biologically safe for human beings.” Biopolitics is what guided the promotion of pesticides and nuclear power.

...

Established science creates a fixed and bounded area of light which the adherents insist is the sole area of the discovery of truth.

There is a story which illustrates this.

A policeman noticed a drunk crawling around a lamp post. The policeman asks him what he is doing. He tells the policeman that he is looking for his keys. The policeman asks him if this is where he lost them. The drunk says, “No, I lost them down that dark street.” The policeman then asks, “Why are you looking for them here?” The drunk replied, “Because there is light here!” The true scientist brings light to the dark neglected areas of knowledge. The

establishment scientist remain in the secure well-lit areas with no consideration of where the truth really lies. The lost key was in a dark place...

(relating to conflict of interest)...A true story illustrating this relates to a one-page advertisement in the *New York Times* by some eleven Nobel Laureates in the 1970's. This advertisement supported the expansion of civil nuclear power, alleging that nuclear power was the cleanest, safest, and the cheapest energy source, solving all the problems of energy for America. In response, nine other Nobel Laureates later took out a one page ad in the *New York Times*, this time stating that nuclear power was dangerous, having unsolvable problems, that it was expensive, and that there were other energy sources available. What was the public to think about this disagreement. The Nobel Prize is a recognition of the highest achievement in science. There were all experts, a veritable Supreme Court of Science. One of the Laureates, George Wald of Harvard, opposed to nuclear power, did some research. Using freedom of information laws, he researched the various affiliations of all 20 Nobel Laureates involved. While most of them were academic, he found the following. All eleven pro-nuclear Laureates had connections to the nuclear industry. None of the nine opposed had such connections. Wald wrote a letter on his research to the New York Times and ended it with an insightful statement. "This does not prove conflict of interest, it defines it."

A forestry engineer is walking on a west coast beach with an Indian band chief. The engineer is talking about a major logging development on the mountains rising from the sea shore onto the hills above, containing huge stands of virgin forests. He is trying to assure the chief that the company has taken every precaution to minimize environmental impacts, having brought together a team of specialists to study the projects. Feeling he must reach the uneducated chief with some easily grasped symbols of the issue, he draws a huge circle, and says, "You see, our knowledge is represented by this big circle, and yours by that dot, so you can trust us." The chief looks down intently and says, "Yes, but what worries me is that what you don't know lies outside that circle."

...

... the giant volcanic eruption of Tambora in Indonesia in 1813 had the greatest climate effect ever recorded. Even though Tambora is in the Southern Hemisphere, the cooling effect was felt throughout Europe and even Canada. It snowed in July in Montreal, and the huge crop failure in Europe actually spread all over the world. The English poet Lord Byron wrote a poem about this event a year later in June, 1816.

**I had a dream, which was not all a dream.
The bright sun was extinguished and the stars
Did wander darkling in the eternal space.
Rayless, and pathless, and the icy earth**

**Swung blind and blackening in the moonless air;
Morn cane and went - and came and brought no day,
And men forgot their passions in the dread
Of this their desolation; and all hearts
Were chilled into a selfish prayer for light.
And they did live by watch fires - and the thrones,
The palaces of crowned kings - the huts
The habitations of all things which dwell,
Were burnt for beacons; cities were consumed;
And men were gathered round their blazing homes
To look once more into each other's face.
Happy were those who dwelt within the eye
Of the volcanoes, and their mountain-torch:
A fearful hope was all the world contained;
Forests were set on fire - but hour by hour
They fell and faded - and the crackling trunks.**

...

Some years ago when the present country of Zimbabwe was Rhodesia, boats used to go up and down one of the major rivers carrying supplies for the river villages and tourists who wanted to see the wildlife. On one river run, a herd of hippopotamus was on one side of the river that had a shallow sandy bottom. One day as a boat passed by the Hippopotamus habitat, as usual taking the deep channel on the far side of the river. A hippopotamus strayed near it and frightened a hysterical passenger with influence, who complained bitterly back in the capital to a high official. A troop of soldiers were dispatched and shot every one of the hippopotamus herd, including babies. So much for that. A month or so later, there was a breakout of a terrible disease — river blindness— in the villages downstream from the former hippopotamus habitat. Eventually a team of scientists were sent out by the World Health Organization and they solved the puzzle. the disease was caused by a virus entering the body of snails, a staple diet of the villagers. However, prior to the genocide of the hippopotamus, their cavorting on the sandy habitat constantly stirred up a fine sand into the water, which filtered out the viruses so they never got downstream to contaminate the snails which the villagers ate.

...

A smart aleck young man decided to confuse a wise man “I have a bird between my cupped hands” he said, “is it alive or dead?. He knows that if the wise man side dead, then he merely had to open his hand , and if the wise man said “alive” he could simply crush the bird. But the wise man turned the question around and said “Young man, the life of the bird is in your hands.”

...

the grass and trees are our flesh, the animals are our flesh. (Susie Tutcho, Fort Franklin)

...

Earth's Ten Commandments from "Ecotopia"
by Ernest Callenbach

Thou shalt love and honour the Earth
for it blesses thy life and governs thy survival

Thou shalt keep each day sacred to the Earth and celebrate the
turning of its seasons.

Thou shalt not hold thyself above other living things nor drive
them to extinction.

Thou shalt give thanks for thy food to the creatures and plants
that nourish thee.

Thou shalt limit thy offspring for multitudes of people are a
burden unto the Earth.

Thou shalt not kill nor waste Earth's riches upon weapons of war.

Thou shalt not pursue profit at the earth's expense but strive to
resort its damaged majesty.

Thou shalt not hide from thyself or others the consequences of
thy actions upon the Earth.

Thou shalt not steal from future generations by impoverishing or
poisoning the Earth.

Thou shalt consume material goods in moderation so all may
share Earth's bounty.

(Ernest Callenbach is the author of Ecotopia (Bantam, 1983)
and Ecotopia Emerging (Banyan Tree, 1981)

YET IN 1994 the 10 Commandments of the Christian Right,
Military industrial complex

1. Thou shalt clothe Intolerance in the cloak of "freedom of
expression"

2. Thou shalt forsake social programs to reduce national debt;
Thou shalt above all not tax the rich

3. Thou shalt privatize health care, beware of universal health
care

4. Thou shalt be devoted to nationalism, military expansion and
intervention, and thou shalt remove all UN restrictions to US

actions, and thou shalt drastically cut foreign aid, discourage immigration and reduce support for the UN.

5. Thou shalt respect the gun and the right to bear arms, especially concealed and assault weapons

6. Thou shalt couch Anti-reproductive choice (right to choose abortion) as “right to life.” Thou shalt sanction and ensure the Communion of religion and state, and thou shalt reinstate the school prayer

7. Thou shalt not honour the rights of indigenous peoples

8. Thou shalt protect private property privilege over environmental rights; thou shalt not allow environmental protection, equity or human rights to be a barrier to free trade; and thou shalt at all costs not impede economic progress. Thou shalt promote eternal nuclear energy

9. Thou shalt covet thy neighbours resources

10. Thou shalt punish for crime rather than prevent crime, and thou shalt help the needy partners in free trade (NAFTA) by setting up prisons for American criminals on the sovereign territory of partner states

Any similarities between these 10 Commandments and the platform of any of the political parties of Canada are purely coincidental.

(The Changing Times, Fall, 1994)

...We waste what we have, our food, our fuel, our wealth, our gifts. and then we watch in surprise the destruction of our world. What we do not explode or gouge out of the earth, we pollute, and what we do not pollute, we kill. We do not see, or wish to see, the damage we do, and later we will regret.

(Reform Synagogue Prayer book , Oxford University Press, 1985)

...

**The range of what we think and do
is limited by what we fail to notice
And because we fail to notice
there is little we can do
to change
until we notice
shapes our thoughts and deeds**

R.D. Laing, “Knots”

9.2. EXAMPLES FROM ECOLOGY BOOK

CHAPTER10

Alternative systems for achieving socio-political global change, and for preventing or contributing to negative ecological global change

- ecologically sound technologies
- the Environment Industry

10.1. ECOLOGICALLY SOUND TECHNOLOGIES

10.1.1. Readings:

10.1.Example of technology from El Salvador

10.1.Example of technology from El Salvador

10.2. APPEASEMENT OF BENEVOLENCE (THE “ENVIRONMENT INDUSTRY”) NOTES following attendance at Globe 1994 “Environment industrial fair”

Although the Environment industry is extremely complex, there are two dominant trends related to the response to standards and the response to technologies.

One trend is to call for high enforceable standards so that “prevention technology”— doing it right the first time— (BEST) technology will be given incentives. At Globe 1994, there were voices from the BEST industry— the Best ecologically Sound technology—calling for high enforceable standards. These industries were involved with alternative energy, substances and practices. The other trend is the trend promoted by the REPTHAW (Resource Extraction Production of Toxic, Hazardous, and Atomic Wastes) Industries, or REPTHAW linked industries. These industries are calling for low or non-existent technical regulations, and for voluntary adherence to standards, and for non-enforceable technical regulations and standards. Their industries thrive on the continued production of ecologically unsound materials because they can develop technologies to attempt to rectify previous the impact from the ecologically unsound technology. There is also an intermediary trend, where the prevention technology has been used as a justification for perpetuating the ecologically unsound technology.

TREND 1

• Prevention technology doing it right the first time

Calling for high government standards to prevent activities that could be harmful to the environment or to human health . High emission and waste pollution prevention standards will facilitate this frame of the environment industry because if standards are high the emphasis will be on developing technology not to clean up previous ecologically unsound practices but to prevent ecological destruction

Examples: non fossil fuel and non-nuclear energy alternatives like solar and wind energy

TREND 1/2

Prevention technology used by technological fix clean up technology to legitimize the continued production and consumption (including recycled substances) of toxic, hazardous (including atomic)

Calling for high government standards to prevent activities that could be harmful to the environment or to human health . High emission and waste pollution prevention standards will facilitate this frame of the environment industry because if standards are high the emphasis will be on developing technology not to clean up previous ecologically unsound practices but to prevent ecological destruction. The technology is initially developed to rectify a serious problem but then is used as a justification for continuing the source of the original problem

Example: nuclear detection technology developed to assist in discovering radiation emitted during the Chernobyl disaster, could be used to support the continued use of nuclear energy

Initially ecologically sound technology in one area contributing to ecologically unsound practices in another area

A technology is developed to address one problem but then in the interest of expanding markets an expanded application which could be used to facilitate ecologically unsound practices is suggested

Example: A Technology is developed for the crushing of concrete so that it can be recycled; the manufacturers of this technology in a display show how it could also be used to grind up debris from clear cut logging. the technology could then be used to promote the practices of clear cut logging

TREND 2

• The "flaunting and condoning of the vicious circle principle" strategy

This strategy involves the recognition that procedure X will be the best, then the recognition that realistically we have to continue with not-X, with the result that research is not done into X so that it can replace not-X.

Canada in its report to UNCED appears to be engaging in this strategy:

" Nuclear energy has increased from only 0.05 % of production in 1970 to a high of 16 % in 1988, mostly on account of Ontario's decision (currently under review) to use nuclear power for new additions to its generating capacity.

" Nuclear energy has safety risks associated with the entire uranium cycle, from mining through processing to the ultimate disposal of high-level radioactive wastes. In addition, there are safety risks associated with the reactors used to generate electricity from uranium, . and the use of fossil fuel to drive conventional thermal generation produces carbon dioxide and waste heat. (Canada's National report UNCED p. 46- 47)

"From a domestic consumption point of view, the least environmentally damaging energy option is energy efficiency. (Canada's National report UNCED p. 47)

" New, cleaner technologies such as solar energy may help, but the hard fact is that to a large extent we will have to rely on either thermal, hydro, or nuclear energy in the future. In addition, energy projects for both export and domestic supply provide

jobs and economic wealth to the country, and are especially important in some regions of Canada" (p. 47. Canada's National report UNCED June, 1992, authors' emphasis)

Convenient [insidious] connection device

Several governments have already made commitments to reduce carbon emission, while recognizing that this will be hard to achieve except through drastic policy decisions in the energy sector. (p.6)

Electricity demands will increase

Electricity services are closely related to the quality of life (p7)

Lowest denominator [least damaging] comparison

Nuclear power plants in normal operations cause very little environmental detriment and are beneficial when they replace plants which would emit CO₂, SO₂, and NO₂

least favourite comparison strategy

comparison between Nuclear vs Coal annual waste production p 17?

• Inflated claims technique

The "Peer collusion review" device

"The IAEA also offers international peer assessment services (underwrites Waste Management Assessment and technical Review Programmed)... (p. 19.

Energetic dispelling of concerns

Condoned violations of

Euphemistic dumping

"the IAEA in 1990 promulgated a Code of Practice on the International trans-boundary Movement of Radioactive Waste as a basis for harmonization of national legislation and policies. The code lays down the conditions and principles for international waste transfers, such as that movement must be made in a manner consistent with the international safety standards, that there must be prior notification and consent of the sending, receiving and transit States, and that each State involved should have a regulatory authority...(IAEA Document, p. 20

(see section 15 of the Rio Declaration)

"States should effectively cooperate to discourage or prevent the relocation and transfer to other States of any activities and substances that cause sever environmental degradation or are found to be harmful to human health. Principle 14 Rio Declaration

Displacement of problem

The claiming to have solved a problem when the problem has been moved to another area. Solution to one environmental problem through displacing.

Allow others to adjust so that you can continue to contribute to the problem
(Maurice Strong Solution)

Carbon budget - where one state is so anxious to continue polluting and not complying with agreements that it arranges to purchase cheap land elsewhere so as to appear to be dealing with the problem

the "Maurice. Strong solution" buy up rainforests as carbon sinks and biodiversity reserves to make up for our auto-dependency and our disregard for local biodiversity to feign compliance with the convention on biological diversity and

Maurice Strong long time industrialist placed in a position to influence decisions about the environment, has proposed that , to assist Canada in complying with the Climate Change Convention Ontario hydro purchase carbon sinks in Costa Rica

Dirty technology transference

World Bank leaked memo proposing that “ between you and me the transfer of dirty technology to the least developed countries makes good economic sense” written by Summers Director of World Bank. When memo released, he indicated that he never thought that anyone would take him seriously.

"Environmental reporting trust us we know that we have failed just let us now monitor ourselves self-regulation

Environmental facade

Polluting industry sets up environment section to mask ecologically unsound practices of firm's main industrial activity

Producers of hazardous, toxic and atomic wastes uses an environmental facade behind which they operate.

Weakening of International resolve through Redefinition of Terms

In the Copenhagen Protocol 1994, the term “consumption” in the expression “the phasing out of consumption and production” has been redefined to not include recycled material and the use of recycled material

Rejuvenating banned substance through development of recycling technology

Ecologically sound practice extended to justify the redefinition of a term which would bring about the elimination of ecologically unsound product

A technology— used to address a particular activity or eliminate a particular substance that has been scheduled for elimination, is used to justify the continued use of the activity or substance.

For example, the blue bottle technology —developed to recycle HFCs whose consumption and production have been scheduled for elimination, has

resulted in the redefinition of the term “consumption” to not include the use of recycled material (Co

Coupling technology package by same industry

lobbying for relaxing of standards; coupled with the production of hazardous activity or toxic substance or atomic wastes by a company, and with the production of the technology to clean up the initial activity or substance by the same company

Example; the company that produces military mines for \$3 sells the clean-up technology for \$3000

Usurping of ecologically sound technology (EST) research by those interested in promoting the ecologically unsound technology that the EST was designed to replace

Standards, technical regulations

Regulation: strict government regulations related to emissions

moderate government regulations related to emissions

voluntary compliance with regulations

nature of technology

prevention

anticipatory

mitigate

restorative

transfer of technology

commitment to ecologically safe and sound alternatives

Categories for assessment

nature of research

waste prevention

waste reduction

nature of substances

nature of activities

contribution to solution

contribution to problem

Readings:

Chapter 10, Knelman F and J. Russow. Global Issues: Environmental and Social Dynamics of Global Change. (A collection of writings and documents).

In-house library:

Readings: excerpts from Lester Brown, Herman Daly, Hazel Henderson Etc.

Readings: publications from the Environment Industry (Globe 94)

CHAPTER11

Principles for positive socio-political global change: Ecology and Ethics

- ecological principles
- ethical principles
- globally adopted principles

11.1. CHARTER OF ECOLOGICAL RIGHTS

This Charter draws from international obligations that have already been agreed to internationally. The Charter draws from both obligations undertaken by states through UN resolutions such as the "World Charter of Nature", globally agreed to documents such as the United Nations Conference on Humans and the Environment (Stockholm, 1972), The Rio Declaration (UNCED, 1992) and Agenda 21 (UNCED, 1992) and the legally binding documents such as the Vienna Convention on Ozone (1986), the Montreal Protocol (1987), The Basel Convention (); (Convention on Environmental Impact Assessment in a trans-boundary (1994) Convention on Biological Diversity (UNCED, 1992, in Force, 1993) and the Convention on Climate Change (UNCED, 1992, in force 1993), and the Law of the Sea (in force 1994). This Charter also proposes additions that complement existing obligations or that are necessary so that compliance is possible.

NOTE: Article 18 of the Vienna Convention Treaty stipulates that if a state has signed a treaty there is an "obligation not to defeat the object and purpose of a treaty prior to the entry into force"

Ecological principles: either agreed to internationally

Legend

Underlined: what has already been agreed to internationally (agreed to principles)

Bold: what still needs to be done (proposed principles or changes)

Bold and underlined (proposed by international NGOs, or official panels)

Italics: What should be left out

Acknowledgment that International obligations must be fulfilled as being not the maximum but the minimum standards to follow (recommendation from the Scientific Panel, B.C.)

RECOGNITION OF THE URGENCY OF GLOBAL SITUATION

Humanity stands at a defining moment in history. We are confronted with a perpetuation of disparities between and within nations, a worsening of poverty hunger, ill health and literacy and the continuing deterioration of the ecosystem on which we depend for our well-being (Agenda 21, UNCED)

CONDEMNATION OF TRADITIONAL CONSUMPTION PATTERNS OF DEVELOPMENT

[one of the most serious problems now facing the planet is that associated with historical patterns of unsustainable consumption and production, leading to environmental degradation, aggravation of poverty and imbalances in the development of countries.] (4.3 Changing consumption patterns, Agenda 21)

We have come to realize that the traditional consumptive patterns of development have contributed to poverty, to the inequitable distribution of resources, to over-consumption, to the violation of human rights and to the

potentially irreversible degradation of the ecosystem (ERA Ecological Rights, Alternative Earth Charter)

We demand recognition of the causes of economic and ecological crises arising from patterns of Production and over-consumption in the rich North. This causes depletion of the world's resources, especially in the South, with all the accompanying negative ecological, social, economic and political consequences. (Statement from the Women of the South, Women and Sustainable Development Conference, 1994)

ACKNOWLEDGMENT OF THE NEED FOR ACTION

We have come to realize that the threats to the biosphere which sustains all life on this planet have increased in rate, magnitude and scale that inaction is negligent. The international community has enough information about the pending state of ecological irreversibility that it must act immediately. (affirmed by the NGO Earth Charter, Global Forum)

UNDERTAKING TO TRANSFERRING AGREED TO PRINCIPLES TO STATE PRACTICES

The principles set forth in the present Charter shall be reflected in the law and practice of each State, as well as at the international level (World Charter of Nature)

ENSURING THE INHERENT WORTH OF NATURE

ensuring that every form of life is unique, warranting respect regardless of its worth to man [human], and to accord other organisms such recognition's, man [human] must be guided by a moral code of action (World Charter of nature) (World Charter of Nature)

RECOGNITION OF INTERCONNECTEDNESS WITH NATURE

Humankind is a part of nature and life depends on the uninterrupted functioning of natural systems which ensure the supply of energy and nutrients (World Charter of Nature)

RESPECT FOR ESSENTIAL PROCESSES

Nature shall be respected and its essential processes shall not be impaired (World Charter of Nature)

ACKNOWLEDGMENT OF URGENCY OF CONSERVING AND PRESERVING NATURE

Humans can alter nature and exhaust natural resources by their actions or the consequences and, therefore, must fully recognize the urgency of maintaining the stability and quality of nature and of conserving natural resources and preserving nature (World Charter of nature)

ACCEPTANCE OF NEED FOR MORAL CODE OF ACTION IN RESPECT OF NATURE

ensuring that every form of life is unique, warranting respect regardless of its worth to man [humans] , and to accord other organisms such recognition's,

man [human] must be guided by a moral code of action (World Charter of nature)

ENUNCIATION OF THE PRIMACY OF THE ECOSYSTEM

Ensuring that in all decisions made about the environment that the ecosystem be given primacy

ACKNOWLEDGING THE IMPORTANCE OF PRESERVATION OF ECOSYSTEMS

QUALIFICATION OF DEVELOPMENT (ALTERNATIVE EXPRESSION FOR 'SUSTAINABLE DEVELOPMENT' OR "SUSTAINABILITY")

Equitable, and ecologically sustainable use (Adopted by the IUCN, annual General Meeting, 1994)

ADHERENCE TO THE ANTICIPATORY PRINCIPLE

Mindful of the need and importance to develop anticipatory policies and of preventing, mitigating and monitoring significant adverse environmental impact in general and more specifically in a trans-boundary context (Convention on Environmental Impact Assessment in a trans-boundary Context, 1994)

INVOCATION OF THE PRECAUTIONARY PRINCIPLE

where there is a threat of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing measures to avoid or minimize such a threat (from the Biodiversity Convention)

ENUNCIATION OF THE PRINCIPLE OF DOUBT

Activities which are likely to pose a significant risk to nature shall be preceded by an exhaustive examination; their proponents shall demonstrate that expected benefits outweigh potential damage to nature, and where potential adverse effect are not fully understood, the activities should shall not proceed (World Charter of Nature)

ENUNCIATION OF THE "CAUTIONARY" PRINCIPLE

Every proponent of an intervention in the ecosystem must demonstrate that the intervention will not cause harm to the environment or will not create ecologically unsound wastes

ADOPTION OF "PREVENTION TECHNOLOGIES

Prevention technologies — technologies that emphasize "protecting, conserving and sustaining the environment from the beginning, and thus avoiding the cycle of rectification of error.

Non introduction of hazardous products in the environment
the onus of proving the non-hazardous nature of the product will be on the proponent of this new type of product [after a full life cycle analysis of all the potential environmental harm by non-vested interest parties]

Environmental Assessment review

Introduce appropriate procedures requiring environmental impact assessment of its proposed projects that are likely to have significant adverse effects on Biological diversity with a view to avoiding or minimizing such effects, and where appropriate, allow for public participation in such procedures (Article 14, 1A, Convention on Biological Diversity)

Assertion of the avoidance of activities

Activities which are likely to cause irreversible damage to nature shall be avoided (World Charter of Nature)

Affirmation of intergenerational equity

Reaffirming that man [humans] must acquire the knowledge to maintain and enhance their ability to use natural resources in a manner which ensures the preservation of the species and ecosystems for the benefit of present and future generations
(World Charter of Nature)

Commitment to non-transference of harmful substances and activities

States should [Shall] *effectively cooperate to discourage or prevent the relocation and transfer to other States of any activities and substances that cause severe environmental degradation or are found to be harmful to human health (Rio Declaration)*

Affirmation of positive-duty-to protect-indigenous-lands principle.

recognition that the lands of indigenous people and their communities should be protected from activities that are environmentally unsound or that the indigenous people concerned consider to be socially and culturally inappropriate (Agenda 21, 16.3. ii)

Elimination of weapons of mass destruction

Man [Humans] and their environment must be spared the effects of nuclear weapons and all other means of mass destruction . States must strive to reach prompt agreement in the relevant international organs on the elimination and complete destruction of such weapons (Principle 26)

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To be incorporated in Russow, J., T.Boston, F. Knelman, and D. White—in preparation: Anatomy of Anti-Ecological Thought . ERA Ecological Rights Press).

11.2. PRINCIPLES OF ACTION EXTRACTED FROM INTERNATIONAL DOCUMENTS (PARTICULARLY AGENDA 21)

2.2. PRINCIPLES OF ACTION

The following principles have been extracted from a series of international documents, including Stockholm Convention 1972, the World Charter of Nature, 1992, and UNCED documents and the Rights of the Child. These principles will be combined with those extracted from UN Declaration of Human Rights and international Covenants {diagram from Russow, J (1985), "A diagram of rights that are or are not protected through international documents"}. The delineation of principles is in progress. The proposed format will be the extracting of the principle from the documents, the naming of the principle, the abstract definition of the principle, and the citation from the international document that supports the principle.

Responsible-care-linked-to-life-cycle principle

This principle involves the recognition that responsible care is dependent upon the revealing of the full environmental impact of each stage of the life cycle of the product or substance

Industry should be encouraged to develop application of a 'responsible care' approach by producers and manufacturers towards chemical products, taking into account the total life cycle of such products (Agenda 21, 19.51 b.)

Positive-duty-to protect human rights principles

Indigenous people and their communities shall enjoy the full measure of human rights and fundamental freedoms without hindrance or discrimination. (Agenda 21, 16.1)

Positive-duty-to-protect principle

Recognition that the lands of indigenous people and their communities should be protected from activities that are environmentally unsound or that the indigenous people concerned consider to be socially and culturally inappropriate; recommendations (Agenda 21, 16.3 ii)

Positive-duty-to-protect-from-activities-that-are-environmentally-unsound principle

Recognition that the lands of indigenous people and their communities should be protected from activities that are environmentally unsound or that the indigenous people concerned consider to be socially and culturally inappropriate; recommendations (Agenda 21, 16.3 ii)

Positive-duty-to-protect-from-activities-that-are-culturally-inappropriate principle

Recognition that the lands of indigenous people and their communities should be protected from activities that are

environmentally unsound or that the indigenous people concerned consider to be socially and culturally inappropriate; recommendations (Agenda 21, 16.3 ii)

Positive-duty-or-responsibility principle

the responsibility to conserve their biodiversity and use their biological resources sustainably, and to ensure that activities within their jurisdiction or control do not cause damage to the biological diversity of other states or of areas beyond the limits of national jurisdiction. " (Agenda 21, 15.3)

Prevention-through-effective-enforcement principle

Effective prevention requires action through effective monitoring and the enforcement and imposition of appropriate penalties (Agenda 21, 20.20)

Prevention-through-effective-enforcement principle

Effective prevention requires action through effective monitoring and the enforcement and imposition of appropriate penalties (Agenda 21, 20.20)

Prevention-through-imposition-of appropriate-penalties principle

Government international and regional organization and industry should facilitate and expand the dissemination of technical and scientific information dealing with the various health aspects of hazardous wastes (Agenda 21, 20.22)

Revelation-of-health-impact principle

Government international and regional organization and industry should facilitate and expand the dissemination of technical and scientific information dealing with the various health aspects of hazardous wastes (Agenda 21, 20.22)

Dissemination-of-technical-information-dealing-with-the-health-aspects principle

Government international and regional organization and industry should facilitate and expand the dissemination of technical and scientific information dealing with the various health aspects of hazardous wastes (Agenda 21, 20.22)

Dissemination of scientific-information-dealing-with-the-health-aspects principle

Government international and regional organization and industry should facilitate and expand the dissemination of technical and scientific information dealing with the various health aspects of hazardous wastes (Agenda 21, 20.22)

Not-transferring-environmentally-harmful-activities-or-substances principle

States should effectively cooperate to discourage or prevent the relocation and transfer to other states of any activities and substances that cause severe environmental degradation or are found to be harmful to human health (Principle 14, Rio Declaration)

Root-cause-change principle

Environmentally sound waste management must go beyond the mere safe disposal or recovery of wastes that are generated and seek to address the root cause of the problem by attempting to change unsustainable patterns of production and consumption (Agenda 21)

Significant-causal-interdependence principle

Possible reduction of resilience of ecosystem to climatic variation because of loss of biological diversity principle

" The loss of biological diversity may reduce the resilience of ecosystems to climatic variations and air pollution damage. Atmospheric changes can have important impacts on forests, biodiversity, and freshwater and marine ecosystems, as well as on economic activities, such as agriculture. (Agenda 21, 9.16)
cross link with clear cut

Linking-of-environmental-degradation-and-environmentally-harmful mismanagement principle

Forests worldwide have been and are being threatened by uncontrolled degradation and conversion to other types of land uses, influenced by increasing human needs; agricultural; expansion, and environmentally harmful mismanagement, including, for example...unsustainable commercial logging... and the impact of loss and degradation of forests are in the form of soil erosion; loss of biological diversity, damage to wildlife habitats and degradation of watershed areas, deterioration of the quality of life and reduction of options for development (Agenda 21, 11.12)

Overuse-avoidance principle

"Chemical control of agricultural pests has dominated the scene, but its overuse has adverse effects on farm budgets, human health and the environment...(Agenda 21, 14.74)

Adverse-environmental-effects-of-overuse-of-chemicals principle

"Chemical control of agricultural pests has dominated the scene, but its overuse has adverse effects on farm budgets, human health and the environment...(Agenda 21, 14.74)

Ecologically-unsound-practices-accumulation-impact principle

" Despite mounting efforts over the past 20 years, the loss of the world' biological diversity, mainly from habitat destruction, over-

harvesting, pollution and the inappropriate introduction of foreign plants and animals has continued. (Agenda 21, 15.3)

Multiple-cause-destruction principle

“The environment is threatened in all its biotic and abiotic components: animals, plants, microbes and ecosystems comprising biological diversity; water, soil and air, which form the physical components of habitats and ecosystem; and all the interactions between the components of biodiversity and their sustaining habitats and ecosystem. With the continued increase in the use of chemicals, energy and non-renewable resources by expanding global population, associated environmental problems will also increase. Despite increasing efforts to prevent waste accumulation and to promote recycling, the amount of environmental damage caused by over-consumption, the quantities of waste generated and the degree of unsustainable land use appear likely to continue growing.” (Agenda 21, 16.22)

Linking-of-environmental-damage-caused-by-overconsumption-principle

“Despite increasing efforts to prevent waste accumulation and to promote recycling, the amount of environmental damage caused by over-consumption, the quantities of waste generated and the degree of unsustainable land use appear likely to continue growing.” (Agenda 21, 16.22)

Multiple-unforeseen-consequence principle

“Poor land-use management, including deforestation and non-sustainable agriculture, mining and urbanization, could lead to a considerable increase in erosion problems and related soil loss in the river basins. The sedimentation in large reservoirs may have serious adverse effects downstream by reducing the quantity of natural nutrients available to agricultural land and coastal waters. .. Acidification of surface waters and groundwaters due to atmospheric deposition of air pollutants can lead to depletion of freshwater living resources and thereby contribute to the loss of biodiversity.” (Agenda 21, 18.3)

“Major problems affecting the water quality of rivers and lakes arise, in variable order of importance according to different situations, from inadequately treated domestic sewage, inadequate controls on the discharges of industrial waste waters, loss and destruction of catchment areas, ill-considered siting of agricultural practices. This gives rise to the leaching of nutrients and pesticides. Aquatic ecosystems are disturbed and living freshwater resources are threatened. ...Erosion, degradation, deforestation and desertification have led to increased land degradation, and the creation of reservoirs has, in some cases, resulted in adverse effects on ecosystems.”(Agenda 21,18.45)

Attribution-of-causal-connection principle

“Many of these problems have arisen from a development model that is environmentally destructive and from a lack of protection. Ecological and human health effects are the measurable consequences... although the means to monitor them are inadequate or non-existent in many countries. There is a widespread lack of perception of the linkages between the development, management use and treatment of water resources and aquatic ecosystems.” (Agenda 21, 18.45)

Prevention-to-avoid-subsequent-measures-to-rehabilitate principle

“A preventive approach, where appropriate, is crucial to the avoiding of costly subsequent measures to rehabilitate, treat and develop new water supplies.” (Agenda 21, 18.45)

Assessment-of-direct-and-indirect-costs principle

“Human health and environmental quality are undergoing continuous degradation by the increasing amount of hazardous wastes being produced. There are increasing direct and indirect costs to society and to individual citizens in connection with the generation, handling and disposal of such wastes.” (Agenda 21, 20.9)

Linking of degradation-of-human-health-and-environmental-quality-with-increasing-amount-of-hazardous-wastes principle

“Human health and environmental quality are undergoing continuous degradation by the increasing amount of hazardous wastes being produced. There are increasing direct and indirect costs to society and to individual citizens in connection with the generation, handling and disposal of such wastes.” (Agenda 21, 20.9)

Unprecedented-increase-in-environmentally-persistent-wastes principle

“Unsustainable patterns of production and consumption are increasing the quantities and variety of environmentally persistent wastes at unprecedented rates. The trend could significantly increase the quantities of wastes produced by the end of the century and increase quantities four to fivefold by the year 2025.” (Agenda 21, 21.7)

Condemnation-of-illegal-trafficking principle

“...illegal traffic in toxic and dangerous products (toxic and dangerous products are those that are banned, severely restricted, withdrawn or not approved for use or sale by governments in order to protect public health and the environment). see resolutions 42/183 and uu/226” (Agenda 21, 19.67)

Limiting-harmful-anthropogenic-activities principle

“the objectives of this programme area are: reducing atmospheric pollution or limiting anthropogenic emissions of greenhouse gases”
(Agenda 21, 9)

Linking-of-unsustainable-production-and-consumption-and-unprecedented-increase-in-environmentally-persistent-wastes principle

“Unsustainable patterns of production and consumption are increasing the quantities and variety of environmentally persistent wastes at unprecedented rates. The trend could significantly increase the quantities of wastes produced by the end of the century and increase quantities four to fivefold by the year 2025.” (Agenda 21, 21.7)

Ecological-and-human-health-effects-measurable-consequences-of - environmentally-destructive-model principle

“Many of these problems have arisen from a development model that is environmentally destructive and from a lack of protection. Ecological and human health effects are the measurable consequences... although the means to monitor them are inadequate or non-existent in many countries. There is a widespread lack of perception of the linkages between the development, management use and treatment of water resources and aquatic ecosystems”. (Agenda 21, 18.45)

Measurability-of-ecological-and-health-consequences principle

“ Many of these problems have arisen from a development model that is environmentally destructive and from a lack of protection. Ecological and human health effects are the measurable consequences...” (Agenda 21, 18.45)

Change-in-lifestyle- trend-reversal principle

“A preventive waste management approach focused on changes in lifestyles and in production and consumption patterns offers the best change for reversing current trends” (Agenda 21, 21.7)

Reorientation-of-consumption-patterns principle

“Achieving the goals of environmental quality and sustainable development will require efficiency in production and changes in consumption patterns in order to emphasize optimization of resource use and minimization of waste. In many instances, this will require reorientation of existing production and consumption patterns that have developed in industrial societies and are in turn emulated in much of the world.” (Agenda 21, 4.15)

Promotion-of-alternative-models-of-consumption-to-reduce-environmental-stress principle

“to promote patterns of consumption and production that reduce environmental stress and will meet the basic needs of humanity” (Agenda 21, 4.7.a)

Promotion-of-alternative-models-of-consumption-to-meet-basic-needs-of- humanity principle

“to promote patterns of consumption and production that reduce environmental stress and will meet the basic needs of humanity” (Agenda 21, 4.7.a)

Prohibition-of-harmful-substances principle

“Considering the prohibition of those(harmful pesticides, fertilizers) found to be environmentally unsound” (Agenda 21, 17.28. i)

Prohibition-of-environmentally-unsound-substances principle

“Considering the prohibition of those(harmful pesticides, fertilizers) found to be environmentally unsound” (Agenda 21, 17.28. i)

Elimination-of-accumulation-to-dangerous-levels principle

“...eliminating the emission or discharge of organohalogen compounds that threaten to accumulate to dangerous levels in the marine environment”
(Agenda 21, 17.28)

Phasing-out -unmanageable-risk principle

“ And the phasing out or banning of toxic chemicals that pose an unreasonable and otherwise unmanageable risk to the environment or human health and those that are toxic, persistent and bio-accumulative and whose use cannot be adequately controlled” (Agenda 21, 19.50 b)

Phasing-out -unreasonable risk principle

“And the phasing out or banning of toxic chemicals that pose an unreasonable and otherwise unmanageable risk to the environment or human health and those that are toxic, persistent and bio-accumulative and whose use cannot be adequately controlled” (Agenda 21, 19.50 b)

Banning-of-unmanageable-risk principle

“ And the phasing out or banning of toxic chemicals that pose an unreasonable and otherwise unmanageable risk to the environment or human health and those that are toxic, persistent and bio-accumulative and whose use cannot be adequately controlled” (Agenda 21, 19.50 b)

Phasing-out-unreasonable-risk principle

“ And the phasing out or banning of toxic chemicals that pose an unreasonable and otherwise unmanageable risk to the environment or human health and those that are toxic, persistent and bio-accumulative and whose use cannot be adequately controlled” (Agenda 21, 19.50 b)

Replacement-of-safe-alternative principle

“Governments should intensify research and development activities on cost-effective alternatives for processes and substances that currently result in the generation of hazardous wastes that pose particular problems for environmentally sound disposal or treatment, the possibility of ultimate phase-out of those substances that present an unreasonable or otherwise unmanageable risk and are toxic, persistent and bio-accumulative to be considered as soon as practicable. ???Emphasis should be given to alternatives that could be economically accessible to developing countries ???(Agenda 21, 20.13. c)

Promotion-of-phase-out-of-risk research principle

" States, with the cooperation of international organizations where appropriate, should encourage industry to promote and undertake research into the phase-out of the processes that pose the greatest environmental risk based on hazardous wastes generated." (Agenda 21, 20.18 b)

Mandate-to-supply-basic-needs principle

" As a first step towards the goal of providing adequate shelter for all, all countries should take immediate measures to provide shelter to their homeless poor, while the international community and financial institutions should undertake actions to support efforts of the developing countries to provide shelter to the poor. "(Agenda 21, 7.9.)

" Promote cooperation between the parties to relevant international conventions and action plans with the aim of strengthening and coordinating efforts to conserve biological diversity and the sustainable use of biological resources. "(Agenda 21, 15.8 e.)

Strengthen-support-for-international-and-regional-instruments principle

“programmes and action plans concerned with the conservation of biological diversity and the sustainable use of biological resources.” (Agenda 21, 15.8 f)

Determination-of-guidelines-for-acceptable-exposure principle

“to produce guidelines for acceptable exposure for a greater number of toxic chemicals, based on peer review and scientific consensus distinguishing between health or environment based

exposure limits and those relating to socio-economic factors.”
(Agenda 21, 19.13 b.)

Distinction-of-guidelines-for-health-or-environment-based-exposure-limits principle

“to produce guidelines for acceptable exposure for a greater number of toxic chemicals, based on peer review and scientific consensus distinguishing between health or environment based exposure limits and those relating to socio-economic factors.”
(Agenda 21, 19.13 b.)

Internationally-agreed-code principle

" Develop an internationally agreed upon code of principles for the management of trade in chemicals, recognizing in particular the responsibility for making available information on potential risks and environmentally sound disposal practices if those chemicals become wastes, in cooperation with governments and relevant international organizations and appropriate agencies of the United Nations system” (19.51 Toxic chemicals)

Costs-and-benefits-guideline-formation principle

" A relevant and competent United Nations organization should take the lead, in cooperation with other organizations, to develop guidelines for estimating the costs and benefits of various approaches to the adoption of cleaner production and waste minimization and environmentally sound management of hazardous wastes, including rehabilitation of contaminated sites” (see 1991 Nairobi meeting and Basel Convention) (20.13. j, Hazardous wastes)

Harmonization-of-criteria-[[harmonizing up to highest standard]] principle

“There is a need to harmonize the procedures and criteria used in various international and legal instruments. There is also a need to develop or harmonize existing criteria for identifying wastes dangerous to the environment and to build monitoring capacities.”(Agenda 21, 20.33)

Promotion-of-clear-guidelines principle

" Promote the development of clear criteria and guidelines, within the framework of the Basel Convention and regional conventions, as appropriate, for environmentally and economically sound operation in resource recovery, recycling reclamation, direct use of alternative uses and for determination of acceptable recovery practices, including recovery levels where feasible and appropriate, with a view to preventing abuses and false presentation in the above operations.”
(Agenda 21, 20.35 e)

Internationally-agreed-principle-on-risk-assessment principle

" There is a need for further development of internationally agreed principles on risk assessment and management of all aspects of biotechnology which should build upon those developed at the national level." (Agenda 21, 16.32)

Ethical-consideration-principle (also 16.16 a and b)

"Governments at the appropriate level, with the assistance of international and regional organizations, academic and scientific institutions and the pharmaceutical industry, should taking into account appropriate safety and ethical considerations "(Agenda 21, 16.14)

Need-to-take-into-account-appropriate-safety principle

"Governments at the appropriate level, with the assistance of international and regional organizations, academic and scientific institutions and the pharmaceutical industry, should taking into account appropriate safety and ethical considerations" (Agenda 21, 16.14)

Precautionary principle

" Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation." (Rio Declaration, 1992).

Preventive-precautionary-and-anticipatory-approach principle

" apply preventive, precautionary and anticipatory approaches so as to avoid degradation of the main environment, as well as to reduce the risk of long-term or irreversible adverse effects upon it;" (Agenda 21, 17.23 a)

Reduction-of-long-term-risk-or-irreversible-adverse-effects principle

" apply preventive, precautionary and anticipatory approaches so as to avoid degradation of the main environment, as well as to reduce the risk of long-term or irreversible adverse effects upon it;" (Agenda 21, 17.23 a)

Precautionary-and-anticipatory-rather-than-reactive principle

" a precautionary and anticipatory rather than a reactive approach is necessary to prevent the degradation of the marine environment. "

Anticipatory-linked-with-clean-production-techniques principle

Anticipatory-linked-with-environmental-impact-assessment principle

This requires inter alia, the adoption of precautionary measures, environmental impact assessments, clean production techniques, recycling, waste audits and minimization, construction and/or improvements of sewage treatment facilities,

quality management criteria for the proper handling of hazardous substances, and a comprehensive approach to damaging impacts from air, land and water” (Agenda 21, 17.22.)

Anticipatory-and-life-cycle-approach principle

"consider adopting policies based on accepted producer liability principles, where appropriate, as well as precautionary, anticipatory and life-cycle approaches to chemical management, covering manufacturing, trade, transport, use and disposal (Agenda 21, 19.50 a)

Producer-liability principle

"consider adopting policies based on accepted producer liability principles, where appropriate, as well as precautionary, anticipatory and life-cycle approaches to chemical management, covering manufacturing, trade, transport, use and disposal” (Agenda 21, 19.50 a)

Producer-liability based policy principle

"consider adopting policies based on accepted producer liability principles, where appropriate, as well as precautionary, anticipatory and life-cycle approaches to chemical management, covering manufacturing, trade, transport, use and disposal” (Agenda 21, 19.50 a)

Foresight principle

"Each country should develop the knowledge and practical skills to foresee and identify environmental health hazards, and the capacity to reduce the risks. Basic capacity requirements must include knowledge about environmental health problems and awareness on the part of leaders, citizens and specialists...” (Agenda 21, 6.46 d)

Develop-knowledge-skills-to-foresee-environmental-hazards principle

"Each country should develop the knowledge and practical skills to foresee and identify environmental health hazards, and the capacity to reduce the risks. Basic capacity requirements must include knowledge about environmental health problems and awareness on the part of leaders, citizens and specialists...”(Agenda 21, 6.46 d)

Develop-knowledge-skills-to-identify-environmental-hazards principle

"Each country should develop the knowledge and practical skills to foresee and identify environmental health hazards, and the capacity to reduce the risks. Basic capacity requirements must include knowledge about environmental health problems and awareness on the part of leaders, citizens and specialists...” (Agenda 21, 6.46 d)

Develop-capacity-to-reduce-risks principle

"Each country should develop the knowledge and practical skills to foresee and identify environmental health hazards, and the capacity to reduce the risks. Basic capacity requirements must include knowledge about environmental health problems and awareness on the part of leaders, citizens and specialists..."(Agenda 21, 6.46 d)

Culture-of-safety Principle

This principle involves the commitment to act to prevent rather than to [correct]
"to promote a 'culture of safety' in all countries, especially those that are disaster-prone, the following activities should be carried out" (Agenda 21, 7.60)

Responsible-care-principle

"Industry should be encouraged to develop application of a 'responsible care' approach by producers and manufacturers towards chemical products, taking into account the total life cycle of such products" (Agenda 21, 19.51 b.)

Responsible-care-linked-to-life-cycle principle

This principle involves the recognition that responsible care is dependent upon revealing of life cycle of products

"Industry should be encouraged to develop application of a 'responsible care' approach by producers and manufacturers towards chemical products, taking into account the total life cycle of such products" (Agenda 21, 19.51 b.)

Concept-of-environmental-care principle...

"Empower community groups, non-governmental organizations and individuals to assume the authority and responsibility for managing and enhancing their immediate environment through participatory tools, techniques and approaches embodied in the concept of environmental care." (Agenda 21, 7.21. g)

Empowerment-of-community-groups principle

"Empower community groups, non-governmental organizations and individuals to assume the authority and responsibility for managing and enhancing their immediate environment through participatory tools, techniques and approaches embodied in the concept of environmental care." (Agenda 21, 7.21. g)

Preventive-to avoid-costly-corrective-measures principle

"A preventive approach, where appropriate, is crucial to the avoiding of costly subsequent measures to rehabilitate treat and develop new water supplies." (Agenda 21, 18.45)

Avoidance-of-costly-corrective-measures principle

“A preventive approach, where appropriate, is crucial to the avoiding of costly subsequent measures to rehabilitate treat and develop new water supplies.” (Agenda 21, 18.45)

Cradle-to-grave-approach monitoring principle

This principle involves the recognition that governments have the responsibility for monitoring through the cradle to grave approach

“Governments, in collaboration with industry and appropriate international organizations, should develop procedures for monitoring the application of the cradle to grave approach, including environmental audits” (Agenda 21, 20.20 e)

Monitoring-through-Cradle-to-grave-approach principle

This principle involves the recognition that governments have the responsibility for monitoring through the cradle to grave approach

“Governments, in collaboration with industry and appropriate international organizations, should develop procedures for monitoring the application of the cradle to grave approach, including environmental audits” (Agenda 21, 20.20 e)

Lead-to-be-taken-by-government-to-establish environmental assessment principle

“Governments should take the lead in establishing and strengthening, as appropriate, national procedures for environmental impact assessment, taking into account the cradle-to-grave approach to the management of hazardous wastes, in order to identify options for minimizing the generation of hazardous wastes, through safer handling, storage, disposal and destruction” (Agenda 21, 20.20 e)

“Governments should take the lead in establishing and strengthening, as appropriate, national procedures for environmental impact assessment, taking into account the cradle-to-grave approach to the management of hazardous wastes, in order to identify options for minimizing the generation of hazardous wastes, through safer handling, storage, disposal and destruction” (Agenda 21, 20.20 e)

Cradle-to-grave-approach-impact-assessment principle

“Governments should take the lead in establishing and strengthening, as appropriate, national procedures for environmental impact assessment, taking into account the cradle-to-grave approach to the management of hazardous wastes, in order to identify options for minimizing the generation of hazardous wastes, through safer handling, storage, disposal and destruction ”(Agenda 21, 20.20 e)

Environmental-impact-assessment principle

" Introduce appropriate environmental impact assessment procedures for proposed projects likely to have significant impacts upon biological diversity... and encourage the assessment of the impacts of relevant policies and programmes on biological diversity "(Agenda 21, 15.5 k)

Mandate-to-assess-impacts-of-policies-on-biodiversity principle

" Introduce appropriate environmental impact assessment procedures for proposed projects likely to have significant impacts upon biological diversity... and encourage the assessment of the impacts of relevant policies and programmes on biological diversity" (Agenda 21, 15.5 k)

Mandate-to-assess-impacts-of-programs-on-biodiversity principle

" Introduce appropriate environmental impact assessment procedures for proposed projects likely to have significant impacts upon biological diversity... and encourage the assessment of the impacts of relevant policies and programmes on biological diversity "(Agenda 21, 15.5 k)

Entire-life-cycle-risk-reduction principle

"This principle involves the recognition that only through examining the full life cycle of a product can the risk be reduced "risk reduction involves broad-based approaches to reducing the risks of toxic chemicals, taking into account the entire life cycle of the chemicals." (Agenda 21,19.45,)

Prior-assessment-of potential-adverse-impacts principle

" Ensure prior assessment of activities that may have significant adverse impacts upon the marine environment;" (Agenda 21,17.23 b)

Prior-assessment-in-decision-making-principle

"Ensure that relevant decisions are preceded by environmental impact assessments and also take into account the costs of any ecological consequences" (Agenda 21,7.42)

Mandate-in-decision-making-to-take-into-account-costs-of-ecological - consequences principle

"Ensure that relevant decisions are preceded by environmental impact assessments and also take into account the costs of any ecological consequences" (Agenda 21,7.42)

Environmental-awareness-and-understanding-dissemination principle

" Development of public education programmes directed at decision makers and the general public to encourage awareness and understanding of the relative benefits and risks of modern biotechnology, according to ethical and cultural considerations." (Agenda 21,16.16 b)

Standards-no-less-than-country-of origin-principle

(" Wherever they operate, transnational corporations and other large-scale enterprises should be encouraged to introduce policies and make commitments to adopt standards of operation with reference to hazardous waste generation and disposal that are equivalent to or no less stringent than standards in the country of origin, and Governments are invited to make efforts to establish regulations requiring environmentally sound management of hazardous wastes." (Agenda 21,20.30)

Mandate-for-transnational-to make-commitments-to-adopt standards-of-operation-no-less-stringent-than-country-of-origin principle

(" Wherever they operate, transnational corporations and other large-scale enterprises should be encouraged to introduce policies and make commitments to adopt standards of operation with reference to hazardous waste generation and disposal that are equivalent to or no less stringent than standards in the country of origin, and Governments are invited to make efforts to establish regulations requiring environmentally sound management of hazardous wastes." (Agenda 21,20.30)

Mandate-to-government-to-establish-regulations-requiring-environmental-source-management principle

(" Wherever they operate, transnational corporations and other large-scale enterprises should be encouraged to introduce policies and make commitments to adopt standards of operation with reference to hazardous waste generation and disposal that are equivalent to or no less stringent than standards in the country of origin, and Governments are invited to make efforts to establish regulations requiring environmentally sound management of hazardous wastes." (Agenda 21,20.30)

Polluter-pay principle

' Governments should include in national planning and legislation an integrated approach to environmental protection, driven by prevention and source reduction criteria, taking into account the 'polluter pays' principle, and adopt programmes for hazardous waste reduction, including targets and adequate environmental control"(Agenda 21,20.20 b)

" Governments, according to their capacities and available resources and with the cooperation of the UN and other relevant organization, as appropriate should make recommendations to the appropriate forums or establish or adapt norms, including the equitable implementation of the polluter pays principle"(Agenda 21,20.39 b)

Treat-at-source principle

Inadequate sewage treatment (see marine 17.28)

"promoting primary treatment of municipal sewage discharged to rivers, estuaries and the sea, or other solutions appropriate to specific sites" (Agenda 21,17.28 e)

Minimize-or-avoid-environmental-damage principle

"Adopt policies that minimize if not altogether avoid environmental damage, whenever possible" (Agenda 21, 7.42 a)

Mandate-to-adopt-policies-to-minimize-or-avoid-environmental-damage principle

"Adopt policies that minimize if not altogether avoid environmental damage, whenever possible" (Agenda 21, 7.42 a)

Substitution-of-less-harmful principle

"...there are often alternatives to toxic chemicals currently in use. Thus risk reduction can sometimes be achieved by using other chemicals or even non-chemical technologies. The classic example of risk reduction is the substitution of harmless or less harmful substances for harmful ones. establishment of pollution prevention procedures and setting standards for chemicals in each environmental medium, including food and water, and in consumer goods, constitute another example of risk reduction "(Agenda 21,19.45)

Risk-reduction-through-substitution-of-harmless-or-less-harmful principle

"...there are often alternatives to toxic chemicals currently in use. Thus risk reduction can sometimes be achieved by using other chemicals or even non-chemical technologies. The classic example of risk reduction is the substitution of harmless or less harmful substances for harmful ones. establishment of pollution prevention procedures and setting standards for chemicals in each environmental medium, including food and water, and in consumer goods, constitute another example of risk reduction" (Agenda 21,19.45)

Mandate-to-establish-pollution-prevention-procedures principle

there are often alternatives to toxic chemicals currently in use. Thus risk reduction can sometimes be achieved by using other chemicals or even non-chemical technologies. The classic example of risk reduction is the substitution of harmless or less harmful substances for harmful ones. establishment of pollution prevention procedures and setting standards for chemicals in each environmental medium, including food and water, and in consumer goods, constitute another example of risk reduction (Agenda 21,19.45)

Setting -standards-means-to-risk-reduction principle

"... there are often alternatives to toxic chemicals currently in use. Thus risk reduction can sometimes be achieved by using other

chemicals or even non-chemical technologies. The classic example of risk reduction is the substitution of harmless or less harmful substances for harmful ones. establishment of pollution prevention procedures and setting standards for chemicals in each environmental medium, including food and water, and in consumer goods, constitute another example of risk reduction” (Agenda 21,19.45)

Root-cause-change principle

" Environmentally sound waste management must go beyond the mere safe disposal or recovery of wastes that are generated and seek to address the root cause of the problem by attempting to change unsustainable patterns of production and consumption." (Agenda 21,21.4)

Root-cause-linked-to-unstustainable-patterns-of-production-and-consumption principle

" Environmentally sound waste management must go beyond the mere safe disposal or recovery of wastes that are generated and seek to address the root cause of the problem by attempting to change unsustainable patterns of production and consumption." (Agenda 21,21.4)

Conservation-of-sinks principles

" the conservation, sustainable management and enhancement, where appropriate, of all sinks for greenhouse gases;" (Agenda 21,9.17 ii)

Positive-mandate-to- conserve principle

Mandate-to -conserve-traditional-forest-habitat-of indigenous-peoples principle

Mandate-to- conserve-forest-habitat-of local-communities principle

Mandate-to-establish-national-protected-area-system principle

Mandate-to-expand-national-protected-area-systems principle

Mandate-to- conserve-for-environmental-values principle

Mandate-to- conserve-for-social-values principle

Mandate-to- conserve-for-spiritual-values principle

Mandate-to- conserve-genetic-resources principle

Mandate-to- conserve-representative-ecological-systems principle

Mandate to conserve-

" Establishing, expanding and managing, as appropriate to each national context, protected area systems, which includes systems of conservation units for their environmental, social and spiritual functions and values, including conservation of forests in representative ecological systems and landscapes, primary old-growth forests, conservation and management of wildlife, nomination of world Heritage Sites under the World Heritage Conventions, as appropriate, conservation of genetic resources, involving in situ and ex situ measures and undertaking supportive measures to ensure sustainable utilization of

biological resources and conservation of biological diversity and the traditional forest habitats of indigenous people, forest dwellers and local communities;" (Agenda 21, 11.15 b)

Positive-mandate-to-improve-the conservation principle

" The objectives and activities in this chapter of Agenda 21 are intended to improve the conservation of biological diversity and the sustainable use of biological resources." (Agenda 21,15.1)

Positive mandate to conserve biological diversity principle

" The objectives and activities in this chapter of Agenda 21 are intended to improve the conservation of biological diversity and the sustainable use of biological resources." (Agenda 21,15.1)

Mandate -to-take-economic-social-incentive measures to encourage conservation of biodiversity principle

" take effective economic, social and other appropriate incentive measures to encourage the conservation of biological diversity and the sustainable use of biological resources, including the promotion of sustainable production systems such as traditional methods of agriculture, agroforestry, forestry, range and wildlife management, which use, maintain or increase biodiversity" (Agenda 21,15.5)

Positive-mandate-to-be-consistent with requirements of international law principle

" Governments... and consistent with the requirements of international law should, as appropriate Identify and evaluate the potential economic and social implications and benefits of the conservation and sustainable use of terrestrial and aquatic species in each country, building upon the results of country studies" (Agenda 21,15.6.)

Positive-mandate-to-identify and evaluate-potential-economic-social implications and benefits of Conservation principle

" Governments... and consistent with the requirements of international law should, as appropriate Identify and evaluate the potential economic and social implications and benefits of the conservation and sustainable use of terrestrial and aquatic species in each country, building upon the results of country studies" (Agenda 21,15.6.)

Mandate-to conserve and restore of altered critical habitats principle

" conservation and restoration of altered critical habitats " (Agenda 21, 17.6 h.)

Recognition of non-damaging use value principle

Consideration-of-possibility-of-increasing-value-of-forests-through-non-damaging -uses principle

Mandate-for action-to-increase-people's-perception-of-non-damaging-uses-of-forests principle

" the implications of the harvesting of forest resources for the other values of the forest should be taken fully into consideration in the development of forest policies. It is also possible to increase the value of forests through non-damaging uses such as eco-tourism and the managed supply of genetic materials. Concerted action is needed in order to increase people's perception of the value of forests and of the benefits they provide." (Agenda 21, 11.22)

Positive-mandate-to-respect-indigenous practices principle

Mandate to emphasize in pilot project traditional environmental practices

" consider undertaking pilot projects that combine environmental protection and development functions with particular emphasis on some of the traditional environmental management practices or systems that have a good impact on the environment" (Agenda 21, 13.21.a)

Positive mandate to utilize and produce [safe and] sound technology principle

Mandate-to-utilize-environmentally [safe and sound]renewable energy sources

Increase-use-of-environmentally [safe and sound] renewable resources principle

"cooperate to increase the availability of capacity, capabilities and relevant technologies--recognizing that technology includes biotechnology--in developing countries for utilizing and producing environmentally [safe and] sound renewable energy resources, such as solar, wind, geothermal, hydropower and biomass, including wood-fuel resource. Each resource should be utilized in a manner that fosters sustainable development and minimizes environmental stress and health impacts, emphasizing the need for easily available, cleaner burning, smoke-free household fuel." (Agenda 21, 9.9 g)

Positive mandate to plan and develop more efficient and less polluting principle

" "to plan and develop [safe and] more efficient and less polluting transportation systems, especially mass transit to support economic development efforts in an environmentally [safe and] sound way, giving special attention to urban and metropolitan areas." (Agenda 21, 9.11.b)

Mandate-for-positive-long-term-research-into-biodiversity- in ecosystems principle

Importance-of-biodiversity-for-functioning-of-ecosystem principle

Mandate to determine ecological conditions for biodiversity conservation principle

Participation of indigenous people[s] and their communities in long-term-research -into biodiversity principle

" Long-term research into the importance of biodiversity for the functioning of ecosystems and the role of ecosystems in producing good, environmental services and other values supporting sustainable development with particular reference to the biology and reproductive capacities of key terrestrial and aquatic species, including native, cultivated and cultured species; ? observation and inventory techniques; ecological conditions necessary for biodiversity conservation and continued evolution; and social behaviour and nutrition habits dependent on natural ecosystems, where women play key roles. The work should be undertaken with the widest possible participation, especially of indigenous people and their communities, including women." (Agenda 21, 15.5 f,)

Promotion of environmentally sound technology research principle

"promoting research and development in environmentally sound technologies" (Agenda 21, 4.18 b)

" in rural areas, unsustainable practices, such as the exploitation of marginal lands and the encroachment on forests and ecologically fragile areas by commercial interests and landless rural populations, result in environmental degradation, as well as in diminishing returns for impoverished rural settlers." (Agenda 21, 7.28 2.)

Promotion of assessment and-observation-by-non-vested-interest-groups principle

"Governments and institutions, in collaboration where necessary with appropriate international agencies and organizations, Universities and non-governmental organizations should undertake assessments and systematic observations of forests and related programmes and processes with a view to their continuous improvement. "(Agenda 21,11.34)

Determination of Guidelines-for-acceptable-exposure-by-peer-review-and-scientific- consensus principle

Guidelines for -acceptable-exposure-based-on-peer-review and scientific-consensus principle

"...to produce guidelines for acceptable exposure for a greater number of toxic chemicals, based on peer review and scientific consensus distinguishing between health or environment based exposure limits and those relating to socio-economic factors." (Agenda 21, 19.13 b.)

Responsibility-of-community-and-individuals-participation principle

“Empower community groups, non-governmental organizations and individuals to assume the authority and responsibility for managing and enhancing their immediate environment through participatory tools, techniques and approaches embodied in the concept of environmental care.”(Agenda 21, 7.21. g)

Transparency-of-operations-of-industry principle

“Governments should encourage industries to be transparent in their operations and provide relevant information to the communities that might be affected by the generation, management and disposal of hazardous wastes” (Agenda 21, 20.14 f)

Mandate-to -encourage-Industry-to-provide-relevant-information principle

“Governments should encourage industries to be transparent in their operations and provide relevant information to the communities that might be affected by the generation, management and disposal of hazardous wastes” (Agenda 21, 20.14 f)

Community-right-to-know principle

“Industry should be encouraged to: adopt, on a voluntary basis, community right-to-know programmes based on international guidelines, including sharing of information on causes of accidental and potential releases and means of preventing them and reporting on annual routine emissions of toxic chemicals to the environment in the absence of host country requirements.”(Agenda 21, 19.51 c)

International-guidelines-for-community-right-to-know principle

“Industry should be encouraged to: adopt, on a voluntary basis, community right-to-know programmes based on international guidelines, including sharing of information on causes of accidental and potential releases and means of preventing them and reporting on annual routine emissions of toxic chemicals to the environment in the absence of host country requirements.”
(Agenda 21, 19.51 c)

Host-country-right-to-know principle

“Industry should be encouraged to: adopt, on a voluntary basis, community right-to-know programmes based on international guidelines, including sharing of information on causes of accidental and potential releases and means of preventing them and reporting on annual routine emissions of toxic chemicals to the environment in the absence of host country requirements.”
(Agenda 21, 19.51 c)

Community-right-to-know-based international guidelines principle

“Industry should be encouraged to: adopt, on a voluntary basis, community right-to-know programmes based on international guidelines, including sharing of information on causes of accidental and potential releases and means of preventing them and reporting on annual routine emissions of toxic chemicals to the environment in the absence of host county requirements.”
(Agenda 21, 19.51 c)

Mandate-for-governments-to-develop educational -materials principle

Mandate-for-government-to collaborate-with-UN-in developing-educational materials principle

Mandate-for-government-to collaborate-with-NGO-in developing-educational materials principle

Mandate-for-government-to collaborate-with-NGO-in-disseminating-educational materials principle

Mandate-for-government-to collaborate-with-NGO-in-developing-educational-materials-on the effects on environment and human health principle

“Governments, according to their capacities and available resources and with the cooperation of the United Nations, other organizations and non-governmental organizations, should collaborate in developing and disseminating educational materials concerning hazardous wastes and their effects on environment and human health, for use in schools, by women's groups and by the general public” (Agenda 21,20.29 a)

Mandate-to-include-material-on-environmental-impacts-in-schools principle

“Countries should incorporate within school curricula, where appropriate, the principles and practices of preventing and minimizing wastes and material on the environmental impacts of waste” (Agenda 21, 21.15)

Discouragement-or-prevention-of-transfer-to-other-states-of-harmful-activities principle

“States should effectively cooperate to discourage or prevent the relocation and transfer to other States of any activities and substances that cause severe environmental degradation or are found to be harmful to human health”.(Principle 14 Rio Declaration)

Discouragement-or-prevention-of-transfer-to-other-states-of-harmful-substances principle

“States should effectively cooperate to discourage or prevent the relocation and transfer to other States of any activities and substances that cause sever environmental degradation or are found to be harmful to human health.”(Principle 14 Rio Declaration)

Discouragement-or-prevention-of-transfer-to-other-states-of-substances- or-activities-that-cause-severe-environmental-degradation principle

“States should effectively cooperate to discourage or prevent the relocation and transfer to other States of any activities and substances that cause severe environmental degradation or are found to be harmful to human health.”(Principle 14 Rio Declaration)

Discouragement-or-prevention-of-transfer-to-other-states-of-substances- Harmful-to-human-health principle

“States should effectively cooperate to discourage or prevent the relocation and transfer to other States of any activities and substances that cause severe environmental degradation or are found to be harmful to human health”.(Principle 14 Rio Declaration)

11.3. INTELLECTUAL CONSTRAINTS THROUGH CONDONEMENTS: EXPRESSION AND EVALUATION

Condonement of appeal to compliance: an extension of the appeal to force

The "condonement of appeal to compliance" occurs when the truth of a practice that embodies value appears to be dependent or to reside in the outcome that those who fail to comply with the practice, fail to embody the value. (Russow, 1991)

Condonement" of fallacy reliance"

The condonement of fallacy reliance occurs when an rationalization is deemed to be fallacious because it depends on another fallacious rationalization or on more than one fallacious rationalization (Russow, 1991)

Condonement of inevitable encumbrances

Condonement of inevitable encumbrance occurs when conceiver justifies incompatibility between mode of thinking and mode of expression by stating that in any transfer incompatibility exists.

"Condonement" of self-fulfilling prophecy

the "condonement of self-fulfilling prophecy" occurs when one argues a particular statement must be true because those who do not comply with it do not succeed when compliance with it is a requirement (Russow , 1991).

Condonement of the delusion of certainty

The condonement of the delusion of certainty occurs when an action is perpetuated because it is perceived to be certain and when the reason for its perpetuation is its certainty, and there is no substantial evidence to demonstrate this certainty (Russow, 1991)

Condonement of delusion of certainty (evaluation)

The condonement of the delusion of certainty occurs when those applying the standards that are presumed to be certain are fully aware that the standards are not certain (Russow, 1991)

Condonement of rationalized hypocrisy

The "condonement of the rationalizing of hypocrisy" occurs when one argues that the rationalization that even though there

are serious reservations about the imposition of a particular standards, and even though there are reservations about the imposition of a state or condition there is nothing inconsistent with the continuing to impose that standard (Russow, 1991)

Condonement of the perpetuated”, an extension of the fallacy of appeal to authority: .

The “condonement of the perpetuated” occurs when the tradition is in place does not come under [systematic [logical] scrutiny. Those who suggest that there should be an alternative to the established tradition, must have to present rationalizations to substantiate their claim whereas those who wish to maintain the tradition do not appear to have to demonstrate the soundness or the validity of the tradition that they wish to perpetuate. Condonement of the perpetuated.]0 (Russow, 1991)

Condonement of presumed statistical reducibility (fallacy of inappropriate statistical analogy)

The condonement of presumed statistical reducibility occurs when there is the presumption that because in one set of cases the projection of data from the part on the whole is justified then in all sets of cases the projection of data from the part on the whole is justified (Russow, 1991)

Condonement of premature closure —Extension of the Fallacy of false dilemma

this fallacy [the fallacy of false dilemma] involves the unquestioned acceptance of a disjunctive premise , some statement of the form "A or B," when in fact more options than A and B are available. In many cases you will encounter, the argument will be valid; however, the false disjunctive premise renders such arguments unsound.. the argument is valid; the fallacy consists in supposing that the first premise exhausts all the possibilities. (Morgan 1987, p. 444)

"Condonement of exclusion" — Extension of fallacy of false dilemma:

The condonement of exclusion involves the process of excluding possibilities, particularly prematurely [assuming there could be a way of ascertaining when the exclusion of possibilities ceases to be premature] which may encourage the denying of the possibility of the emergence of aspects during the composing process. [or the emergence of possible aspects] (Russow, 1991)

Condonement of reified distinctions

The Condonement of reefered distinction occurs when conceivers make distinctions within an entity field; these distinctions that may initially have been tentative become reefered and then perceived to be possibly embodied in reality; the conceivers then forget the derivation of the distinctions and presume that the distinctions reflect more that the conceivers tentative decoalescence of the entity-field reality. (Russow, 1991)

Condonement of pre-rational persistence in guise of rationality

The "Condonement of pre-rational persistence in guise of rationality" occurs when conceivers wishing to give the illusion of all-inclusiveness often use [engage in the fallacy of pre-rational persistence through the use of] numerology or gemetria (false dilemma) 5 points, 4 aspects. The specific numbering of point or aspects or , without qualification, suggests that the numbered ones are all-inclusive, or that the numbered ones on the only tenable ones from a range of possibilities within the entity field, without the conceivers ever indicating what the other possibilities might have been. (Russow, 1991)

Condonement of time-constraint justification

Condonement of time constraint justification occurs when conceivers are willing to sacrifice a range of possibilities and emergent 'transforming' thoughts to comply with predetermine time for submission of product (Russow, 1991)

Condonement of impossibility-driven condonement or imposition

The "fallacy of impossibility-driven condonement or imposition" occurs when conceivers justify the engaging in a sanctioned action which the conceivers recognize as being inappropriate by evoking the impossibility of engaging in the action which they recognize as appropriate (Russow, 1991)

Condonement of manageability-driven justification

Condonement for manageability-driven justification occurs when conceivers are willing to sacrifice a range of possibilities and emergent transforming thought to comply with 'admonitions' about the need to achieve manageability (Russow, 1991)

Condonement of delusion of determinability of [logic] of expedient omission"

Condonement of expedient omission occurs when conceivers support a claim by intentionally ignoring evidence that could refute the claim (Russow, 1991)

Condonement of inadvertent exclusion

The condonement of inadvertent exclusion occurs when to comply with the thesis statement model conceivers do not delve too deeply into the complexity of the entity-field because they realize that the deeper they go into the complexity the more difficult it is for them to select a thesis statement. (Russow, 1991)

Condonement of Convenient aspect- selection or single aspect selection

The condonement of convenient aspect or single aspect selection occurs when conceivers restrict themselves to the selection of one aspect rather than to the consideration of the interdependence of aspects. (Russow, 1991)

Condonement of non-revelation of struggle

The condonement of non-revelation of struggle occurs when the conceivers in authoritative position gives the impression that conforming to the requirement is easy even when they had difficulty themselves conforming to the requirement (Russow, 1991)

Condonement of suspended-connection [transition] avoidance (or forced connection)

The condonement of suspended-connection avoidance occurs when a conceiver explores a concept and then a subsequent concept emerges and there is no apparent connection between the two concepts, and then the conceiver forces a connection rather than leaving a potent interval (Russow, 1991)

Condonement of single connection (extension of false dilemma) • delusion of sequence

The condonement of single connection occurs in the development of most paragraphs. After each statement is made there are multiple connections that could be made between this statement and the subsequent statement. By selecting one statement without indicating either the range of possible statements from which it was chosen or without indicating that the statement was one of many possible statements, the conceiver could be commit the fallacy of single connection giving the delusion that it is possible to determine a connection that is more significant than any of the other possible connections. (Russow, 1991)

Condonement of interval-control obsession (potent interval avoidance)

The condonement of interval-control obsession occurs in the development of most paragraphs. After each statement is made there appears to be a requirement to determine the nature of the connection between the statement and the following statement. The writer cannot make a complex statement and leave the interval open. There appears to be an obsession with controlling the interval between complex thoughts through a range of expected connections (polarity, sequence, causation, connection, integration, covariance, precedence, succession, whole part, expansion of first, contraction of first. Fixed interval - possibility of multiple intervals -- leaving interval open (Russow, 1991)

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The "condonement of fragment non-insertion" occurs when a conceiver associates academic rigour with the taking only a part of the entity field and expanding the part in detail, without reinserting the part back into the whole to demonstrate the interaction and interdependence of the parts within the entity field, (Russow, 1991)

Condonement of justification through impossibility

The "condonement of justification through impossibility" occurs where the evocation of the impossibility of x justifies the engaging in not x. The condonement thus occurs when one argues to support the sanctioned notion that, because the whole cannot be examined and subsequently expressed, one must select only a part to be expressed and that this part could stand for the whole. (Russow, 1991)

Condonement of denial of transformation-potential

The "condonement of denial of transformation-potential" occurs when a conceiver becomes aware that different sections of the paper could be transformed as a result of the introduction of new aspects, but the conceiver is not willing to include the transformation because the introduction of the transformation could demonstrate the inconsistency of the previously fixed aspects of the paper. The potential that the transformation could introduce to the paper is thus ignored because there is usually no provision within the traditional model of expression for unresolved inconsistency. (Russow, 1991)

Condonement of cumulative-significance denial

The fallacy of cumulative significance denial occurs when one believes

that one has fully examined something when one has examined the part even though what might be most significant is the accumulative or cumulative effect (Russow, 1991)
[example of pesticides]

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[example of pesticides]

Extension of fallacy of false dilemma "Condonement of premature closure"

The condonement of premature closure involves or occurs when a conceiver is encouraged to close options or possibilities prior to reflective analysis. The fallacy consists in the presentation of the selected possibilities as being an adequate representation of the complexity of the entity (Russow, 1991)

The condonement of premature closure occurs when conceiver are willing to cease exploring because of traditional constraints. (Russow, 1991)

Condonement of technical prowess compliance display

The condonement of technical prowess compliance display occurs when the demonstration of ability to conform to regulations, such as regulations in APA is deemed to be an indication of intellectual ability (Russow, 1991)

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The "condonement of ease-dependency" occurs when the format of product is determined by not the reason for producing the product but by the ease at which the product can be assessed (Russow, 1991)

Condonement of conforming to society constraint

Role of education to reproduce society inculcate societal values

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Condonement of constraint of practicality

"condonement of constraint of practicality " when the complexity and uncertainty of knowledge and information is not revealed because of the presumption that people cannot function when the uncertainty of knowledge and information is revealed (Russow, 1991)

Condonement of purpose-driven determined constraint

The "condonement of purpose-driven determined constraint" occurs when the conceiver whose initially stated purpose becomes transformed during the process of exploring the purpose ignores the transformed purpose so as to comply with

the traditional model of evaluation of academic thought which requires adherence to initial purpose. (Russow, 1991)

Condonement of inconsistent valuing

Condonement of inconsistent valuing occurs when what is valued in one context would be devalued in another and the former determines whether conceivers should engage in the latter. (Russow, 1991).

Condonement of relying on past thought giving the illusion that what emerges is new thought

The "condonement of relying on past thought" occurs when a situation is created in which the emergence of new thought is valued and in which those who succeed by relying on previously thought-out concepts placed in preconceived structural form. (Russow, 1991)

Condonement of delusion of conceptualization.

The fallacy of delusion of conceptualization occurs when one presumes that what emerges during the development of a previously unknown topic is new conceptualization rather than old transmission [retransmitted formerly conceived structures of thought](Russow, 1991)

Condonement of correspondence illusion

The "condonement of correspondence illusion" occurs when an evaluator assumes that there is a correspondence between what is evaluated and what is thought to be evaluated

11.4. PRINCIPLES OF ENVIRONMENTAL ETHICS

- 1. Humans are by nature Moral agents; they are also moral subjects**
- 2. animals and ecosystems are also moral subjects**
- 3. While survival is a fundamental right, any harm necessitated by it has the moral imperative to be kept to the minimum. Moreover, whenever possible compensation should be accorded the victim. Irreparable harm is totally unacceptable.**
- 4. Not all humans are moral agents i.e. infants and the insane are exceptions. Nevertheless we do not deny that they are moral subjects. It is the same for animals**
- 5. in effect, it is a moral imperative to treat nature, all living things and the integrity of ecosystems as having intrinsic value, something we assert for ourselves**
- 6. all extrinsic values applied to the natural world ;that violate intrinsic value are unethical**
- 7. the basis for environmental ethics is the according of respect for all of life and all that is necessary for life**

Readings:

Chapter 11, Knelman F and J. Russow. Global Issues: Environmental and Social Dynamics of Global Change. (A collection of writings and documents).

In-house library:

Principles drawn from collection of ethical and environmental principles

12 CHAPTER12

A modest proposal for a global solution **12.1. STUDENTS OUTLINE FOR GLOBAL SOLUTION**

Readings:

Chapter 12, Knelman F and J. Russow. Global Issues: Environmental and Social Dynamics of Global Change, (A collection of writings and documents).

In-house library:

Other readings in files or class -selected readings in files

13 CHAPTER 13

Summary and integration of concepts in the course

1.3.1. Incorporation of course drawing upon suggestions by students for next work book

First they came for the Jews and I did not speak out because I was not a Jew

Then they came for the communists and I did not speak out because I was not a communist

Then they came for the trade unionists and I did not speak out because I was not a trade unionist

Then they came for me and there was no one left to speak out for me

(Pastor Niemoeller)

ORGANIZATION

1. Each Monday there will be a lecture, roughly 40 minutes in length, followed by a class discussion.
2. Each Thursday there will be a series of classroom presentations and discussions related to the readings and other relevant topics (when Monday is a holiday, the lecture will be on Thursday)

REQUIREMENTS

1. A major paper of some 4,000 words, the topic of which should be discussed with the instructors. This paper is to be suitably referenced and to incorporate a bibliography. March 13 is the deadline for "interactive comments" on paper, and April 3 is the deadline for submission of the paper
2. Two classroom presentations whereby the students should attempt to integrate the various themes
3. A series of 5 short critical reviews of issues, 150 to 300 words.

GRADING DISTRIBUTION (THE DISTRIBUTION HERE IS FLEXIBLE)

Major Essay	50%
Classroom presentation and discussion	30%
Short Critical Review of issues	20%

NOTES:

1. student course evaluations will be held on wed April 3, 1995
2. In compliance with department directives :
all papers and essays must be handed in to the classroom assistant during class time no later than Wednesday, April 3, 1995; this is a firm date. late papers will be marked down in order to be fair to all students (the only exception is the case illness or other serious personal problems which must be confirmed with a letter form a physician or UVic counselor
3. students may negotiate the grading distribution with the instructors
4. a private library of relevant books and readings, as well as a significant support material will be available to students. Students may pick up these materials during office hours or through making an appointment with the Teaching Assistant.
5. three copies of required readings will be placed on reserve in the UVic library
6. grades and papers will be available on Friday may 5, 1995
7. please do not hand in papers or essays to the Environmental Studies secretary's office

() **THAT** on December 3, I revised the ECOSOPHY document that had been submitted at the Learned's in Calgary

EXHIBIT

DEC 3 1994

DRAFT: FOR COMMENT AND CARTOONS

Circulated at Learned Society meeting in Calgary

ANTI-ECOLOGY SCROLL: SYSTEMIC CONSTRAINTS, DIVERGENT PRINCIPLES, DEVICES AND STRATEGIES

0. INTELLECTUAL CONSTRAINTS THROUGH CONDONEMENTS

1. SYSTEMIC CONSTRAINTS

2. MISINFORMATION THROUGH RHETORIC: AND DIVERGENT PRINCIPLES

3. SEDUCTIVE STRATEGIES, DEVICES AND TRIPLE SPEAK

4. APPEASEMENT OF BENEVOLENCE (THE ENVIRONMENT INDUSTRY)

5. MISGUIDED ANTI-ENVIRONMENTAL BEHAVIOUR

6. "MORAL IMPERATIVE" OF INCLUSION.: THE ROUND TABLE

7. UNDEFINED TERMS IN SEARCH OF PERPETRATOR

0. INTELLECTUAL CONSTRAINTS THROUGH CONDONEMENTS: EXPRESSION AND EVALUATION

Condonement of appeal to compliance: an extension of the appeal to force

The "condonement of appeal to compliance" occurs when the truth of a practice that embodies value appears to be dependent or to reside in the outcome that those who fail to comply with the practice, fail to embody the value. (Russow, 1991)

Condonement" of fallacy reliance"

The condonement of fallacy reliance occurs when an rationalization is deemed to be fallacious because it depends on another fallacious rationalization or on more than one fallacious rationalization (Russow, 1991)

Condonement of inevitable encumbrances

Condonement of inevitable encumbrance occurs when conceiver justifies incompatibility between mode of thinking and mode of expression by stating that in any transfer incompatibility exists.

"Condonement" of self-fulfilling prophecy

the "condonement of self-fulfilling prophecy" occurs when one argues a particular statement must be true because those who do not comply with it do not succeed when compliance with it is a requirement

(Russow , 1991).

Condonement of the delusion of certainty

The condonement of the delusion of certainty occurs when an action is perpetuated because it is perceived to be certain and when the reason for its perpetuation is its certainty, and there is no substantial evidence to demonstrate this certainty (Russow, 1991)

Condonement of delusion of certainty (evaluation)

The condonement of the delusion of certainty occurs when those applying the standards that are presumed to be certain are fully aware that the standards are not certain (Russow, 1991)

The condonement of rationalized hypocrisy

The “condonement of the rationalizing of hypocrisy” occurs when one argues that the rationalization that even though there are serious reservations about the imposition of a particular standards, and even though there are reservations about the imposition of a state or condition there is nothing inconsistent with the continuing to impose that standard (Russow, 1991)

The “condonement of the perpetuated”, an extension of the fallacy of appeal to authority: .

The “condonement of the perpetuated” occurs when the tradition is in place does not come under [systematic [logical] scrutiny. Those who suggest that there should be an alternative to the established tradition, must have to present rationalizations to substantiate their claim whereas those who wish to maintain the tradition do not appear to have to demonstrate the soundness or the validity of the tradition that they wish to perpetuate.
Condonement of the perpetuated.]0 (Russow, 1991)

Condonement of presumed statistical reducibility (fallacy of inappropriate statistical analogy)

The condonement of presumed statistical reducibility occurs when there is the presumption that because in one set of cases the projection of data from the part on the whole is justified then in all sets of cases the projection of data from the part on the whole is justified (Russow, 1991)

Extension of the Fallacy of false dilemma [the Condonement of premature closure]

this fallacy [the fallacy of false dilemma] involves the unquestioned acceptance of a disjunctive premise, some statement of the form "A or B," when in fact more options than A and B are available. In many cases you will encounter, the argument will be valid; however, the false disjunctive premise renders such arguments unsound.. the argument is valid; the fallacy consists in supposing that the first premise exhausts all the possibilities. (Morgan 1987, p. 444)

Extension of fallacy of false dilemma: "Condonement of exclusion"

The condonement of exclusion involves the process of excluding possibilities, particularly prematurely [assuming there could be a way of ascertaining when the exclusion of possibilities ceases to be premature] which may encourage the denying of the possibility of the emergence of aspects during the composing process. [or the emergence of possible aspects] (Russow, 1991)

Condonement of reified distinctions

The Condonement of reified distinction occurs when conceiver make distinctions within an entity field; these distinctions that may initially have been tentative become reified and then perceived to be possibly embodied in reality; the conceiver then forget the derivation of the distinctions and presume that the distinctions reflect more that the conceiver tentative decoalescence of the entity-field reality. (Russow, 1991)

Condonement of pre-rational persistence in guise of rationality
T" ?

The "Condonement of pre-rational persistence in guise of rationality" occurs when conceiver wishing to give the illusion of all-inclusiveness often use [engage in the fallacy of pre-rational persistence through the use of] numerology or gemetria (false dilemma) 5 points, 4 aspects. The specific numbering of point or aspects or , without qualification, suggests that the numbered ones are all-inclusive, or that the numbered ones on the only tenable ones from a range of possibilities within the entity field, without the conceiver's ever indicating what the other possibilities might have been. (Russow, 1991)

Condonement of time-constraint justification

Condonement of time constraint justification occurs when conceiver are willing to sacrifice a range of possibilities and emergent 'transforming' thoughts to comply with predetermine time for submission of product (Russow, 1991)

Condonement of impossibility-driven condonement or imposition

The "fallacy of impossibility-driven condonement or imposition" occurs when conceivers justify the engaging in a sanctioned action which the conceivers recognize as being inappropriate by evoking the impossibility of engaging in the action which they recognize as appropriate (Russow, 1991)

Condonement of manageability-driven justification

Condonement for manageability-driven justification occurs when conceivers are willing to sacrifice a range of possibilities and emergent transforming thought to comply with 'admonitions' about the need to achieve manageability (Russow, 1991)

Condonement of delusion of determinability of [logic] of expedient omission"

Condonement of expedient omission occurs when conceivers support a claim by intentionally ignoring evidence that could refute the claim (Russow, 1991)

Condonement of inadvertent exclusion

The condonement of inadvertent exclusion occurs when to comply with the thesis statement model conceivers do not delve too deeply into the complexity of the entity-field because they realize that the deeper they go into the complexity the more difficult it is for them to select a thesis statement. (Russow, 1991)

Condonement of Convenient aspect- selection or single aspect selection

The condonement of convenient aspect or single aspect selection occurs when conceivers restrict themselves to the selection of one aspect rather than to the consideration of the interdependence of aspects. (Russow, 1991)

Condonement of non-revelation of struggle

The condonement of non-revelation of struggle occurs when the conceivers in authoritative position gives the impression that conforming to the requirement is easy even when they had difficulty themselves conforming to the requirement (Russow, 1991)

t

Condonement of suspended-connection [transition] avoidance (or forced connection)

The condonement of suspended-connection avoidance occurs when a conceiver explores a concept and then a subsequent concept emerges and there is no apparent connection between the two concepts, and then the conceiver forces a connection rather than leaving a potent interval (Russow, 1991)

Condonement of single connection (extension of false dilemma)
• delusion of sequence

The condonement of single connection occurs in the development of most paragraphs. After each statement is made there are multiple connections that could be made between this statement and the subsequent statement. By selecting one statement without indicating either the range of possible statements from which it was chosen or without indicating that the statement was one of many possible statements, the conceiver could be commit the fallacy of single connection giving the delusion that it is possible to determine a connection that is more significant than any of the other possible connections. (Russow, 1991)

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[example of pesticides]

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The "condonement of correspondence illusion" occurs when an evaluator assumes that there is a correspondence between what is evaluated and what is thought to be evaluated

At the press conference given by Federal Minister of the Environment, Jean Charest at the UNCED conference in Rio, a representative of the United Nations introduced Charest as being from a country which was truly

concerned about the environment. During the question period I indicated that "UNCED should be a time to dispel myths not perpetuate them and that Canada is not an ecologically sound country and that we should be honest with the rest of the world

This paper is a follow-up to the paper, "Delusion of certainty in science and technology: implications for global environmental issues," presented at the 1992 NARST Conference (National Association of Research into Science Teaching). The delusion of certainty also occurs because of the rhetoric embodied in laws that are deemed to protect the environment. The public assumes that when there are laws in place enunciating high environmental

The institutions and individuals that have been responsible for thwarting the substantial societal changes necessary to "sustain" the environment, economy and the social fabric , usurp the rhetoric of change and offer solutions that prevent the rhetoric from being translated into action. The global environmental situation is too urgent for the international community to be content with rhetoric. We as educators must expose the discrepancy between rhetoric and action and ensure that students and the public will not be "miseducated." The need for international awareness of the way that rhetoric is contributing to inaction is essential.

. Members of the global community who are concerned about the escalation of war, the degradation of the environment, the violation of human rights, and the disregard for social justice are concerned that the Earth Summit in Rio de Janeiro did not go far enough in addressing the urgency of the global situation. There are a number of systemic constraints that have prevented real change.

Although the global community did not go far enough, there are still some strong fundamental principles that did emerge. International educators, along with other concerned members of the global community, must insist on the translating of the rhetoric of enunciated principles into convergent action.

1. SYSTEMIC CONSTRAINTS

1.1. Systemic Constraints

(1991 Systemic constraints derived from a paper in progress by Russow, (Sessional lecturer in Global issues) and David White (Environmental Activist and educator) with contributions from Scott Wakeman (graduate in Philosophy), and Ken Hewitt (Professor of Geography)

- Institutional Collusion
- Absence equated with presumed resolution "out of mind"
- Addiction to consumption
- Altruistic concerns misconstrued by interest groups
- Appeasement of international conferences
- *• Appeasement without action
- Assumption that methodology that worked in the past will still be effective today
- Avoidance of obvious but unpopular inconsistencies
- Beneficial purposes
- *• burn-out manoeuvre
- Calculated diversion (While the ecological community is protesting the destruction of one old growth valley, the forest industry continues to destroy many others)
- Collective forgetfulness
- Collusive public process (government agencies are working with industry)
- Complacency through authority/numbing of the public will
- Condoned myopia (unwillingness to link development and disasters ,
- Confusion between tenability and non-tenability
- Confusion between fairness and "objectivity" in research
- Counter-argument retrieval device (the public hearing where the decision maker have the opportunity to collect data from the interveners for future rebuttals)
- Cult of the model
- *• Delusion of public process (the public hearing, not a listening or an attending to)
- Dire consequences strategy
- Disguised concerns expressed in palatable altruistic terms (jobs)
- Endemic inertia
- Euphemistic designations ("share the forests" --loggers and industry)
- Failure to recognize that situation has changed so substantially that new modes are required to bring about change
- Feigned alternatives
- Feigned altruism
- Illusive substantive change (token change)
- *• illusion of substantial change
- Ineffectiveness of international organizations

- Ineffectual time of intervention for interveners
- *• Inhibiting legal terms
- *• Inhibiting legal processes
- Influential use of violation of principle(compromise) couched in euphemistic terms
- *• Just who's in charge here
- Justification of unethical acts because revenue can be used for
- Laughter of squeamishness (When criticized the perpetrators of the problem laugh as though they were exempt from the criticism and then continue to perpetuate the problem)
- Media segmentation of issues without reinserting them into the continuous interacting and interdependent plane of outstanding unresolved and resolved issues
- *• Misinformed decisions making
- *• Misplaced Priorities
- Legitimized rationalization. Rationalization and justification as inhibitors of change.
- Misplaced onus of proof
- *•Nimby factor
- "Now we know better but what can we do " device (We recognize that we have destroyed a large segment of the "old growth forest but if we no longer log the old growth forest , the forest industry will shut down)
- *• One page decision maker phenomena
- Perception superseding substance
- Premature terms of reference
- Presume rigour of fragmented studies
- Presumption and perpetuation of the remedial technological fix
- Presumption that the system that generated harm is the only one capable of addressing and redressing the harm
- Rationalized non-involvement
- *• Sanctioned human dominion syndrome (imposition of human purpose)
- "Seductive posture" "sustainable development- prescription for continuous rape"
- System inertia
- Syndrome of expedient omission
- Susceptibility of international organizations to being usurped by dominant states
- Tenacity of convenience
- Unwillingness to confront complexity
- Unwillingness to redefine progress as being integration and interdependence not imposition and exploitation
- Visual misrepresentation (public hearings in which companies use images to suggest that they are primarily concerned with the environment e.g. Mac Millan Bloedel, traditional fawn-protection, and disguised size of clear-cut)

1. 2 systemic Constraints preventing change related to UNCED

The following "systemic constraints," appear to have prevented the global community from addressing the urgency: at UNCED ("Systemic Constraints preventing change," Russow J. & White, D. 1992)

- the continued willingness to enshrine the sovereign right to exploit natural resources.
- the unwillingness to move beyond sovereign barriers to international environmental governance
- the failure to recognize that the situation is so urgent that international environmental governance and standards have to be necessary
- the refusal of states to accept the rule of international law
- the reluctance to establish stringent international environmental standards and technological regulations
- the unwillingness of states to allow for a stringent monitoring program
- the reluctance to recognize that the urgency of the current global situation requires the summoning up of the international political will to move from "should" to "shall"
- the obsession with consensus which may lead to the lowest common denominator rather than striving through collaboration for the highest tenable principles
- the decision making process being conceived as an arena of competing interests
- the designation of failure made by those states, institutions and individuals who do not even live up to the moderate principles established by consensus
- the reluctance to redefine what constitutes development in an ecologically sound way
- the revelation of a problem and the presentation of a solution which could have more disastrous or equally disastrous consequences as the problem (nuclear)
- the continued justification and rationalization about the use of ecologically unsound practices in the guise of technological fixes
- the condoning of technological fixes suggested as solutions:
- the continued condoning of research and development into rectifying the harm done through ecologically unsound practices rather than

discontinuing ecologically unsound practices(the Green Revolution syndrome)

- the presence and use of international short term economic regulations which justify the abandoning by sovereign states of high ecological standards. (present in GATT regulations, and evident in Chapter 2 of Agenda 21 "Social and Economic Dimensions."
- the reluctance of GATT to consider the applicability of any chapters in Agenda 21 other than Chapter 2
- the persistence of the situation whereby the power to prevent environmental harm or to preserve environmental heritage resides in those whose interest it is to benefit economically from the environment. and that in whose interest it is to benefit economically from the environment tend to ignore ecologically sound practices
- the persistence of the co-option, often through government funding, of groups, whose role should be to act as the conscience of the official decision makers
- the persistence of the situation where those who should be speaking out are constrained because of professional commitments, and where those who are willing to speak out are not heard because the press fails to report their statements
- the sanctioned use of "words of delusion" that either delude the public into thinking that what is unsafe, is safe, or delude the public into thinking that there is the political will to eliminate unsafe practices.
- the sanctioned use of loophole vague terms like "as appropriate" or of loophole provisions like without prejudice to international trade principles. For example in the following section on consumption They should therefore review the purchasing policies of their agencies and departments so that they may improve, where possible, the environmental content of government procurement policies, without prejudice to international trade principles. (4.23, Consumption)
- the sanctioned use of the "notwithstanding clause" device. This device allows for the indulging in strong statements about deep concern and the need for significant change and then including a notwithstanding clause that negates the strong statement.
" Implement, as a matter of urgency, in accordance with country-specific conditions and legal systems, measures to ensure that women and men have the same right to decide freely and responsibly on the number and spacing of their children and have access to the information, education and means, as appropriate, to enable them to exercise this right in keeping with their freedom, dignity and personally held values, taking into account ethical and cultural considerations. (3..8 j Combating Poverty)

- the sanctioned use of oxymorons like "the environmentally sound management of hazardous wastes" (20.22 Hazardous wastes) or "the promoting the safe and environmentally sound management of radioactive wastes" (Chapter 22 Radioactive wastes)
- the sanctioned use of term like "harmonizing" which usually leads not the highest tenable principles but to the lowest common denominator
- the unwillingness to redefine development in terms of ecologically sound practices; such as
 - (i) the degree to which a state has been able to integrate with the ecosystem through ecological sound practices causing its human activity to have little deleterious impact on the environment
 - ii) The degree to which there is an equitable distribution of resources
 - iii) the extent to which a state refrains from contributing to global ecological or military harm
 - iv) The degree of condemnation, and avoidance of over-consumption
 - v) the ability to minimize the human impact on the environment through stabilization of population
 - vi) the degree of compliance with the enshrining of positive rights (right to ecologically sound work, to food, to shelter as well as with negative rights)
 - (vii) the ability to live within the carrying capacity of the ecosystem; in which case the US could possibly be the least developed
- the stereotyping of countries into categories of "developed, underdeveloped, and developing" rather than designating behaviours and attitudes as being "developed, underdeveloped and developing";
- the simplistic distinction between North (environment) and South (development)
- the presumption that technological transfer should always pass from "North" to "South"
- the reluctance to deal with essential issues such as the link between "Nuclear civil reactors and Nuclear Arms Industry" or the Link between Poverty and lack of universal "secondary" as well as "primary" health care system (3.6. e Combating Poverty)
- the reluctance to address the environmental degradation caused by military operations

2. SEDUCTIVE DEVICES, DOCTRINES, DOGMAS, STRATEGIES AND FALLACIES

By Fred Knelman and Joan Russow

Dr Fred Knelman is the Vice President of the Whistler Foundation for a Sustainable Environment, and Joan Russow, was the delegate for the Whistler Foundation at the New York Preparatory Committee for UNCED and at the Earth Summit at Rio. The Whistler Foundation and the Nuclear Age Peace Foundation had circulated a Declaration that was signed by 37 Nobel Laureates; this declaration called for the phasing out of Nuclear energy. They requested permission to read this declaration at one of the plenary session at Rio Centro; permission was denied.

The International Atomic Energy Agency (IAEA) was initially set up in the 1960's to regulate Nuclear energy; they have, however, become one of the strongest proponents of nuclear energy. A fundamental regulatory principle of the "separation of function" is that "the agency entrusted for regulating a technology cannot be the same agency that promotes the use of that technology"(Knelman, 1975). IAEA, through its UNCED document entitled "Nuclear Techniques and Sustainable Development." acted as a major proponent, not only of the current use, but of the increased use of nuclear energy.

Agenda 21-- the 700 page far-reaching action-plan document from UNCED, was adopted unanimously by the global community represented at the Earth Summit in Rio. In Agenda 21 the following concern about radiation was expressed:

The deterioration of environmental quality, notably air, water and soil pollution owing to toxic chemicals, hazardous wastes, radiation and other sources, is a matter of growing concern. (Chapter 16. subsection 12),

The extent of the consequences of the nuclear industry were also identified in Agenda 21:

Annually about 200,000 m³ of low-level and intermediate- level waste and 10,000 m³ of high-level waste (as well as spent nuclear fuel destined for final disposal) is generated worldwide from nuclear power production. These volumes are increasing as more nuclear power units are taken into operation, nuclear facilities are decommissioned and the use of radionuclides increases. (Chapter 22, subsection 1)

Yet at one of the plenary sessions, Mr. Hans Blix, Director-General of the IAEA, was given permission to present a document advocating nuclear energy as being a safe alternative energy for the future. The International Non-Governmental Organizations, (NGOs), however, recognized that the fundamental regulatory principle had been violated, and gave IAEA, the

dubious honour of being presented with the International NGO Community's "Most Preposterous Proposal Award" "for presenting nuclear power as the environmental solution in energy and successfully keeping its problems out of the documents."

We would like to highlight some of the SEDUCTIVE DEVICES, STRATEGIES, DOCTRINES, DOGMAS and FALLACIES that have made the IAEA worthy of this honour. The examples will be drawn from IAEA document which was prepared for UNCED. Also references will be made to other UNCED Documents such as Agenda 21 and the Rio Declaration-- the Earth Charter-- 1992, and the Canada's National Report for UNCED, 1992

The seductive devices, strategies and fallacies used by the IAEA all draw upon the fundamental language of 'nukespeak.' Knelman (1986, 1992) has expanded on the euphemistic nature of Nukespeak:
(term first used in Hilgartner S., R. Bell, and R. O'Connor 1982)

The rule is sanitize by euphemism: political euphemism is of course older than nuclear power. How many of us recognize the "elimination of unreliable elements"? There are forbidden words in the language of civil nuclear power. For example, the words "accident", "pollution" or "disease" are never used. Accidents are either "transients", "events", "significant events", "anomalies", "occurrences" or "abnormal occurrences". In the extreme, they become "normal abnormalities", i.e. truth becomes lies. Explosions are "events of rapid disengagement" or "prompt criticality". Waste dumps are "residue areas". Thermal pollution becomes "thermal effects" and pollution becomes "impacts". Disease becomes "health effects." This is a euphemism for cancer and genetic malformations. And missing plutonium, which is the link to clandestine acquisition of nuclear explosives is "material unaccounted for" or simply MUF! (Knelman, 1986.) Other names relating to nuclear accidents are criticality, nuclear excursions, abnormal evolution, normal aberration, plant transients, unnecessary ignition sources. "Nukespeak" is perpetuated through "nuclear acceptance campaigns" by the PR departments of the nuclear establishment, designed to find "palatable synonyms" for "scare words" through the use of "truth squads" in order to remove "undue public concern", create "pro-energy climate" where "technically qualified persons" would agree that nuclear power poses "no significant threat" and could be entrusted for the timely detection of potential abnormalities, or there is "no evidence" of such threat (as though lack of evidence is proof of assertion) and the promises that turned into lies i.e. that nuclear power would be "too cheap to meter" providing society with "boundless energy" and save us from "freezing in the dark"., this is the language of Orwell's 1984, where peace is war and truth is a lie. (Knelman, 1992).

Seductive devices, doctrines, dogmas, strategies and fallacies

- The "blatant misrepresentation or expedient omission" device

This device involves the convenient exclusion of any part that could be detrimental to one's position.

The IAEA through expedient omission (possibly for advantageous "clarification") has left out a significant section in Agenda 21 which does not include nuclear energy in the list of "safe" technologies for the future. To "clarify" Agenda 21, the IAEA in its UNCED document stated the following:

The UNCED Agenda 21 notes the need for a transition to environmentally sound energy systems, which will entail major changes in the patterns of energy production and consumption (IAEA Document, p.5, 1992)

In the Atmosphere chapter of Agenda 21, the following [safe] and sound technologies are advocated:

cooperate to increase the availability of capacity, capabilities and relevant technologies ...for utilizing and producing environmentally [safe and] sound renewable energy resources, such as solar, wind, geothermal, hydropower and biomass,... Each resource should be utilized in a manner that ... minimizes environmental stress and health impacts, (Section 9. Subsection 9 g Agenda 21, 1992)

Thus, we see that in the Energy section of Agenda 21, Nuclear energy is not mentioned as being one of the [safe] or sound technology.

- The "co-opted terms" strategy

This strategy involves the stipulating of a new definition for a term that would jeopardize one's own argument.

In the Rio Declaration the following precautionary principle was advocated:

Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation." (Rio Declaration, 1992).

In the following statement, the IAEA redefines the important precautionary principle that was agreed to in the Rio Declaration, 1992.

The basic principles for radiation protection and safety in all applications and activities in nuclear science and technology are precautionary (IAEA Document , p. 2, authors emphasis)

The Rio principle, however, if enacted and truly adhered to, would bring about a moratorium on new nuclear power plants while phasing out currently existing ones.

- The "comparison of convenience" device

This device involves the narrowing down of alternatives so that whatever aspect is compared will appear favourable to the proposed alternative.

In the following statement from the IAEA document, the IAEA narrows the alternatives used for comparison to those which would appear to be favourable within the terms of reference of their comparison. Thus, for example, they compare the relatively low volume of nuclear wastes to the much larger volume of wastes from fossil fuels. However, it is the volume of wastes multiplied by their toxicity that is significant. Merely comparing volumes is a "comparison of convenience". The same false comparison is used to compare fuel requirements for the same energy output.

A nuclear plant would require 27 tonnes of slightly enriched uranium each year, which corresponds to a few truckloads. The corresponding quantity of natural uranium is 160 tonnes.
a coal fired plant would need 2.6 million tonnes of coal each year... which corresponds to the load carried by 5 trains, each transporting 1400 tones every day
an oil fired plant would require 2 million tonnes of fuel oil per year, which is about 10 supertanker loads. (IAEA document, 1992, p.12)

The nuclear establishment never fails to compare coal and nuclear as competing energy sources, always claiming the inherent superiority of nuclear. Usually this is accomplished by failing to include the entire fuel cycle over its full life of impacts, social and environmental. They conveniently exclude "safety" factors," "production of wastes," "disposability of wastes," "degree of potential for bioaccumulation," lifetimes of wastes, toxicity and proliferation problems associated with nuclear.

Yet no bombs are built of coal, no terrorist is interested in hijacking coal or in the clandestine acquisition of coal weapons, coal plants do not have to be decommissioned and mothballed after some 30 to 50 years of operation, their hazardous wastes do not have to be guarded for 100,000 years, coal dust is easier to contain than radon and coal plants do not require liability subsidies by acts of parliament" (Knelman, 1992)

- The "lull and lure of the technological fix" syndrome (the "misleading assurance" device or the fallacy of "technological omnipotence")

This syndrome, device or fallacy involves the revealing of the seriousness of the problem and the offering of a "solution" which is usually worse than the problem

The proponents of a potentially dangerous act indicate that they recognize the danger and focus on one area for which they can offer a technological fix

In the following statement from the Radioactive Wastes section of Agenda 21, into which it appears that the IAEA had input, the following situation is recognized:

Annually about 200,000 m³ of low-level and intermediate-level waste and 10,000 m³ of high-level waste (as well as spent nuclear fuel destined for final disposal) is generated worldwide from nuclear power production. These volumes are increasing as more nuclear power units are taken into operation, nuclear facilities are decommissioned and the use of radionuclides increases. The high level waste contains about 99 percent of the radionuclides and thus represents the largest radiological risk. (Agenda 21, Radio Active wastes, 21.1.).

In the IAEA document the authors affirm the certainty of the technological fix.

There is nevertheless a consensus among experts that safe geological disposal of high level wastes, including spent nuclear fuel, is technically feasible. (IAEA Document, p.17)

The view of experts in the field is that safe technological solutions exist for managing the waste. (IAEA Document, 1992, p. 15)

Knelman (1992) points out that

The assumption behind the notion of permanent disposal of High level wastes deep in a stable geological formation is false because this assumption relies on the mistaken belief that anything we do technologically can be permanent This assumption of permanence is particularly false when we are dealing with the lithosphere over some 100,000 years and when we must first disturb the geological structure by digging a very deep hole. AECL(Atomic Energy of Canada Limited) has dug a deep hole near Lac du Bonnet in Manitoba which is totally inappropriate for such so-called "permanent" disposal. For one thing you must, in all events, avoid water. Yet, The AECL hole must be soaked Walt Patterson, a nuclear critic described this AECL research as follows: A drunk has lost his keys and is discovered by a police officer crawling around a street light. When questioned, the drunk admitted that he had lost his keys in front of a dark building, a block away. When asked why the drunk was then searching around the street light, the drunk said " you see, officer, the light is better here" and as Dr Martin Resnikoff, an expert on geological waste disposal has put it " the

earth does not stand still. In other words, experts in the relevant fields do not agree. (Knelman, 1992, in progress)

- The "rhetoric of notwithstanding clause" doctrine.

This doctrine allows for the indulging in strong statements about deep concern and the need for significant change and then including a notwithstanding clause that negates the strong statement.

In the Rio declaration (1992) there is a strong statement about third world dumping:

States should effectively cooperate to discourage or prevent the relocation and transfer to other States of any activities and substances that cause severe environmental degradation or are found to be harmful to human health. (Principle 14 Rio Declaration, 1992)

(

There are, however, disturbing "notwithstanding clauses" that appear such as in the following statements:

Develop regulatory and non-regulatory measures and procedures aimed at preventing the export of chemicals that are banned, severely restricted, withdrawn or not approved for health or environmental reasons, *except when such export has received prior written consent from the importing country or is otherwise in accordance with the PIC procedure*; (Section 19. subsection 53 f , Agenda 21, 1992)

In the following statement in the IAEA document, the IAEA energetically adopts the spirit of the " rhetoric of notwithstanding clauses"

The IAEA in 1990 promulgated a Code of Practice on the International trans-boundary Movement of Radioactive Waste as a basis for harmonization of national legislation and policies. The code lays down the conditions and principles for international waste transfers, such as that movement must be made in a manner consistent with the international safety standards, that there must be prior notification and consent of the sending, receiving and transit States, and that each State involved should have a regulatory authority...(IAEA Document, 1992, p. 20

- The "flamboyant absurdity" doctrine or dogma

This doctrine or dogma carries the concerns of one's opponents to the point where the regulations governing the opponents concerns should become the standard by which other potentially lesser concerns will be addressed.

The IAEA appears to advocate that, what is considered to be the most dangerous industry, just because it is dangerous, has developed stringent standards, and that they who contribute to possibly the greatest uncontrollable hazard are the ones who should assist the community in dealing with other hazards.

The basic principles for radiation protection and safety in all applications and activities in nuclear science and technology are precautionary and are so well founded in science and so widely accepted that they are now also being regarded as a source of guidance in controlling pollutants and impacts arising from other human activities. Their wider application would undoubtedly contribute towards sustainable development. (p.2)

- The "justification through dire consequences of alternatives" device

This device involves the revealing of the dire consequences of the current practices and offering one own practice as the salvation for the problem

In the following statement the IAEA cites the dire consequences of the other alternatives to justify their proposed alternative:

The problem of acid rain, which is linked to emissions from the burning of fossil fuels, has been recognized for decades..... the primary concern about the continued and increasing use of fossil fuels is the problem of CO₂ emission and the potential impact on world climate..... World conference on the Changing Atmosphere... need to reduce CO₂ emission (IAEA document, p. 5)
climate change in connection with fossil fuels (p. 9)

- The "benevolent outcome exploitation" strategy

This strategy involves the selection of the outcome which the opposition to the proposed alternative would advocate and the subsequent attempt to demonstrate that the proposed alternative, which the opposition would condemn, would be the best way of achieving that outcome.

In the following statements from the IAEA document, the IAEA focuses on the desired outcomes of reducing acid rain and limiting greenhouse gas to justify the selection of their proposed alternative:

Several governments have already made commitments to reduce carbon emission, while recognizing that this will be hard to achieve except through drastic policy decisions in the energy sector. (IAEA Document, 1992, p.6)

Nuclear power plants in normal operations cause very little environmental detriment and are beneficial when they replace

plants which would emit CO₂, SO₂, and NO₂ (p. 12). In this respect they would help to reduce acid rain and limit greenhouse gas emissions (IAEA Document 1992 , p. 12)

To accomplish the above, IAEA and other nuclear proponents are recommending the construction of some 4000 to 5000 new commercial nuclear power plants. The combination of the multi- trillion cost and the time required for construction renders this proposal no less than bewildering. By the 6 to 10 year period required for construction, other sources of climate-altering gases would wipe out all gains. Secondly at 1/7th to 1/10th the above cost, a much greater reduction in CO₂ and other climate-altering gases can be achieved through simple available conservation and efficiency measures.

- The "flaunting and condoning of the vicious circle principle" strategy

This strategy is best explained by the economic principle that "bad money drives out good,". that is the opportunity costs of nuclear power are unacceptable and prohibitive Thus the money spent to subsidize nuclear power is at the expense of the funds required to solve the energy problem with safe alternatives, and consequently, because the research into alternatives will not be effectively carried out, the safe alternatives will not be able to adequately replace the non-renewable forms of energy.

In the 1992 report to UNCED, following was stated:
Nuclear energy has safety risks associated with the entire uranium cycle, from mining through processing to the ultimate disposal of high-level radioactive wastes. In addition, there are safety risks associated with the reactors used to generate electricity from uranium . And the use of fossil fuel to drive conventional thermal generation produces carbon dioxide and waste heat. (Canada's National report UNCED p. 46- 47)
From a domestic consumption point of view, the least environmentally damaging energy option is energy efficiency. (Canada's National report UNCED p. 47)

Despite the above statement, the document concludes::

New, cleaner technologies such as solar energy may help, but the hard fact is that to a large extent we will have to rely on either thermal, hydro, or nuclear energy in the future. In addition, energy projects for both export and domestic supply provide jobs and economic wealth to the country, and are especially important in some regions of Canada" (p. 47. Canada's National report UNCED June, 1992, authors' emphasis)

The Canadian government has invoked the "vicious circle principle" by cutting subsidies to conservation efficiency and renewals. Canada is thus playing an important role in facilitating this not too hidden agenda by using many strategies, devices, doctrines, etc.

CONCLUSION:

The "nukespeak" and the seductive devices, strategies, syndromes used by the Nuclear Industry involve the language of delusion and distortion. Hopefully, through the continued revealing and categorizing of these words of delusion we could, in some small way, counteract the impact of the not too-hidden-agenda of the IAEA, and the rest of the nuclear establishment and their government supporters.

3. MISINFORMATION THROUGH DIVERGENT PRINCIPLES

(from presentation at ECOED, Miseducation through Rhetoric: Implications for Global Education, October, 1992, by Joan Russow, Sessional Lecturer, Global Issues Environmental Studies, Program University of Victoria)

Divergent principle of shelved commitments

This principle involves the making of strong recommendations but failing to summon up the political will to carry out the recommendations.

IN 1972, WE SAID, recognizing our ignorance

Declaration of the United Nations Conference on the Human Environment (1972)

- A point has been reached in history when we must shape our actions throughout the world with a more prudent care for their environmental consequences. Through ignorance or indifference we can do massive and irreversible harm to the earthly environment...
- Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations (Principle 1)
- Man and his environment must be spared the effects of nuclear weapons and all other means of mass destruction. States must strive to reach prompt agreement, in the relevant international organs, on the elimination and complete destruction of such weapons (Principle 26)

IN 1982, WE WERE STILL SAYING,

World Charter of Nature (1982)

- Activities which are likely to pose a significant risk to nature shall be preceded by an exhaustive examination; their proponents shall demonstrate that expected benefits outweigh potential damage to nature, and where potential adverse effects are not fully understood, the activities should not proceed (11 b)
- Activities which are likely to cause irreversible damage to nature shall be avoided (11. a)
- All areas of the earth, both land and sea, shall be subject to these principles of conservation; special protection shall be given to unique areas, to representative samples of all the different type of ecosystems and to the habitats of rare or endangered species (3)

- Every form of life is unique, warranting respect regardless of its worth to man, and to accord other organisms such recognition, man must be guided by a moral code of action (a)
- Knowledge of nature shall be broadly disseminated by all possible means, particularly by ecological education as an integral part of general education. (16)
- Military activities damaging to nature shall be avoided (Principle 20)

NOW IN 1992, WE ARE SAYING AGAIN, with knowledge

Humanity stands at a defining moment in history. We are confronted with a perpetuation of disparities between and within nations, a worsening of poverty, hunger, ill health and illiteracy, and the continuing deterioration of the ecosystems on which we depend for our well-being (Agenda 21, Preamble, 1.1)

Rio Declaration (1992)

- States should effectively cooperate to discourage or prevent the relocation and transfer to other States of any activities and substances that cause severe environmental degradation or are found to be harmful to human health (Principle 14)
- In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation. (Principle 15)

Agenda 21

- The growth of world population and production combined with unsustainable consumption patterns places increasingly severe stress on the life-supporting capacities of our planet (Agenda 21, 5.2)
- Forests worldwide have been and are being threatened by uncontrolled degradation and conversion to other types of land uses... and environmentally harmful mismanagement including...unsustainable commercial logging...and the impacts of loss and degradation of forests are in the form of soil erosion; loss of biological diversity, damage to wildlife habitats and degradation of watershed areas..(Agenda 21, 11.12)
- Despite mounting efforts over the past 20 years,, the loss of the world's biological diversity, mainly from habitat destruction, overharvesting, pollution and the inappropriate introduction of foreign plants and animals has continued (Agenda 21, 15.3)
- Many of the problems have arisen from a development model that is environmentally destructive and from a lack of protection. (Agenda 21. 18.45)
- Unsustainable patterns of production and consumption are increasing the quantities and variety of environmentally persistent wastes at unprecedented rates (Agenda 21, 21.7)
- Environmentally sound waste management must go beyond the mere safe disposal or recovery of wastes that are generated and seek to address the

root cause of the problem by attempting to change unsustainable patterns of production and consumption. (Agenda 21, 21.4)

- Ensure prior assessment of activities that may have significant adverse impacts upon the marine environment (Agenda 21, 17.23b)
- Apply preventive, precautionary and anticipatory approaches so as to avoid degradation of the main environment, as well as to reduce the risk of long-term or irreversible adverse effects upon it (Agenda 21, 17.23)
- ...Taking into account the cradle-to-grave approach to the management (Agenda 21, 20.20)
- to promote a 'culture of safety' in all countries... (Agenda 21, 7.60)
- Develop application of responsible care approach... (Agenda 21, 20.18)
- ...taking into account entire life cycle (Agenda 21, 19.45)
- ...equitable implementation of the polluter pays principle (Agenda 21, 20.39 b)
- Effective prevention requires action through effective monitoring and the enforcement and imposition of appropriate penalties (Agenda 21, 20.20)
- To increase the availability .. in developing countries for utilizing and producing environmentally [safe and] sound renewable energy resources, such as solar, wind geothermal, hydropower and biomass. (Agenda 21, 9.9)
- Indigenous people and their communities shall enjoy the full measure of human rights and fundamental freedoms without hindrance or discrimination (agenda 21, 26.1)

Indigenous people and their communities have an historical relationship with their lands and are generally descendants of the original inhabitants of such lands. In the context of this chapter the term "lands" is understood to include the environment of the areas which the people concerned traditionally occupy. Indigenous people and their communities represent a significant percentage of the global population. They have developed over many generations a holistic traditional scientific knowledge of their lands, natural resources and environment. Indigenous people and their communities shall enjoy the full measure of human rights and fundamental freedoms without hindrance or discrimination. Their ability to participate fully in sustainable development practices on their lands has tended to be limited as a result of factors of an economic, social and historical nature. In view of the interrelationship between the natural environment and its sustainable development and the cultural, social, economic and physical well-being of indigenous people, national and international efforts to implement environmentally sound and sustainable development should recognize, accommodate, promote and strengthen the role of indigenous people and their communities. (Agenda 21, 16.1)

In full partnership with indigenous people and their communities, Governments and, where appropriate, intergovernmental organizations should aim at fulfilling the following objectives: (Agenda 21, 16.3)

- (a) Establishment of a process to empower indigenous people and their communities through measures that include:
 - (i) Adoption or strengthening of appropriate policies and/or legal instruments at the national level;
 - (ii) Recognition that the lands of indigenous people and their communities should be protected from activities that are environmentally unsound or that the indigenous people concerned consider to be socially and culturally inappropriate;
- recommendations

States should effectively cooperate to discourage or prevent the relocation and transfer to other States of any activities and substances that cause severe environmental degradation or are found to be harmful to human health. (Rio Declaration, Principle 14)

In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation. (Rio Declaration, Principle 15)

National authorities should endeavour to promote the internalization of environmental costs and the use of economic instruments, taking into account the approach that the polluter should, in principle, bear the cost of pollution, with due regard to the public interest and without distorting international trade and investment.(Rio Declaration, Principle 16)

Canada violates or ignores international environmental documents to which it has been a signatory while deluding the world community into thinking that it is genuinely concerned about the environment.

At the press conference given by Federal Minister of the Environment, Jean Charest at the UNCED conference in Rio, a representative of the United Nations introduced Charest as being from a country which was truly concerned about the environment. During the question period I indicated that " UNCED should be a time to dispel myths not perpetuate them and that Canada is not an ecologically sound country and that we should be honest with the rest of the world

Evidence that could dispel the myth that Canada is truly concerned about the environment has been occurring for years throughout B.C. in the forest industry, and is occurring currently in the dispute in Clayoquot Sound.

Rather than the courts in Canada insisting on adherence to international environmental documents such as the World Charter of Nature (UN Resolution 37/7, 1982) or to the current Convention on Biological Diversity (1992), Canadian courts condemn those who strive to call for the adherence to international law (environmentalists) , and condone those who ignore International Law. (industry).

For Example, Canada is a signatory of the World Charter of Nature, 1982 (UN resolution 37/7) which states the following:

11. Activities which might have an impact on nature shall be controlled, and the best available technologies that minimize significant risks to nature or other adverse effects shall be used; in particular;
 - a) all activities which are likely to cause irreversible damage to nature shall be avoided;
 - c) Activities which are likely to pose a significant risk to nature shall be preceded by an exhaustive examination; their proponents shall demonstrate that expected benefits outweigh potential damage to nature and where potential adverse effects are not fully understood, the activities should not proceed;

Have governments in Canada since 1982 "avoided" industrial activities such as ecologically unsound "logging practices that have caused irreversible damage to nature.? Have governments in Canada called upon forest companies to not proceed with ecologically unsound practices whose adverse effects are not fully understood?

In 1992, Canada is now a signatory of the Convention on Biological Diversity which notes the following:

that it is vital to anticipate, prevent and attack the causes of significant reduction or loss of biological diversity at source.

also where there is a threat of significant reduction or loss of biological diversity, lack of full scientific certainty should not be used as a reason for postponing measures to avoid or minimize such a threat

Is Canada reducing the loss of biological diversity at the source, when it is prepared to log old growth forests before it has carried out adequate non-arm's length research into the true biodiversity of the old growth forests? Is there not strong enough evidence in place that clear-cut logging has destroyed biodiversity, yet we appear to wait for "scientific certainty" before we are prepared to avoid or minimize such a threat? By that time there may be very little biodiversity left.

At the Press Conference where Mulroney signed the Convention on Biological Diversity in Rio de Janeiro, I asked him " if the signing of this document would mean that the government of Canada would condemn

ecologically unsound practices such as clear-cut logging that destroy biodiversity"; he replied that "he did not want to deal with issues."

If Mulroney is willing to sign a document professing to adhere to the preservation of biodiversity, and if he is not willing to deal with the practices that contribute to the loss of biodiversity, then the Canadian public will have to bring this discrepancy between rhetoric and action to the attention of the international community..

The environmentalists who have continually been striving to preserve the little remaining old growth forests, and to call for the need to identify and do research into biodiversity are the ones who have been adhering to the principles enunciated in the United Nations' World Charter of Nature. They will also be the ones who are calling for the preservation of the old growth areas so that Canada will be able to adhere to the binding principles enunciated in the United Nations Convention on Biological Diversity. Yet it is those who act to prevent "irreversibility" that are prosecuted as criminals, and those who cause 'irreversibility" that are protected by Canadian courts

I have analyzed statements in the following Government of Canada statutes and attempted to extract and categorize general principles underlying these statements:

The Atomic Energy Control Act, R.S. C A-19, S 1
The Emergency Preparedness Act, 1988, C 11.
The Canadian Environmental Protection Act, 1988, C 22.
The Environmental Contaminants Act, 1974-75-76, C 72.
The Fisheries Act, 1977, C 35
The Department of the Environment Act, R.S., C 14 (2nd Supp.), s2
The Government Organization Act 1979, C 13
The Hazardous Products Act, R.S., C H-3, S 1

In all the statutes, which I examined, dealing with either hazardous materials or the pollution caused by hazardous materials, importance is placed on the determination of the safety of the hazardous materials. And it is recognized that in order to determine safety, it is necessary to have information about the materials and their uses. This principle is enunciated in the following examples drawn from the statutes.

a) In section 11 (Disclosure) of the Hazardous Products Act, "disclosure of information is required where the Minister has reason to believe that a product or substance may be dangerous... The Minister may send a written notice to the manufacturer of the product or substance requesting the manufacturer to disclose to the Minister the formula, composition or chemical ingredients of the product or substance and such other information in the possession of the manufacturer as the Minister deems necessary for the purpose of determining whether the product or substance is or is likely to be a

danger to the health or safety of the public.” (the Hazardous Products Act. R.S., CH-3, S 1)

b) Pursuant to 7 (2) Of the Environment Contaminants Act “where the Minister of National Health and Welfare believes that a substance will constitute a significant danger to human health or the environment, the Minister may send a written notice to any person engaged in any commercial, manufacturing or processing activity involving the substance or any member of a classes of substances of which the substance is a member requiring that person to furnish the Minister with such information specified in the notice.” (The Environmental Contaminants Act. 1974-75-76, C 72)

c) Section 33. 1 of the Fisheries Act states the following:
“Every person who carries on or proposes to carry on any work or undertaking that results or is likely to result in
a) the deposit of a deleterious substance in water frequented by fish or in any place under any conditions where that deleterious substance or any other deleterious substance that results from the deposit of that deleterious substance may enter any such water, or
b) the alteration, disruption or destruction of fish habitat shall on the request of the Minister... (a) provide the Minister with such plans, specifications, studies, procedures, schedules, analyses, samples or other information relating to the work or undertaking and with such analyses, samples, evaluations, studies or other information relating to the water, place or fish habitat that is or is likely to be affected by the work or undertaking as will enable the Minister to determine
c) whether there is or is likely to be a deposit of a deleterious substance by reason...d) whether the work or undertaking results or is likely to result in any alternation, disruption or destruction of fish habitat.”
(Federal Fisheries, 1977, C. 35)

e) In section 5 Department of the Environment Act
“The Minister in exercising his powers and carrying out his duties and functions under section 4 shall...
5(ii) ensure that new federal projects, programs and activities are assessed early in the planning process for potential adverse effects on the quality of the natural environment and that a further review is carried out of those projects, programs, and activities that are found to have probable significant adverse effects and the results thereof taken into account”,

f) Furthermore in Section 2 of the Environmental Contaminants Act consideration is given to effects that are persistent and cumulative:

“(iii) the extent to which the substance or any class of substances of which it is a member can become dispersed and will persist in the environment.

(iv) the ability of the substance or of any class of substances of which it is a member to become incorporated and to accumulate in biological tissues and to cause biological change.” (The Environmental Contaminants Act. 1974-76)

8. That the principle is set out in the regulations related to the Atomic Energy Board Act that extreme precautions must be taken in the transport of atomic materials:
 - a) “*(2) Any person who transports or causes to be transported any radioactive material ...” (see Exhibit A for the list of stipulated regulations for atomic materials)
9. That the principle is expressed in the Emergency Preparedness Act that the government has a duty to make extensive provisions for civil emergency preparedness

Divergent Principle of accumulated appeasements

This principle involves the participating in conferences, conventions, round tables that examine a particular issue, knowing that delay dispels criticism

Divergent principle of managed conception

This principle involves the offering of a new vision by destroying of what exists so that it will no longer even be conceived

Principle of destroying what exists to eliminate its conception [to deny its prior existence]

involves the destruction of what exists so that it will not even be conceived

For example, if the old growth forests were destroyed the conception of the old growth forest would be the "managed" forest of industry.

Principle of management of conception of preservation

involves the creation usually through a diorama in museum of what one wants to bring into existence

"A major problem in *settling the question* of "old growth preservation" is defining "old growth" - everyone has his or her own definition. the term "old growth" more likely describes a *biological condition* or forest environment, rather than trees of a specific age classification.

Once it is defined, the biggest problem then is that society must decide on the goal and the strategy. Preservation of land areas should be both *biologically reasonable* and *socially affordable*. Society needs to weigh the costs and benefits of all the options.

One solution could be to leave some of the new forests we are growing long enough to develop the characteristics of old growth stands. (Janna Kumi, Silviculture Research Coordinator, MacMillan Bloedel) [they have eliminated the concept of an old growth forest being an area where there has been no human intervention)

Divergent principle of fulfillment illusion

This principle involves the stating of objectives but knowing that fulfillment is impossible

Divergent Principle of non-enforceability

This principle involves the agreeing to anything providing that it will not be enforceable

Divergent principle of excluded alternative

This principle involves the claiming to consider an alternative but then irreversibly eliminating the alternative during the period of deliberation

3. Talk and log syndrome

ethical implications of violation of the "principle of fair alternative" which ensures that no action should irreversibly destroy an alternative while this alternative is purported to be seriously considered.

In the decision making process alternatives that are purported to be under consideration are being eliminated while the decision making process continues.

Although certain areas have been set aside, while the Commission on Resources and Environment is involving the community, logging will proceed in specific areas.

Divergent Principle of fair unequal access

This principle involves the asserting of equal access while affirming that some have more equal access than others
involves access being determined in a mobility sense rather than a pecuniary sense

Everyone has access; " everyone has the right to sleep under the bridges of Paris but it is only the poor who avail themselves of that right"

Divergent Principle of Misconstrued balance

This principle involves expressing concern about the fairness, consensus and balance, and then failing to make a distinction between vested human interests and ecological concerns

Members on Round table

Divergent principle exclusionary tactics or extreme exclusion

This principle involves the lauding of the consensus process and then ensuring that the extreme views are excluded before the process begins
For example, prior to engaging in the Consensus process for CORE, the so-called different sectors are to meet select delegates; the delegates that reflect the extremes in each group will thus be eliminated as delegates, before the delegates enter into the consensus process

For example, during the public workshops for the Canadian "Green Plan," there were sessions with participants

Divergent principle of predetermine failure of consensus to justify unilateral decision

This principle involves decision making body initiating a process of consensus, which by its composition will not achieve consensus, and then indicating that if the process does not work, the decision making body will make the decision.

For example , in the description of the consensus process for CORE, the premier states:

"The Commission will complete its regional planning process on Vancouver Island within 18 months. If consensus is not possible, after duly considering the Commission's public report, decisions on protected areas and the working forest will be taken by government." (Premier Harcourt, Press Release, January 18, 1992)

Divergent principle of misapplied balance or fairness

This principle involves the extolling of fairness and balance in the remainder while having destroyed and "managed" a large proportion of the whole
involves the destruction of large proportion of whole and then demanding the sharing of the remainder, and extolling the unfairness of the opposition for not being willing to share or to enter into a "balanced" process

Divergent principle of survival rationalization

This principle involves the extolling of the value of the work ethic to justify the causing of harm

Divergent Principle of Pontification (the greener than thou)

This principle involves the undertaking to "solve " a problem that exists externally while ignoring the same problem when it exists internally [thus giving the illusion that the problem does not exist internally]

magnanimity

rather than address the problem locally, the state offers to address the same problem in another state thus giving the illusion that the problem does not exist in the home state

to address external problem presumes that problem does not exist internally
Mulroney at UNCED promised 115 M for "managing forests in developing countries

Divergent Principle of commitment entailing presumption of minimum standard

This principle involves proposing a solution to a problem whose existence depends on a much deeper problem that is not even being addressed.

Brazil states it will include 'environmental education," in the school system, conveying the impression that it has in fact a school system (Lopes, personal communication)

Divergent principle of flaunting the good to disguise the bad

This principle involves the focusing on the only non-destructive part of production while ignoring the serious impacts of the predominantly destructive part of the production.

For example Alcan flaunting Alcan Recycling while destroying displacing cultures and destroying the environment through the production of aluminum

Divergent principle of industry-driving principle

This principle involves the proponent of harm determining what should constitute harm

Divergent principle of misplaced onus of proof

This principle requires opponents of activities that could have potentially significant adverse environmental effects to have to demonstrate harm rather than proponents of the activities having to demonstrate the safety of their activities.

Divergent principle of opportunistic criticism (self servingism

this principle involves the phrasing and using of the criticism of the opposition to discard a term or practices and then replacing it with a term or practices that would be less acceptable to the opposition

Principle of opportunistic criticism: self servingism

involves using the criticism of the opposition to discard a term or practices and then replacing it with a term or practice that would be more despicable to the opposition

statement of the Round table

Sustainable development replaced with "sustainability"

" One of the most important findings of the British Columbia round Table's initial series of public consultations was that the use of the term 'sustainable development' was problematic. AS in the rest of the world, British Columbians had difficulty accepting the Brundtland Commission's definition of this term and the Round Table found that the debate surrounding this definition often detracted from the development of a proactive strategy designed to meet British Columbia's needs. AS s result of the apparent contradiction between 'sustainable ' (meaning capable of being maintained) and "development" (implying expansion and growth), the round Table has chosen to adopt the simpler term of 'sustainability' (meaning a process or a state that can be maintained indefinitely).

Divergent principle of delusion of solution

This principle involves the offering of a solution that is either equally as bad or worse than the problem it was intended to solve

1.4. "Principle of delusion of solution"

Making strong statements and then offering a solution that is worse than the problem, IAEA document

Divergent principle of the dogma of "flamboyant absurdity"

This principle carries the concerns of one's opponents to the point where the regulations governing the opponents concerns should become the standard by which other potentially lesser concerns will be addressed.

For example, the IAEA appears to advocate that, what is considered to be the most dangerous industry, just because it is dangerous, has developed stringent standards, and that they who contribute to possibly the greatest uncontrollable hazard are the ones who should assist the community in dealing with other hazards.

The basic principles for radiation protection and safety in all applications and activities in nuclear science and technology are precautionary and are so well founded in science and so widely accepted that they are now also being regarded as a source of guidance in controlling pollutants and impacts arising from other human activities. Their wider application would undoubtedly contribute towards sustainable development. (p.2)

Divergent principle of "justification through dire consequences of alternatives" device

This device involves the revealing of the dire consequences of the current practices and offering one own practice as the salvation for the problem

In the following statement the IAEA cites the dire consequences of the other alternatives to justify their proposed alternative:

The problem of acid rain, which is linked to emissions from the burning of fossil fuels, has been recognized for decades..... . the

primary concern about the continued and increasing use of fossil fuels is the problem of CO₂ emission and the potential impact on world climate..... World conference on the Changing Atmosphere... need to reduce CO₂ emission (IAEA document, p. 5)
climate change in connection with fossil fuels (p. 9)

Divergent principle of the "benevolent outcome exploitation" strategy

This strategy involves the selection of the outcome which the opposition to the proposed alternative would advocate and the subsequent attempt to demonstrate that the proposed alternative, which the opposition would condemn, would be the best way of achieving that outcome.

In the following statements from the IAEA document, the IAEA focuses on the desired outcomes of reducing acid rain and limiting greenhouse gas to justify the selection of their proposed alternative:

Several governments have already made commitments to reduce carbon emission, while recognizing that this will be hard to achieve except through drastic policy decisions in the energy sector. (IAEA Document, 1992, p.6)

Nuclear power plants in normal operations cause very little environmental detriment and are beneficial when they replace plants which would emit CO₂, SO₂, and NO₂ (p. 12). In this respect they would help to reduce acid rain and limit greenhouse gas emissions (IAEA Document 1992, p. 12)

Divergent Principle of usurpation of opponents desired consequences

This principle involves the commiserating with the opponent's concern and then showing how the opponent's position would deny the concern "Principle of usurpation of opponents desired consequences" involves the selection of the opponents concern and then showing how the opponents position would deny the opponents concern
For example, The Fraser Institute of British Columbia is against rent controls. To support their opposition, they indicate how rent controls would contribute to discrimination (something that the opponent would be concerned about)

Divergent Principle of vested interest altruism or blatant visual misrepresentation

This principle involves the portrayal or depiction of an idyllic state disguising vested interest or ecologically unsound practices, visually or verbally
For example in the development plans presented by the Forest Companies, industry depicts a fawn, a single logger in the Forests and a clear cut the size of a classroom, a blatant case of visual misrepresentation.

At the public viewings sponsored by the company and usually with a concurrent presentation by the Ministry of Forestry, there are usually presentations of plans (verbal-graphic imagery) indicating what is to be done accompanied by visual representations (visual imagery) of what they claim will occur. I have noticed that there is a disjunction between the presentation of plans and the visual representation. In the visual representation are often scenes of fawns in the forest, a logger with a saw in an area that appears to be fully treed, and a photograph of a clear-cut area that gives the impression of being not much larger than a class room. As a member of the public have been initially intimidated by the complexity of the plans and look to the visual representation for clarification and simplification of the information. In the plans there is evidence of large areas of clear cut but in the visual representation there is usually no visual evidence of road blasting, of construction extensive road building, of miles of deforestation caused by clear-cut, of broadcast burns, or of non-productive planted areas that pass for reforestation. I felt that while I had been asked to attend the public process viewings, I do not feel that I have been presented with the real alternatives: I was left with the impression that the companies have been allowed to use whatever visual images they wish in order to inform and communicate with the public, regardless of whether the visual images correspond to what is actually being done. I also noticed that at several sessions the Ministry of Forestry and the Ministry of Fisheries were in attendance with their own visual representation. When they were present they also depicted scenes of wilderness. I felt that I had been visually misled by not only the forest companies but also by the government departments that are supposed to be monitoring the forest companies in the public interest.

2. Another example of visual/verbal misrepresentation is present in the juxtaposition of the actual forests (visual imagery) and the interpretation of what the visual image represents (verbal imagery). On a trip through the Cowichan Valley I noticed an example of a lush second growth forest. On the road in front of this lush second growth, Fletcher Challenge has placed a sign that reads "Fletcher Challenge, naturally seeded, 1920." This juxtaposition between the lush second growth forest and the sign is another example of verbal/visual misrepresentation. Fletcher Challenge neglected to mention on the sign that this lush second growth forest is not the outcome of their current forest practices, and that the only reason that this second growth stand, is so lush is that it was logged at a time when there was minimal construction of roads, when there was no full scale clear-cut, and when there was no prescribed burn and when it was not replanted in off-site monoculture.

Divergent principle of silken transition

This principle involves the expression of deep concern before launching into the real agenda, so that the reader is ready for acceptance

For example

"Surveys have shown clearly the concern of Canadians for their environment: but patterns of behaviour that spring from generations of rising expectations and assumptions of inevitable

economic growth are slow to change. Environmental security and job security often seem to be in conflict.

The key is education: first, to transform public concern into appropriate decision making and action; second, in the longer term, to help new generations to understand the interdependence of ecology and economic development, to acquire the skills to find the balance between them, and to develop the commitment to participate in the search for a more sustainable future.

"Learning for a sustainable Future:" A sustainable Development Education Program. affiliated with the Conference Board of Canada.

Industry Association Contact Meetings - members of the Board of Directors and Conference Board staff held a series of meetings with major industry associations to ask them to promote the program with their member companies. These member companies will be approached for the private sector portion of the program funding in 1992. Association involvement was seen as a critical part of the legitimization process for the companies.

Divergent Principle of entailment of presumed minimum

This principle involves undertaking to address a problem that is dependent upon a more serious problem that is not addressed

Divergent Principle of redefining legally binding terms

This principle involves the recognition that it is important that a concept is legally sanctioned, and then redefining the term that designates the concept to accommodate practices that have been considered to deny the concept

For example, The concepts of " biodiversity the Biodiversity convention being signed, and eventually ratified and legally binding. Industry redefined "biodiversity"

Divergent Principle of redefining legally binding terms

This principle involves the adopting of "environmentally correct" terms, and then redefining the terms to accommodate current practices that would violate the essence of these terms.

For example, The British Columbia Forest Resources Commission has adopted the term "ecologically sound practices" and then proceeds to claim : that "clear cut logging" in most cases was the most ecologically sound forest practice. (Forest Resources Commission Report, 1991)

Miller [the Minister of Forests]concluded by announcing that the Forest Resources Commission has been asked to research and propose a Forest

Practices Code. Its objective will be to ensure that the management of our forest is based on sound ecological practices and achieves the high standards we expect for stewardship (Press Release, January 18, 1992)

In a similar way Industry has adopted the term "old growth," and proceeded to redefine it:

Industry is also redefining "old growth" forests. (Press Release; January 18, 1992) {Note; Miller has recently been suspended for Conflict of Interests}

"A major problem in *settling the question* of "old growth preservation" is defining "old growth" - everyone has his or her own definition. the term "old growth" more likely describes a *biological condition* or forest environment, rather than trees of a specific age classification.

Once it is defined, the biggest problem then is that society must decide on the goal and the strategy. Preservation of land areas should be both *biologically reasonable* and *socially affordable*. Society needs to weigh the costs and benefits of all the options.

One solution could be to leave some of the new forests we are growing long enough to develop the characteristics of old growth stands. (Janna Kumi, Silviculture Research Coordinator)

Divergent Principle of self-serving misplaced categories"

Designation of "North/South dichotomy as being between the North wanting environment and the South wanting development

" developed countries"

statements from "South Group"

iv call for the establishment of a global programme for alleviating poverty in the South and for protecting or rehabilitating the environment

b. the reduction of emission, over an agreed period of time, in line with a country's quota;

(d) The creation of a global system for the transfer, on preferential and non-commercial terms, of environment-friendly technologies that would enable the South to reduce its emission of gases while pursuing a path of economic growth.

p. 1 UNCED subject matter is nothing less than the safety of the planet and the well-being and future of humankind. Its declared aim is to adopt recommendations which, if implemented, may ensure that the world and its resources will satisfy the needs and aspirations of all human beings in an equitable, environmentally sound and sustainable manner.

Divergent Principle of non-effective resolve

This principle involves the criticizing of harm after having cause the harm when one was in a position to prevent it

Principle of non-effective commitment

Involves the proponent of harm waiting until he/she is ineffective to criticize the harm

For example: retired general becomes concerned about what he or she no longer has control over prevention

Divergent Principle of denying-donor

This principle involves donating the disenfranchised and then continuing to deny equitable distribution of resources

1.20. Principle of denial-donor

those who deny the inequitable distribution of resources, use words and actions to donate to the disenfranchised

Mc Millan Bloedel sets up a forest

Divergent principle of readjustment for error (the Green Revolution syndrome, or the perpetuation of the technological fix delusion)

This principle involves the setting up of departments and institutions to determine the means of rectifying the harm after having permitted and continuing to permit harmful practices to occur

Because of this principle, there is the continued condoning of research and development into rectifying the harm done through ecologically unsound practices rather than discontinuing ecologically unsound practices

For example, In Sudbury Canada, the soil has been destroyed for years , and trees have not been able to grow, because of emissions from industry.

Rather than addressing

Divergent Principle of couched hypocrisy

This principle involves talking about the care, or new found wisdom and commitment to prevent harm while continuing to carry out practices that cause harm

Divergent Principle of criticizing as a fault the very thing that the critic is responsible for

"Unfortunately, the present role of the media and of our educational institutions seems to be one that entrenches the status quo. This is partially due to the infrastructures of these institutions and their inability to keep pace with a rapidly changing world. But it is also due in part to the comfort we all feel with the familiar all of us would like the world to operate in a way that is rational, predictable, and understandable. How do we change this attitude: how do we help people make some sense out of the changes occurring all around them;; how do we equip people to not only become comfortable with change but to be agents for positive change." (B.C. Round Table Education Strategy, p.)

Divergent principle of incompatible problem /solution.

Divergent principle of benevolent camouflage

"the two tenets of the program are "positivism" and Both sides

Divergent Principle of "principle enunciation compromise advocacy"

Divergent Principle of non-effective resolve

Divergent Principle of unfulfilled co-option

This principle involves the displaying the language of change while continuing to practice as usual

This principle involves the setting up of principles that the opposition would advocate and then stating that realistically these principles must be compromised

For example, in the "B.C. Round Table: Education Strategy", prepared by private consultants for British Columbia Round Table on Economy and Environment), they enunciate strong principles and then indicate that realistically there will have to be trade-offs.

Sustainability report

- A sustainable British Columbia will have as its objectives: the preservation of biodiversity; the protection of pure water, clean air and uncontaminated terrestrial, wetland, coastal and sea-bottom systems; the stabilization of global climactic conditions; the protection of natural beauty that we value aesthetically and spiritually; and a commitment to a new economic ethic based on making better use of what we have.

A new style of 'doing business' will have to include:

- A new order of urban design that reduces the need for energy-intensive transportation, integrates green space, and enhances our sense of community.
- Forestry and agricultural practices that protect soil, water and nutrient cycles
- Land-use planning that preserves prime agricultural and forest lands and protects wilderness areas and wildlife habitat, while providing, working capacity for development.

- A vibrant and dynamic economy, in which ingenuity is focused on qualitative--rather than quantitative --growth, and in which the full value of environmental assets and the impacts of human activities are considered

*A new harmony with First Nations people in which aboriginal rights and self-determination have been resolved

* Full and satisfying participation in decision-making, with local and individual empowerment

- A social support structure that eliminates the fears of hunger, sickness, alienation and lack of opportunities for education and personal fulfillment
- Health that is measured in degrees of wellness rather than sickness; a standards of living that is measured by quality of life rather than by level of consumption

In summary, we will have realized our absolute dependence on planet earth and will have adopted the ethic of sustainability for our collective survival.

- Limit our impact on the living world to stay within its carrying capacity (its ability to renew itself from natural and human impacts)

- Preserve and protect the environment (conserve life support systems, biological diversity, and renewable resources

8 Hold to a minimum the depletion of non-renewable resources

- Promote long-term economic development that increases the benefits from a given stock of resources without drawing down on our stocks of environmental assets (through diversifying and making resources use more efficient)
- Meet basic needs and aim for a fair distribution of the benefits and the costs of resources use and environmental protection
- Promote values that support sustainability (through information and education)

Applying the Principles

Principles are meant to act as guidelines to shape provincial policy and to test the wisdom of our decisions and actions. However, applying the principles in daily decision-making often involves making difficult choices and compromises. In order to balance environmental, social and economic values fairly, trade-offs between human activities and the principles will be inevitable. (Draft of Education Strategy, (September, 1992),

Divergent Principle of usurped right to criticize

This principle involves the criticizing of proposals for not going far enough by critics who do not even live up to the proposals that they criticize

For example, the Ministry of the Environment of British Columbia returned from the Earth Summit and complained about UNCED being a failure because it did not go far enough (Cashore, 1992, Address given at Post-UNCED Conference). Canada does not even live up to the principles enunciated at UNCED, such as the "precautionary principle," "Anti-dumping principle," or the "life-cycle approach principle"

Divergent Principle of transferred integrity

For example, Steven Owen who was the former Ombudsman of British Columbia, is placed in the controversial position of being the Commissioner of the " Commission on Resources and Environment"

"I'm confident Stephen Owen can lead that process [CORE] in a fair, open and balanced way. The integrity he brings to this position will provide an excellent foundation for the new commission." (Harcourt, Premier of British Columbia (January 18, 1992, in Press Release)

I am extremely pleased that Stephen Owen, with his proven track record for fairness, openness and integrity will lead this initiative. (Harcourt, Premier of British Columbia (January 18, 1992, in Press Release)

Divergent Principle of self-regulation or self-monitoring" or "fox in chicken coop syndrome"

This principle affirms the importance of regulating or monitoring and then allows the proponents of the activity that is to be regulated or monitored, the privilege to regulate or monitor themselves

For example, the (International Atomic Energy Agency (IAEA) has been given the responsibility to monitor the commercial use of nuclear energy, while at the same time they have become promoters of the use of nuclear energy {for further discussion, see Knelman and Russow, "the not-too-hidden agenda of International Atomic Agency (IAEA) at UNCED: Nukespeak, and seductive devices, dogmas, strategies and fallacies}

Divergent Principle of balance of convenience

This principle recognizes the need to prevent irreparable harm while interpreting irreparable harm in terms of balance of convenience

For example, in the updated version of " the Conduct of Civil Litigation in B. C., the following fundamental principle related to injunctions is put forth:

"The remedy [of injunction] of course, is an equitable one. ' The exercise of the equitable jurisdiction is not to be restricted by the straitjacket of rigid rules but is to be based on broad principles of justice and convenience, equity regarding the substance and not merely the facade or the shadow. It moves with time and circumstances. (Norris, J.A.) Equity is not to be presumed to be of an age past childbearing.' (Haman, J) " (Conduct of Civil Litigation in B.C., Chapter 42, August, 1991)

If a remedy of an injunction is an equitable remedy that should move with time and circumstances, perhaps the courts could look to leaders in the international community and to documents from the body of international environmental law and convention for insight into the current time and circumstance. (For further discussion see MacLaren, D. Proceedings from the Royal Society of Canada Conference on Global Issues, 1991)

1. Concerns about the global time and circumstance were expressed by the international community of scientists and scholars at the "Global Environment" conference sponsored by the Royal Society of Canada in Kingston , June, 1991.

Divergent Principle of integration of disparate functions

This principle involves the integrating of the functions of promoter and regulator

For example, International Atomic Energy Agency (IAEA) both promotes the use of nuclear energy and is the regulator of the use of nuclear energy

The International Atomic Energy Agency (IAEA) was initially set up in the 1960's to regulate Nuclear energy; they have, however, become one of the strongest proponents of nuclear energy. A fundamental regulatory principle of the "separation of function" is that "the agency entrusted for regulating a technology cannot be the same agency that promotes the use of that technology"(Knelman, 1975). IAEA , through its UNCED document entitled

"Nuclear Techniques and Sustainable Development." acted as a major proponent, not only of the current use, but of the increased use of nuclear energy. {for further discussion, see Knelman and Russow, "the not-too-hidden agenda of International Atomic Agency (IAEA) at UNCED: Nukespeak, and seductive devices, dogmas, strategies and fallacies}

The seductive devices, strategies and fallacies used by the IAEA all draw upon the fundamental language of 'nukespeak.' Knelman (1986, 1992) has expanded on the euphemistic nature of Nukespeak:
(term first used in Hilgartner S., R. Bell, and R. O'Connor 1982)

The rule is sanitize by euphemism: political euphemism is of course older than nuclear power. How many of us recognize the "elimination of unreliable elements"? There are forbidden words in the language of civil nuclear power. For example, the words "accident", "pollution" or "disease" are never used. Accidents are either "transients", "events", "significant events", "anomalies", "occurrences" or "abnormal occurrences". In the extreme, they become "normal abnormalities", i.e. truth becomes lies. Explosions are "events of rapid disengagement" or "prompt criticality". Waste dumps are "residue areas". Thermal pollution becomes "thermal effects" and pollution becomes "impacts". Disease becomes "health effects". This is a euphemism for cancer and genetic malformations. And missing plutonium, which is the link to clandestine acquisition of nuclear explosives is "material unaccounted for" or simply MUF! (Knelman, 1986.) Other names relating to nuclear accidents are criticality, nuclear excursions, abnormal evolution, normal aberration, plant transients, unnecessary ignition sources. "Nukespeak" is perpetuated through "nuclear acceptance campaigns" by the PR departments of the nuclear establishment, designed to find "palatable synonyms" for "scare words" through the use of "truth squads" in order to remove "undue public concern", create "pro-energy climate" where "technically qualified persons" would agree that nuclear power poses "no significant threat" and could be entrusted for the timely detection of potential abnormalities, or there is "no evidence" of such threat (as though lack of evidence is proof of assertion) and the promises that turned into lies i.e. that nuclear power would be "too cheap to meter" providing society with "boundless energy" and save us from "freezing in the dark"; this is the language of Orwell's 1984, where peace is war and truth is a lie. (Knelman, 1992).

Divergent Principle of misconstrued balance"
Round table

Divergent Principle of functional exclusion"
Given we have 6 official languages at the UN. but after 7 only English and in small work shops

Divergent Principle of mitigated commitment"

Divergent Principle of manifest destiny
for example: in the Museum in British Columbia.

Divergent Principle of benevolent co-option

4. APPEASEMENT OF BENEVOLENCE (THE ENVIRONMENT INDUSTRY)

- The "flaunting and condoning of the vicious circle principle" strategy
This strategy involves the recognition that procedure X will be the best, then the recognition that realistically we have to continue with not X, with the result that research is not done into x so that it can replace not X.

Canada in its report to UNCED appears to be engaging in this strategy:

" Nuclear energy has increased from only 0.05 % of production in 1970 to a high of 16 % in 1988, mostly on account of Ontario's decision (currently under review) to use nuclear power for new additions to its generating capacity.

" Nuclear energy has safety risks associated with the entire uranium cycle, from mining through processing to the ultimate disposal of high-level radioactive wastes. In addition, there are safety risks associated with the reactors used to generate electricity from uranium, and the use of fossil fuel to drive conventional thermal generation produces carbon dioxide and waste heat. (Canada's National report UNCED p. 46- 47)

"From a domestic consumption point of view, the least environmentally damaging energy option is energy efficiency. (Canada's National report UNCED p. 47)

" New, cleaner technologies such as solar energy may help, but the hard fact is that to a large extent we will have to rely on either thermal, hydro, or nuclear energy in the future. In addition, energy projects for both export and domestic supply provide jobs and economic wealth to the country, and are especially important in some regions of Canada" (p. 47. Canada's National report UNCED June, 1992, authors' emphasis)

The "judicially sly comparisons" strategy

"human health risks from severe accidents from nuclear, oil and natural gas are of the same order of magnitude and two orders of magnitude smaller than those from the hydroelectric option.

"all energy sources will need to be used in ways that respect the atmosphere and the environment as a whole" (9.6. Atmosphere)

" b) Ensure prior assessment of activities that may have significant adverse impacts upon the marine environment; (17.23 Marine)

Environmental costs

Adopt policies that minimize if not altogether avoid environmental damage, whenever possible (7.42 a Settlement)

"Ensure that relevant decisions are preceded by environmental impact assessments and also take into account the costs of any ecological consequences" 7.42 b

Irrelevant comparison device

Convenient [insidious] connection device

Several governments have already made commitments to reduce carbon emission, while recognizing that this will be hard to achieve except through drastic policy decisions in the energy sector. (p.6)

Electricity demands will increase

Electricity services are closely related to the quality of life (p7)

Lowest denominator [least damaging] comparison

Nuclear power plants in normal operations cause very little environmental detriment and are beneficial when they replace plants which would emit CO₂, SO₂, and NO₂ (p. 12)

least favourite comparison strategy

comparison between Nuclear vs. Coal annual waste production p 17?

Inflated claims technique

The "Peer collusion review" device

"The IAEA also offers international peer assessment services (underwrites Waste Management Assessment and technical Review Programmed)... (p. 19.

Energetic dispelling of concerns

Condoned violations of

Euphemistic dumping

"the IAEA in 1990 promulgated a Code of Practice on the International trans-boundary Movement of Radioactive Waste as a basis for harmonization of national legislation and policies. The code lays down the conditions and principles for international waste transfers, such as that movement must be made in a manner consistent with the international safety standards, that

there must be prior notification and consent of the sending, receiving and transit States, and that each State involved should have a regulatory authority...(IAEA Document, p. 20
(see section 15 of the Rio Declaration)

"States should effectively cooperate to discourage or prevent the relocation and transfer to other States of any activities and substances that cause severe environmental degradation or are found to be harmful to human health. Principle 14 Rio Declaration
(

Delusion of concern guidelines

Displacement of problem

The claiming to have solved a problem when the problem has been moved to another area
Solution to one environmental problem by displacing it to another area

Allow others to adjust so that you can continue to contribute to the problem
(Maurice Strong Solution)

Carbon budget - where one state is so anxious to continue polluting and not complying with agreements that it arranges to purchase cheap land elsewhere so as to appear to be dealing with the problem

the "Maurice. Strong solution" buy up rainforests as carbon sinks and biodiversity reserves to make up for our auto-dependency and our disregard for local biodiversity to feign compliance with the convention on biological diversity and

Maurice Strong long time industrialist placed in a position to influence decisions about the environment, has proposed that , to assist Canada in complying with the Climate Change Convention Ontario hydro purchase carbon sinks in Costa Rica

Dirty technology transference

World Bank leaked memo proposing that “ between you and me the transfer of dirty technology to the least developed countries makes good economic sense” written by Summers Director of World Bank. When memo released, he indicated that he never thought that anyone would take him seriously.

"Environmental reporting trust us we know that we have failed just let us now monitor ourselves self-regulation

Environmental facade

Polluting industry sets up environment section to mask ecologically unsound practices of firm's main industrial activity

Producers of hazardous, toxic and atomic wastes use an environmental facade behind which they operate.

Prevention technology doing it right the first time

Calling for high government standards to prevent activities that could be harmful to the environment or to human health. High emission and waste pollution prevention standards will facilitate this frame of the environment industry because if standards are high the emphasis will be on developing technology not to clean up previous ecologically unsound practices but to prevent ecological destruction

Examples: non fossil fuel and non-nuclear energy alternatives like solar and wind energy

BUT

Prevention technology used by technological fix clean up technology to legitimize the continued production and consumption (including recycled substances) of toxic, hazardous (including atomic)

Calling for high government standards to prevent activities that could be harmful to the environment or to human health. High emission and waste pollution prevention standards will facilitate this frame of the environment industry because if standards are high the emphasis will be on developing technology not to clean up previous ecologically unsound practices but to prevent ecological destruction. The technology is initially developed to rectify a serious problem but then is used as a justification for continuing the source of the original problem

Example: nuclear detection technology developed to assist in discovering radiation emitted during the Chernobyl disaster, could be used to support the continued use of nuclear energy

Initially ecologically sound technology in one area contributing to ecologically unsound practices in another area

A technology is developed to address one problem but then in the interest of expanding markets an expanded application which could be used to facilitate ecologically unsound practices is suggested

Example: A Technology is developed for the crushing of concrete so that it can be recycled; the manufacturers of this technology in a display show how it could also be used to grind up debris from clear cut logging. the technology could then be used to promote the practices of clear cut logging

Weakening of International resolve through Redefinition of Terms

In the Copenhagen Protocol 1994, the term "consumption" in the expression "the phasing out of consumption and production" has been redefined to not include recycled material and the use of recycled material

Rejuvenating banned substance through development of recycling technology
Ecologically sound practice extended to justify the redefinition of a term which would bring about the elimination of ecologically unsound product

A technology— used to address a particular activity or eliminate a particular substance that has been scheduled for elimination, is used to justify the continued use of the activity or substance.

For example, the blue bottle technology —developed to recycle HFCs whose consumption and production have been scheduled for elimination, has resulted in the redefinition of the term “consumption” to not include the use of recycled material (Co

Coupling technology package by same industry
lobbying for relaxing of standards; coupled with the production of hazardous activity or toxic substance or atomic wastes by a company, and with the production of the technology to clean up the initial activity or substance by the same company

Example; the company that produces military mines for \$3 sells the clean-up technology for \$3000

Usurping of ecologically sound technology (EST) research by those interested in promoting the ecologically unsound technology that the EST was designed to replace

Standards, technical regulations

Regulation: strict government regulations related to emissions

moderate government regulations related to emissions

voluntary compliance with regulations

nature of technology

prevention

anticipatory

mitigate

restorative

transfer of technology

commitment to ecologically safe and sound alternatives

nature of research

waste prevention

waste reduction

nature of substances

nature of activities

contribution to solution

contribution to problem

5.

6. “MORAL IMPERATIVE” OF INCLUSION.: THE ROUND TABLE

7. UNDEFINED TERMS IN SEARCH OF PERPETRATOR

• The "shelter of fragmentation" syndrome

This syndrome involves the dissociating of the problem from a more generic problem by placing the problem in its own isolated category.

In the agenda 21 document, Nuclear wastes are not included in the section of hazardous wastes because atomic wastes has its own section. Nuclear wastes thus seem to appear apart from hazardous wastes and from the strong recommendation associated with hazardous wastes such as:

Governments should intensify research and development activities on cost-effective alternatives for processes and substances that currently result in the generation of hazardous wastes that pose particular problems for environmentally sound disposal or treatment, the possibility of ultimate phase-out of those substances that present an unreasonable or otherwise unmanageable risk and are toxic, persistent and bio-accumulative to be considered as soon as practicable. Section 20 subsection 13c, Agenda 21, 1992)

The "fallacy of obscured cost"

The "fallacy of misplaced faith"

The "flamboyant absurdity" doctrine or dogma

This doctrine or dogma carries the concerns of one's opponents to the point where the regulations governing the opponents concerns should become the standard by which other potentially lesser concerns will be addressed. The IAEA appears to advocate that, what is considered to be the most dangerous industry, because it is dangerous has developed stringent standards, and that they who contribute to possibly the greatest uncontrollable hazard are the ones who should assist the community in dealing with other hazards.

The basic principles for radiation protection and safety in all applications and activities in nuclear science and technology are precautionary and are so well founded in science and so widely accepted that they are now also being regarded as a source of guidance in controlling pollutants and impacts arising from other human activities. Their wider application would undoubtedly contribute towards sustainable development. (p.2)

Canada is playing an important role in facilitating this not to hidden agenda by using many strategies, devices, doctrines, etc. One of which could be the following strategy.

not

IDENTIFICATION OF GROUPS

Who sits on boards

What is source of funding

What political affiliations

2. PHILOSOPHY/IDEOLOGY OF GROUPS

Free enterprise advocacy

Identification of chosen issues

3. THE APPEAL TO "SCIENCE"

Analysis of evidence

Analysis of false modes of reasoning

Affiliations of scientists

Conflict of interest analysis

ENVIRONMENT INDUSTRY

COOPTION OF ENVIRONMENTAL GROUPS

5. CONTENT ANALYSIS

USE OF ... INSTITUTIONAL COLLUSION

round table

4. CASE STUDIES OF ONE OR MORE MAJOR GROUPS

Example Share

"Pest control to protect your environment"

Environment industry

the Environment industry represents a range of "frames" reflecting different approaches to the following facets:

FRAME: DELUSION OF CONCERN INSTITUTIONS

PERI (Public Environmental Reporting Initiative)

CERES Coalition for Environmentally Responsible Economies

Council on Economic Priorities

investor Responsibility Research Center

GEMI Global Environmental Management Initiative (GEMI)

Business Council for Sustainable Development/ International Institute for Sustainable Development

FRAME: DIRECTIVE TERMINOLOGY THAT BECOMES MAINSTREAM TERMINOLOGY

"PROVIDING A BALANCED PERSPECTIVE ON ENVIRONMENTAL POLICIES, PRACTICES AND PERFORMANCE,

Note that the principle of what gets measured gets done. Implications that industry will call for less to be measured, voluntary control, management not prevention

"Company's environmental performance as an essential part of good citizenship"

Environmental reporting ...is an increasingly valuable aspect of a company's environmental management system.

"environmental performance
preparing 3environmental profiles of corporations
two underlying philosophies 91) the merits of 'continuous improvement' and
the principle of 'what gets measured, gets done.:'

"meaningful and credible profile of an organization's environmental
performance

Components include quantitative reporting
qualitative factors (environmental policies
companies will vary in their ability to collect data and explain their
environmental management system.
guidelines are adaptable to different maturity levels
Guidelines allow each company to move at its own pace
guidelines are flexible enough to accommodate the range of activities across
a multitude of industry sectors
Guidelines are structures to integrate reporting commitments to organizational
affiliations such as GEMI, CMA' Responsible Care, API' STEP, EPA's 33/50

Guide to the information that should be included in a balanced environmental
report

Components of PERI Guidelines

1. Company Profile

size of company
number of locations and employees,
the countries in which the company operates
its major lines of business
nature of the environmental impacts of company operations.
name the executive responsible for the report
provide the name of a contact person at the company

2. Environmental Policy

-scope and applicability,
content, goals
date of introduction or revision

3. Environmental Management

-level of management accountability for setting the company's policies and
programs
provide a description of the company's environmental organization, (e.g.
corporate environmental staff and organizational relationships
-indicate ;how policies are implemented throughout the organization and
comment on such items as board involvement and commitment to
environmental matters;
accountability of other functional units of the company;
environmental management systems in place;
TQEM / Continuous Improvement or other company-wide programs that may
embrace environmental performance.
-Identify the resources earmarked for environmental management,
comp0liance and overall environmental performance.
-Describe any formal educational programs in place to keep environmental
staff and management current on their profession and responsibilities

summarize overall corporate environmental objectives, targets and goals, covering the entire program

4. Environmental Releases

Provide information that quantifies the amount of emissions, effluents or wastes released to the environment

Reporting for US Companies may be based on the US EPA Toxic Release Inventory (TRI) data, for instance.

- However, organizations based wholly or partly in countries outside the US may report according to the requirement of the principal government authorities affecting their operations.

- information should be based on global operations with detail provided for smaller geographic sections, if appropriate.

- air emission (e.g. TRI data)

- Greenhouse gas emissions, i.e. carbon dioxide, methane, nitrous oxide and halocarbons

- Use and emissions of ozone-depleting substances;

- Water effluents (e.g. TRI data)

• Hazardous waste (e.g. as defined by RCRA or equivalent)

- indicate the percentage of hazardous waste that was recycled, treated, incinerated, deep-well injected or otherwise handled, either on- or off-site.

Comment on the degree to which hazardous waste disposal vendors (storers, transporters, recyclers or handlers of waste) are monitored or investigated by the company;

• Waste discharges to land (e.g. based on TRI data. Include information on Toxic/

hazardous wastes, as well as solid waste discharges from facilities or the manufacturing process

- Company-wide reduction targets or goals associated with each of the above-listed program elements

- Objectives, targets and progress

extent to which company uses recommended practices or voluntary standards developed by other organization such as the International Chamber of Commerce or the International Standards Organization.

5. Environmental Risk Management

• Environmental audit program and its frequency, scope, number completed over the last two years and extent of coverage.

- indicate whether the audits are conducted by internal or external personnel or organizations

• Remediation programs in place or being planned, indicating locations, and type and scope of activity;

• Environmental emergency response programs, including the nature of training at local levels, its frequency and the extent of the program. Indicate the degree and method of communication extended to local communities and other local companies regarding mutual aid procedures and evacuation plans in case of an emergency; •

Workplace hazards. Indicate the approach taken to minimize health and safety risks in company operations and describe any formal policies or management practices to reduce these risks

6. Environmental Compliance

- the jurisdictions in which any violations occurred
- the nature of noncompliance issues(e.g. reportable, uncontrolled releases, including oil and chemical spills at both manufacturing and distribution operations'
- The scope and magnitude of any environmental impact;
- The programs instituted to correct or alleviate the situation
- fines or penalties incurred over US 25,000 and the jurisdiction in which it was applied

7. Product Stewardship or Product Life-Cycle Management

- Provide information that indicates the degree to which the company is committed to evaluating the environmental impact of its products and processes
- Describe any program activity, procedure, methodology or standard that may be in place to support the corporate commitment to reduce environmental impacts of products.

For example

- Technical research or design, E.G. new products or practices, reformulation of existing products, practices implemented or discontinued for environmental reasons, design for recyclability or disassembly ;
- Packaging reduction, minimization, reuse or recyclability
- materials conservation. Detail the commitment to conservation in the following areas:

Conservation and recycling of materials, use and purchase of recycled materials, and reduction in the use of water or the recycling of water;

implication for global education cynicism because of discrepancy between rhetoric and action

This syndrome occurs when individuals, groups, or institutions sense that a particular direction can be particularly self-serving. In some cases the particular direction has been advocated by individuals, groups or institutions which the JCL s have attempted to discredit, to thwart in any pursuits, prevent access to instruments of change. When the JCL realize the self-serving aspect they embark upon a two prong strategy: the discrediting through misrepresentation and the feigned concern but offering a solution that would counteract the addressing of the concern

Perhaps because the members of the Round table are only recent converts to environmental concerns they are not aware that most concerned members of the global community have been calling for a changed vision and a shift in values and a new world view which encompasses the following, recommendations many of whom have been endorsed by international declarations, covenants, conventions and charters

6. That the principle is repeatedly seen in these statutes that the government has a duty to provide the public with crucial and essential information about the environment

- a) In section 5 of the Department of the Environment Act it is written:
"The Minister in exercising his powers and carrying out his duties and functions ... shall...
(iii) provide to Canadians environmental information in the public interest." (Department of the Environment Act, R.S., R.S., C 14 ,2nd Supp., S 2)
- b) Also in section 19 (6) of Canadian Environmental Protection Act the Minister may disclose information
"where
a) the disclosure is in the interest of public health, public safety or the protection of the environment
and
b) the public interest in the disclosure clearly outweighs in importance any material financial losses or prejudice to the competitive position of the person who provided the information or on whose behalf it was provided." (Canadian Environmental Protection Act, 1988, C 2)
- c) In section 6 of the Government Organization Act, the mandate is given:
"6(iii) to provide to Canadians environmental information in the public interest." (Government Organization Act, 1979, C 13)

7. That the principles are repeatedly enunciated in these statutes that the environment is worthy of protection and that government has a duty to protect the environment and to prevent environmental harm

- a) "It is hereby declared that the protection of the environment is essential to the well-being of Canada." (Canadian Environmental Protection Act, 1988, C 22)
- b) "Whereas the presence of toxic substances in the environment is a matter of national concern." (Canadian Environmental Protection Act, 1988, C 22)
- c) In the Department of the Environment Act, under the division of "Powers, duties and functions of the Minister , it is stated that "the duties of the Minister include providing for
a) the preservation and enhancement of the quality of the natural environment, including water, air and soil quality; and to
2(i) endeavour to protect the environment from the release of toxic substances." (Canadian Environmental Protection Act, 1988, C 22)

d) The duty of the Federal Government is that it shall (a) take both preventative and remedial measures in protecting the environment, (section 2, Canadian Environmental Protection Act, 1988, C 22).

a) "5 (1) c to provide education and training related to civil preparedness or emergencies." (Emergency Preparedness Act, 1988, C 11)

b) "5 (1) e to analyze and evaluate civil preparedness for emergencies and conduct related research." (Emergency Preparedness Act, 1988, C 11)

() **THAT** on December 17, 1994, I made a submission to the Earth Charter Process. In many ways the emerging Charter that had been promoted by Maurice Strong was weaker than commitments made through Conference action plans, and than obligations incurred through treaties, Conventions, and covenants. The Earth Covenant that was being drafted by the IUCN Commission on International Environmental law is certainly a superior document, but it still ignores previous commitments and obligations

EXHIBIT

1994 December 17

CHARTER OF ECOLOGICAL AND EQUITABLE RIGHTS AND RESPONSIBILITIES

(A Draft proposal for submission to the UN deliberations on a UN Earth Charter)

Compiled by Joan Russow, Ecological Rights Association

The Charter draws upon obligations undertaken by states through UN resolutions such as the "World Charter of Nature", globally agreed to documents such as the United Nations Conference on Humans and the Environment (Stockholm, 1972), The Rio Declaration (UNCED, 1992) and Agenda 21 (UNCED, 1992) and the legally binding documents such as the Vienna Convention on Ozone (1986), the Montreal Protocol (1987), The Basel Convention (); (Convention on Environmental Impact Assessment in a trans-boundary (1994) Convention on Biological Diversity (UNCED, 1992, in Force, 1993) and the Convention on Climate Change (UNCED, 1992, in force 1993), and the Law of the Sea (in force 1994). This Charter also draws upon statements from international NGO resolutions, such as the Women's Action Agenda. In addition, this Charter also proposes additions that complement existing obligations or that are necessary so that compliance is possible, such as those proposed in the UN Proclamation for Transferring Rhetoric into Action.

NOTE 1: Article 18 of the Vienna Convention Treaty stipulates that if a state has signed a treaty there is an "obligation not to defeat the object and purpose

of a treaty prior to the entry into force; thus an obligations could be placed on states that have signed but not ratified international Conventions and Treaties.

Note 2: Acknowledgment that International obligations must be fulfilled as being not the maximum but the minimum standards to follow (recommendation from the Scientific Panel, B.C., CANADA)

Note 3: This document has been prepared for the purpose of indicating what has already been agreed to internationally through various international instruments. The sections taken from international documents is documented. Where the international documents do not appear to address the issues, then international NGO resolutions and treaties have been included with appropriate citations. Where the ERA has not been able to find the documents to address the issues, the ERA has proposed wording; in this case all the non-documented statements are from an Earth Charter prepared by the ERA Ecological Rights Association in 1991, and circulated at the New York Prep Com for UNCED and at the Earth Summit and the Global Forum in Rio, in 1992.

GLOBAL RECOGNITION OF THE URGENCY OF GLOBAL SITUATION

Humanity stands at a defining moment in history. We are confronted with a perpetuation of disparities between and within nations, a worsening of poverty hunger, ill health and literacy and the continuing deterioration of the ecosystem on which we depend for our well-being (Agenda 21, UNCED)

CONDEMNATION OF TRADITIONAL CONSUMPTION PATTERNS OF DEVELOPMENT

[one of the most serious problems now facing the planet is that associated with historical patterns of unsustainable consumption and production, leading to environmental degradation, aggravation of poverty and imbalances in the development of countries.] (4.3 Changing consumption patterns, Agenda 21)

We have come to realize that the traditional consumptive patterns of development have contributed to poverty, to the inequitable distribution of resources, to overconsumption, to the violation of human rights and to the potentially irreversible degradation of the ecosystem (ERA Ecological Rights, Alternative Earth Charter)

We demand recognition of the causes of economic and ecological crises arising from patterns of Production and over-consumption in the rich North. This causes depletion of the world's resources, especially in the South, with all the accompanying negative ecological, social, economic and political consequences. (Statement from the Women of the South, Women and Sustainable Development Conference, 1994)

We demand recognition of the causes of economic and ecological crises arising from patterns of Production and overconsumption in the rich North. This causes depletion of the world's resources, especially in the South, with all the accompanying negative ecological, social, economic and political consequences. (Statement from the Women of the South, Women and Sustainable Development Conference, 1994)

Policies must therefore be changed. these policies affect basic economic, technological and ideological structures. The resulting state of affairs will be deeply different from the present. the ideological change is mainly that of appreciating life quality (dwelling in situations of inherent value) rather than adhering to increasingly higher standards of living... (from principles of deep Ecology)

There is no rejection of the usefulness of science and technology but only of their mis-application and assumption of omnipotence, assumed elitism and flawless rationality which are barriers to ecological conservation. The coin of sustainability has two faces, one is ecology and the other is equity. Both must be simultaneously to serve to achieve a sustainable future

ACKNOWLEDGMENT OF THE NEED FOR ACTION

We have come to realize that the threats to the biosphere which sustains all life on this planet have increased in rate, magnitude and scale that inaction is negligent. The international community has enough information about the pending state of ecological irreversibility that it must act immediately. (affirmed by the NGO Earth Charter, Global Forum)

UNDERTAKING OF TRANSFERRING AGREED TO PRINCIPLES TO STATE PRACTICES

The principles set forth in the present Charter shall be reflected in the law and practice of each State, as well as at the international level (World Charter of Nature)

ENSURING THE INHERENT WORTH OF NATURE

ensuring that every form of life is unique, warranting respect regardless of its worth to man

[human], and to accord other organisms such recognition's, man [human] must be guided by a moral code of action (World Charter of nature) (World Charter of Nature)

The well-being and flourishing of human and non-human life on Earth have value in themselves (synonyms: intrinsic value, inherent value). These values are independent of the usefulness of the non-human world for human purposes. Richness and diversity of life forms contribute to the realization of these values and are also values in themselves

All species of plant and animal life are equal and thus no one species (including humanity) should be accorded more rights over another. Humanity should not govern nature, the earth's rhythms and processes should govern humanity. Humanity should not impose itself on but empathize with nature.

RECOGNITION OF INTERCONNECTEDNESS WITH NATURE

Humankind is a part of nature and life depends on the uninterrupted functioning of natural systems which ensure the supply of energy and nutrients (World Charter of Nature)

Humans are a part of Nature not apart from Nature and thus interspecies symbiosis is a universal phenomenon; humans cannot escape natural laws

PRINCIPLE OF COOPERATION WITH AND NON-DOMINATION OVER NATURE

Humanity's role is to understand and work with the rest of nature, not control, manage, dominate or conquer it

RECOGNITION OF DEPENDENCY ON NATURE

All survival ultimately depends on the integrity of ecosystems including its global form, the biosphere

RECOGNITION OF LIMITS TO GROWTH

There are real limits to consumption, population and pollution. Although their precise quantification is uncertain, there are implications of their imminent approach

RESPECT FOR ESSENTIAL PROCESSES

Nature shall be respected and its essential processes shall not be impaired (World Charter of Nature)

ACKNOWLEDGMENT OF URGENCY OF CONSERVING AND PRESERVING NATURE

Humans can alter nature and exhaust natural resources by their actions or the consequences and, therefore, must fully recognize the urgency of maintaining the stability and quality of nature and of conserving natural resources and preserving nature (World Charter of nature)

ACCEPTANCE OF NEED FOR MORAL CODE OF ACTION IN RESPECT OF NATURE

ensuring that every form of life is unique, warranting respect regardless of its worth to man [humans] , and to accord other organisms such recognition's, man [human] must be guided by a moral code of action (World Charter of nature)

ENUNCIATION OF THE PRIMACY OF THE ECOSYSTEM

Ensuring that in all decisions made about the environment that the ecosystem be given primacy

QUALIFICATION OF DEVELOPMENT (ALTERNATIVE EXPRESSION FOR "SUSTAINABLE DEVELOPMENT" OR "SUSTAINABILITY")

Equitable, and ecologically sustainable use (Adopted by the IUCN, annual General Meeting, 1994)

ADHERENCE TO THE ANTICIPATORY PRINCIPLE

Mindful of the need and importance to develop anticipatory policies and of preventing, mitigating and monitoring significant adverse environmental impact in general and more specifically in a trans-boundary context (Convention on Environmental Impact Assessment in a trans-boundary Context, 1994)

INVOCATION OF THE PRECAUTIONARY PRINCIPLE

where there is a threat of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing measures to avoid or minimize such a threat (from the Biodiversity Convention)

ENUNCIATION OF THE PRINCIPLE OF DOUBT

Activities which are likely to pose a significant risk to nature shall be preceded by an exhaustive examination; their proponents shall demonstrate that expected benefits outweigh potential damage to nature, and where potential adverse effects are not fully understood, the activities should not proceed (World Charter of Nature)

ENUNCIATION OF THE "CAUTIONARY" PRINCIPLE

Every proponent of an intervention in the ecosystem must demonstrate that the intervention will not cause harm to the environment or will not create ecologically unsound wastes

SHIFT IN THE ONUS OF PROOF

the proponents of an intervention shall demonstrate the safety of the intervention rather than the opponent having to demonstrate the harm of the intervention

Reverse-onus principle recommended by the Canadian Minister of Environment, Sheila Copps (1994)

ADOPTION OF "PREVENTION TECHNOLOGIES"

Prevention technologies — technologies that emphasize "protecting, conserving and sustaining the environment from the beginning, and thus avoiding the cycle of rectification of error.

NON INTRODUCTION OF HAZARDOUS PRODUCTS IN THE ENVIRONMENT

the onus of proving the non-hazardous nature of the product will be on the proponent of this new type of product [after a full life cycle analysis of all the potential environmental harm by non-vested interest parties]

ENVIRONMENTAL ASSESSMENT REVIEW

Introduce appropriate procedures requiring environmental impact assessment of its proposed projects that are likely to have significant adverse effects on Biological diversity with a view to avoiding or minimizing such effects, and where appropriate, allow for public participation in such procedures (Article 14, 1A, Convention on Biological Diversity)

ASSERTION OF THE AVOIDANCE OF ACTIVITIES

Activities which are likely to cause irreversible damage to nature shall be avoided (World Charter of Nature)

UNDERTAKING OF INCLUDING ENVIRONMENTAL COSTS AND ECOLOGICAL CONSEQUENCES

Governments,...should develop procedures for monitoring the application of the cradle to grave approach, including environmental audits (AGENDA 21, 20.20 e)

Ensure that relevant decisions are preceded by environmental impact assessments and also take into account the costs of any ecological consequences (AGENDA 21, 7.42)

Ecological values are of a class not readily quantified particularly in economic units but must be taken as a given, in that all life is dependent on sustaining the biosphere, the exclusive life-support system

AFFIRMATION OF INTERGENERATIONAL EQUITY

Reaffirming that man [humans] must acquire the knowledge to maintain and enhance their ability to use natural resources in a manner which ensures the preservation of the species and ecosystems for the benefit of present and future generations [human and non-human]

(World Charter of Nature)

to conserve and sustainably use biological diversity for the benefit of present and future generations, (preamble, Convention of Biological Diversity)

the use of components of biological diversity in a way and at a rate that does not lead to the long-term decline of biological diversity, thereby maintaining its potential to meet the needs and aspirations of present and future generations.(definition, Biodiversity convention)

COMMITMENT TO PRESERVE NATURAL HERITAGE FOR FUTURE GENERATIONS

Considering that parts of the cultural or natural heritage are of outstanding interest and therefore need to be preserved as part of the world heritage of [humankind] as a whole (Convention for the Protection of the World cultural and Natural Heritage, preamble, 1972).

Considering that in view of the magnitude and gravity of the new dangers threatening them, it is incumbent on the international community as a whole to participate in the protection of the cultural and natural heritage of outstanding universal value... (Convention for the Protection of the World cultural and Natural Heritage, preamble, 1972)

COMMITMENT TO RESPECT OF BASIC HUMAN RIGHTS OF WOMEN

Knowing that the major causes of environmental degradation are industrial and military pollutants, toxic wastes, and economic systems that exploit and misuse nature and people, we are outraged by suggestions that women's fertility rates (euphemistically called population pressures) are to blame,

Recognizing that this analysis, if unchallenged, lays the ground work for these-emergency of top-down, demographically-driven population policies and programs that are deeply disrespectful of the basic human rights of women as guaranteed in the Convention on the Elimination of all forms of Discrimination Against Women. Knowing that it is the number of people plus their consumption of resources plus their wastes that determine their environmental impact, we note that a person in the industrialized world has a far greater negative impact on the environment that a person living a poor country,

Aware that the right to reproductive health and choice is a basic human right of all individuals, we point out that the World fertility Survey estimates that there are 500 million couples who wish to plan their family size but have no access to the means to do so

Fearful of the threat to women's lives by the HIV pandemic and recognizing that women's ability to protect themselves from AIDS and other sexually transmitted diseases and to determine when-and-if to have children is a prerequisite for women's health, self-determination, and empowerment

We condemn any attempt to deprive women of reproductive freedom or the knowledge to exercise that freedom.

We demand women-centred, women-managed comprehensive reproductive health care and family planning including the right to prenatal care, safe and legal voluntary contraceptive and abortion, sex education and information (WAG)

We urge governments, multilateral and donor agency to increase investments in comprehensive reproductive health services and to include men as beneficiaries of family planning education and services. Family support services should include child care and parental leave.

We call on policy-makers to recognize that raising the economic, health, education, and social status of women are essential to ending environmental degradation. (Women's Action AGENDA)

COMMITMENT TO NON-TRANSFERENCE OF HARMFUL SUBSTANCES AND ACTIVITIES

States should [Shall] effectively cooperate to discourage or prevent the relocation and transfer to other States of any activities and substances that cause severe environmental degradation or are found to be harmful to human health (Rio Declaration)

CANCELLATION OF DEBT FROM POOR NATIONS

In full knowledge that the industrialized nations have been the net beneficiaries of exploitation of the abundant natural resources of poor nations,

Observing the disastrous social, environmental, and economic consequences of international lending practices and current terms of trade between industrialized and non-industrialized nations,

Concerned about the negative impact on the poor, especially women and children, of the International Monetary Fund and World Bank structural adjustment policies

Appalled by the flow of capital from poor nations to the banking systems of rich nations, depriving them of funds for needed domestic, social, economic, health and education programs

Recognizing the grievous consequences of this practice for poor families in the developing countries and for the natural resources upon which we all depend,

We demand immediate official foreign debt cancellation. ... (Women's Action Agenda)

AFFIRMATION OF POSITIVE-DUTY-TO PROTECT-INDIGENOUS-LANDS PRINCIPLE.

recognition that the lands of indigenous people and their communities should be protected from activities that are environmentally unsound or that the indigenous people concerned consider to be socially and culturally inappropriate (Agenda 21, 16.3. ii)

COMMITMENT UNDER THE UN CONVENTION OF HUMAN AND ENVIRONMENT TO ELIMINATE WEAPONS OF MASS DESTRUCTION

Man [Humans] and their environment must be spared the effects of nuclear weapons and all other means of mass destruction . States must strive to reach prompt agreement in the relevant international organs on the elimination and complete destruction of such weapons (UNCHE, 1972 Principle 26)

CONDEMNATION OF ENVIRONMENTAL IMPACT OF MILITARY ACTIVITY

Realizing the disastrous environmental impact of all military activity, including research, development, production of weaponry, testing, maneuvers, presence of military bases, disposal of toxic materials, transport, and resources use (Women's Action Agenda)

PHASING OUT THE MINING OF URANIUM AND CIVIL NUCLEAR POWER

We urge that new nuclear research, development, production, and use be stopped, that uranium mining be halted, and that nuclear power production and use be phased out and replaced by environment-friendly energy sources, (Women's Action Agenda)

PHASING OUT OF FOSSIL FUEL AND NUCLEAR ENERGY

to establish a time-table for phasing out fossil fuel and nuclear energy and for the rapid development of solar and other forms of non-polluting energy, and for more efficient energy use; (Nobel Laureate Declaration, UNCED, 1992)

TRANSFERENCE OF THE MILITARY BUDGET TO ECOLOGICALLY SOUND ACTIVITIES AND EMPLOYMENT

We urge an immediate 50% reduction in military spending with the money saved reallocated to socially useful and environmentally friendly purposes. ...(Women's Action Agenda)

Be if further resolved that a significant proportion of the global military budget be transferred to achieve social justice, to protect human rights, to preserve ecological heritage, to create ecologically safe and sound employment. (UN Declaration for Translating Rhetoric into Action)

RIGHT TO KNOW PRINCIPLE

Information is a necessary component of sustainability
"the obligation to survive gives us the right to know" (R. Carson)

(b) identifying, preserving and preventing the loss or reduction of Biological Diversity
[wording in part from the Convention on Biological Diversity]

(b 1) mitigating climate change by addressing anthropogenic emissions by sources and removals by sinks of all greenhouse gases not controlled by the Montreal Protocol, and measures to facilitate adequate adaptation to climate change [wording from the Climate Change Convention]

(c) Achieving the goal of zero pollution in the Province

(e) applying the principles of pollution prevention as the foundation of environmental protection
[from definition of "pollution prevention"]

(a 0) the prevention of the use, generation and release of any substance into the environment in such a manner or quantity as to cause pollution [repeated from 41 1)

(a) the elimination of the use of polluting substances

(b 0) the substitution of polluting substance with non-polluting substances

(b) the substitution of polluting substances with less polluting substances

(c) the reduction in the introduction and use of [non-renewable] resources and polluting substances

(d) the elimination and reduction in the generation of polluting substances

[e, f, g removed because not deemed appropriate for prevention; Discussion Environmental Group, February 19]

(f0) Confirming the responsibility of government to set up a non-vested interest board or panel with varying levels of expertise and experience to do "arms-length" research into the true environmental impacts of substances and activities by carrying out "life cycle analysis" (recommendations from various chapters of UNCED Agenda 21) (Suggested Environment meeting, February 19)

(f) Confirming the responsibility of producers for sound environmental stewardship of products through all phases of a product's life;

(g) ensuring the comprehensive and integrated consideration of environmental and socioeconomic effects in public policy-making in British Columbia. [Deemed to be inconsistent with the overriding purpose of the Act] Ensuring that in all decisions made about the environment that the ecosystem be given primacy (Suggested Environment meeting, February 19)

(h0) International obligations must be fulfilled as being not the maximum but the minimum standards to follow (proposed, Discussion, February 19)

(h) Recognizing that British Columbia residents have an interest in and a responsibility of minimizing their impact upon the regional, national and global

environment and global environmental well-being (Suggested Environment meeting, February 19)

(i) using the knowledge and experience of British Columbia residents in the formulation of decisions affecting the environment,

(j) confirming the responsibility of polluters to pay for the costs of their actions (also recommended in Agenda 21) but also recognizing that no pecuniary payment of costs for environmental destruction can ever fully redress the loss to the environment, and reaffirming that the prevention of pollution and environmental destruction should be by using "prevention technologies"

(k) ensuring that every activity or substance that could prevent the protection, conservation and sustainability of the environment will be included under this Act, regardless of whether the activity or substance is presumed to be covered under another Act (proposed, February 19)

(l) ensuring that no citizen will be prosecuted for advocating or acting to promote the purposes of the act (Suggested, February 19)

(m) promoting the research into the development and introduction of renewable, non-polluting (protection technologies)

(n) ensuring that compensation can never be used as reason for not exercising the duty under the act to protect, conserve and sustain the environment (proposed, Discussion, February 19)

(o) agreeing that any compensation given shall be assessed on the basis of past environmental performance and environmental costs and subsidies, and that any awarded money shall be (used by the compensated party to create employment within B.C.) placed in a job creation fund (Suggested, Discussion, February 20)

(p) ensuring the maintenance and enhancement of the quality of the environment (moved from section 2.a, February 20)

2. To achieve the purposes of this Act, all persons who exercise functions and powers under this Act shall have regard to the importance of the purposes of this act ((proposed, February 20)

(a) the maintenance and enhancement of the quality of the environment

(b) the actual or potential effect of an activity or natural process on the whole of the environment, including its actual or potential effect on the health and safety, and the economic, cultural and social well-being of people and communities

(c) the potential costs and benefits of any objective, policy, or proposal to the environment

Scope

(1) For the purposes of this Act, introduction of a substance into the environment means depositing the substance on or in or allowing or causing the substance to flow or seep on or into any land or water or allowing or causing the substance to be emitted into the air and includes indirect means of introduction into the environment

(1*) For the purpose of this Act, the impact of an activity on the environment means the engaging in any activity which could prevent the protection, conservation and sustainability of the environment will be included under this Act, regardless of whether the activity or substance is presumed to be covered under another Act (proposed, February 19)

2. Except where this Act or the regulations specifically provides to the contrary, this Act applies to the whole environment of British Columbia {The onus of proof for exclusion from the Act must reside in the proponent for exclusion (proposed, February 20)}

3. Where there is conflict between this Act, its regulations or an authorization under this Act and any other act or regulations thereunder, this Act its regulations and authorizations issued or subsisting under this Act apply, except when provisions in other Acts or regulations contribute to the fulfillment of the purposes of the Environmental Protection Act better than those contained in this Act

- (a) where this Act or its regulations provide to the contrary, or
- (b) as may be prescribed by the Lieutenant Governor in Council

4. Nothing in the Soil Conservation Act shall be taken to prevent the establishment within a local authority of any facility for the disposal of waste in accordance with this Act providing that the establishment is deemed to fulfill the purposes of the Environment Protection Act. (Proposed, February 20)

5. The Crown is bound by this Act, except where this Act or the regulations specifically provide to the contrary

[Not yet commented on rest of section]

Part 2 Environmental Bill of Rights

Public Trust

30. (1) Every resident of British Columbia has a right to protect the environment and the public trust from any pollution, impairment or destruction

(2) The government, as trustee, has a duty to conserve and protect the environment of British Columbia

3. Citizens of British Columbia has the right to have the environment conserved and protected (Suggested Environment meeting, February 19)

4. Citizens of British Columbia have to right to expect that no person shall use generate or release , waste or recyclable maters, or any other substance (including fugitive gas or leachate) into the environment in such a manner or quantity as to cause pollution

[moved from 41 (1) (Suggested Environment meeting, February 19)

5. Citizens of British Columbia have the right to expect that the government will live up to its obligations (Doctrine of Legitimate Expectation)

6. Present and future generations of British Columbia have the right to an ecological heritage (Suggested Environment meeting, February 19)

7. ensuring that no citizen will be prosecuted for advocating or acting to promote the purposes of the act (Suggested Environment meeting, February 19)

Right of action

31. (1) The Attorney General or any resident of British Columbia may commence an action in the Supreme Court against any person who has polluted or otherwise degraded the environment and the public trust or who is likely to do so.

2. A person may commence an action under subsection (1) without having to establish that there is , has been or is likely to be an infringement of an authorization issued under this Act or an approval, permit, licence, standard, regulation, rule or order issued by or under an Act listed in Schedule A.

3. A person who commences an action under subsection (1) shall provide notice of the proceedings to the Attorney General and the Minister.

4. This section does not abrogate those common law rights that would normally be available to a plaintiff to commence an action.

5. the need for intervener funding

Standing

32 A person may commence an action under section 31 without having to show that he or she has

- (1) any greater or different right, harm or interest than any other person; or
- (2) any pecuniary or proprietary right or interest in the subject matter at issue.

Burden of proof.

33.

(1 a) Every proponent of an intervention in the ecosystem must demonstrate that the intervention will not cause harm to the environment or will not create ecologically unsound wastes

If the proposal involves anything that could be hazardous, 0 emissions and waste must apply; if the proposal involves ..lowest achievable discharge rate should apply (February 19, discussion)

(1 b) the plaintiff shall establish a prima facie case showing that the defendant's proposed activities is likely to pollute or degrade the environment
(1) the plaintiff shall establish a prima facie case showing that the defendants activities has polluted or degraded the environment or is likely to do so
(1 c. In a prosecution for a contravention the burden of proving compliance is on the defendant [Section 46, ss 4]

2. Where a prima facie case under subsection (1) is established, the defendant may rebut the prima facie case by showing that there is no feasible and prudent alternative to the defendant's action

[If so there must be some criteria for determining feasible and prudent alternatives in the light of the purpose of the Act; "providing prevention, conservation and sustainability of the environment" determined by an advisory, non-vested interest board or panel with representation from varied areas of expertise and experience]

3. It is a defence to an action commenced under this Act that the defendant's action is authorized under this act or an Act listed in Schedule A, unless the plaintiff can establish, on balance of probabilities, that the standard is inadequate to protect the environment and that the defendant's action has caused, or is likely to cause, severe or irreparable contamination or degradation of the environment.

The burden of proof must be on the defendant to demonstrate that the defendant's action has not caused or is not likely to cause, severe or irreparable contamination or degradation of the environment (Discussion, February 19)

Limitation Period

34. The limitation period for an action under section 31 of this Act is postponed and time does not commence until the plaintiff becomes aware, or ought reasonably to have become aware, of the identity of the defendant and of the material facts surrounding the claim

Appointment of minister's environmental mediator

37 (1) Subject to section 140, the Minister may, Where he or she deems it advisable where it is deemed advisable and where the conflicting parties concur, appoint an environmental mediator acceptable to the parties to mediate between persons involved in an environmental conflict.

(2) when a mediator is appointed under subsection (1), the mediator shall, within 6 weeks after completion of the mediation, report to the results of the mediation to the Minister and the parties

38 (c) award damages to (iv) any person who has a concern for the environment

39 ...licence, standard, regulation, rule or order issued under an Act listed in Schedule A affects the environment and rights of a person, any person shall be furnished with a written statement of the decision setting out....(c) any dissenting opinions (Discussion, February 19)

[Further comment to come on subsequent sections]

Since the first United Nations Conference on the Environment in Stockholm in 1972, we have come to realize that the traditional patterns of development have contributed to poverty - denying more than a quarter of the world's population adequate living conditions — to the inequitable distribution of resources to overconsumption, to the violation of human rights, and to the potentially irreversible degradation of the ecosystem.

WE DECLARE THE FOLLOWING PRINCIPLES TO GUIDE HUMANITY TO AN EQUITABLE AND ECOLOGICALLY SOUND FUTURE:

1. The ecosystem of which we are a part shall be protected and preserved, ecologically unsound patterns of development shall be condemned and the inequity of development must be addressed and rectified
2. Development activities that benefit the few while compromising the biological inheritance and quality of life of the many must be condemned as being inherently wrong
3. Development activities that compromise the biological inheritance and quality of life of the many must be condemned as being inherently wrong
4. International ecological standards should be in place so that no short term individual pursuit of self-interest, or short sighted national or international regulations (GATT) could jeopardize the environment. The purpose of these standards are to address the individual and multinational pursuit of self-interest and consumptive and exploitative use of the environment and not to penalize local communities that wish to function in an interdependent way within the ecosystem. The economic development necessary to eliminate poverty shall not be a mandate to abuse the environment for either short-term gain or economic growth alone. Principle must drive industry not industry driving principle.
5. Environmental processes do not recognize national boundaries; therefore states shall not have the sovereign right to exploit resources within their territories in isolation from the global ecological needs of the Earth
6. The continued build-up of the military complex must cease, and the use of military force as a means of resolving conflict must be rejected. A radical reduction of the military budgets of the world must occur and the funds released for ecological and humanitarian purposes. Peace is not merely the absence of war but the pursuit of environmental, social justice, economic, spiritual and cultural well-being.
7. 8. the decision making process should be clearly defined, transparent, accessible and equitable. Criteria in decision making should be revealed, and the public and affected communities should be involved at the time of the formulation of the terms of reference and through the process.
9. The international community must condemn and disallow the exporting of products deemed to be unsafe in a state where there are advance testing

procedures to other states with less advanced testing procedures. Since the first United Nations Conference on the Environment in Stockholm in 1972 we have come to realize that the threats to the biosphere which sustains all life on this planet have increased in rate, magnitude and scale that inaction is negligent. The international community has enough information about the pending state of ecological irreversibility that it must act immediately (proposal for NGO Earth Charter, Rio, June, 1992)

The precautionary principle shall be extended to require those who wish to intervene in the ecological commons to have to justify their intervention and demonstrate the safety of their intervention. The full environmental costs shall be considered in any proposed development project. (NGO Earth Charter, Rio, June, 1992)

CHARTER OF ECOLOGICAL AND [EQUITABLE] RIGHTS AND RESPONSIBILITIES

Compiled by the ERA Ecological Rights Association
Contact: Joan Russow, 1230 St. Patrick St. Victoria, B.C. V8S 4Y4, CANADA,
Ph. 604-380-2563 or FAX 604-385-0068

Date: Tue, 20 Dec 1994 07:57:33 +0200 (IST)
From: Enosh Environmental Systems - Jay KW
<enosh@zeus.datasrv.co.il
To: jrussow@coastnet.com
Subject: Re: ERA-Earth Charter
Mime-Version: 1.0

**Good work... I will continue to look it over...
I would also like to help with proof-reading
before final submission. Please let me know
if that would help.**

Best wishes at this season,

Jay.

Jay Kaplan-Wildmann
Enosh Environmental Systems
19 Hayetzira Street, Ramat-Gan 52521 Israel
tel 972-3-7514303
fax 972-3-7514320
internet enosh@datasrv.co.il

Date: Tue, 20 Dec 1994 13:38:00 -0500 (EST)
From: Jim Lewis TAL 904/488-9334 <LEWIS_J@dep.state.fl.us
Subject: Re: Earth Charter

Your e-mail on the earth charter was a bit difficult to read since the underlined, bold and italics don't make it through. Maybe you

could resend with *underline* BOLD and -struck- more clearly marked?

Thanks. I'm very interested in the issue.

X-POP3-Rcpt: jwight@island
Date: Tue, 20 Dec 1994 09:11:12 -0500
From: Hcipri@aol.com
Subject: Earth Charter
Status: O

We saw your mailing concerning the Earth Charter. If there are any questions concerning water quality or water usage, please contact us. We are a small consulting firm dealing with ground-water investigations and cleanups. We also work with several environmental attorneys who may also be interested in helping with the charter.

Hydrotechnology Consultants, Inc.
77 Bayberry Road
Princeton, New Jersey 08540
Tel. (609) 466-9628
FAX (609) 466-3634
E-mail: hcipri@aol.com

X-POP3-Rcpt: jwight@island
Date: Tue, 20 Dec 94 10:22:43 -0800
Errors-To: pdh@u.washington.edu
Reply-To: consbio@u.washington.edu
Originator: consbio@u.washington.edu
Sender: consbio@u.washington.edu
Precedence: bulk
From: mark gallyoun <tncshtf@char.vnet.net
To: Multiple recipients of list <consbio@u.washington.edu
Subject: Re: ERA-Earth Charter
X-Listprocessor-Version: 6.0b -- ListProcessor by Anastasios Kotsikonas
X-Comment: Supports discussions in conservation biology.
X-To: consbio@u.washington.edu
Status: O

Include something on human population growth and negative consequences of high growth rates on harvest sustainability, ecological integrity, etc. Maybe make this item #1.

Note this is my view & does not necessarily reflect that of The Nature Conservancy.

Jackie Mohan

Vegetation Ecologist
The Nature Conservancy

On Mon, 19 Dec 1994 jwight@amtsgi.bc.ca wrote:

Hi all:

The Ecological Rights Association is putting together a submission to the UN as suggestions for inclusion into the 1995 Earth Charter committed to at the 1992 UNCED conference at Rio. Any feedback and suggestions would be appreciated. We will circulate the final proposal before submission.

Thanks in advance
Jim Wight

DRAFT OF A PROPOSAL FOR AN EARTH CHARTER
SEND COMMENTS TO ERA ECOLOGICAL RIGHTS ASSOC.
DRAFTED BY JOAN RUSSOW
e-mail C/O <jwight@amtsgi.bc.ca

CHARTER OF ECOLOGICAL AND EQUITABLE RIGHTS AND
RESPONSIBILITIES

This Charter draws from international obligations that have already been agreed to internationally. The Charter draws from both obligations undertaken by states through UN resolutions such as the "World Charter of Nature", globally agreed to documents such as the United Nations Conference

on Humans and the Environment (Stockholm, 1972), The Rio Declaration (UNCED, 1992) and Agenda 21 (UNCED, 1992) and the legally binding documents such as the Vienna Convention on Ozone (1986), the Montreal Protocol (1987), The Basel Convention ; (Convention on Environmental Impact Assessment in a trans-boundary (1994) Convention on

Biological Diversity (UNCED, 1992, in Force, 1993) and the Convention on Climate Change (UNCED, 1992, in force 1993), and the Law of the Sea (in force 1994). This Charter also proposes additions that complement existing obligations or that are necessary so that compliance is possible.

NOTE: Article 18 of the Vienna Convention Treaty stipulates that if a state has signed a treaty there is an "obligation not to defeat the object and purpose of a treaty prior to the entry into force"

Legend

Underlined: what has already been agreed to internationally (agreed to principles)

Bold: what still needs to be done (proposed principles or changes)

Bold and underlined (proposed by international NGOs, or official panels)

Italics: What should be left out

Acknowledgement that International obligations must be fulfilled as being not the maximum but the minimum standards to follow (recommendation from the Scientific Panel, B.C.)

RECOGNITION OF THE URGENCY OF GLOBAL SITUATION

Humanity stands at a defining moment in history. We are confronted with a perpetuation of disparities between and within nations, a worsening of poverty hunger, ill health and literacy and the continuing deterioration of the ecosystem on which we depend for our well-being (Agenda 21, UNCED)

CONDEMNATION OF TRADITIONAL CONSUMPTION PATTERNS OF DEVELOPMENT

[one of the most serious problems now facing the planet is that associated with historical patterns of unsustainable consumption and production, leading to environmental degradation, aggravation of poverty and imbalances in the development of countries.] (4.3 Changing consumption patterns, Agenda 21)

We have come to realize that the traditional consumptive patterns of development have contributed to poverty, to the inequitable distribution of resources, to over-consumption, to the violation of human rights and to the potentially irreversible degradation of the ecosystem (ERA Ecological Rights, Alternative Earth Charter)

We demand recognition of the causes of economic and ecological crises arising from patterns of Production and overconsumption in the rich North. This causes depletion of the world's resources, especially in the South, with all the accompanying negative ecological, social, economic and political consequences. (Statement from the Women of the South, Women and Sustainable Development Conference, 1994)

ACKNOWLEDGMENT OF THE NEED FOR ACTION

We have come to realize that the threats to the biosphere which sustains all life on this planet have increased in rate, magnitude and scale that inaction is negligent. The international community has enough information about the pending state of ecological irreversibility that it must act immediately. (affirmed by the NGO Earth Charter, Global Forum)

UNDERTAKING OF TRANSFERRING AGREED TO PRINCIPLES TO STATE PRACTICES

The principles set forth in the present Charter shall be reflected the law and practice of each State, as well as at the international level (World Charter of Nature)

ENSURING THE INHERENT WORTH OF NATURE

ensuring that every form of life is unique, warranting respect regardless of its worth to man [human], and to accord other organisms such recognition's, man [human] must be guided by a moral code of action (World Charter of nature) (World Charter of Nature)

RECOGNITION OF INTERCONNECTEDNESS WITH NATURE

Humankind is a part of nature and life depends on the uninterrupted functioning of natural systems which ensure the supply of energy and nutrients (World Charter of Nature)

RESPECT FOR ESSENTIAL PROCESSES

Nature shall be respected and its essential processes shall not be impaired (World Charter of Nature)

ACKNOWLEDGEMENT OF URGENCY OF CONSERVING AND PRESERVING NATURE

Humans can alter nature and exhaust natural resources by their actions or the consequences and, therefore, must fully recognize the urgency of maintaining the stability and quality of nature and of conserving natural resources and preserving nature (World Charter of nature)

ACCEPTANCE OF NEED FOR MORAL CODE OF ACTION IN RESPECT OF NATURE

ensuring that every form of life is unique, warranting respect regardless of its worth to man [humans] , and to accord other organisms such recognition's, man [human] must be guided by a moral code of action (World Charter of nature)

ENUNCIATION OF THE PRIMACY OF THE ECOSYSTEM

Ensuring that in all decisions made about the environment that the ecosystem be given primacy

ACKNOWLEDGING THE IMPORTANCE OF PRESERVATION OF ECOSYSTEMS

QUALIFICATION OF DEVELOPMENT (ALTERNATIVE EXPRESSION FOR 'SUSTAINABLE

DEVELOPMENT" OR "SUSTAINABILITY")

Equitable, and ecologically sustainable use (Adopted by the IUCN, annual General Meeting, 1994)

ADHERENCE TO THE ANTICIPATORY PRINCIPLE

Mindful of the need and importance to develop anticipatory policies and of preventing, mitigating and monitoring significant adverse environmental impact in general and more specifically in a trans-boundary context (Convention on Environmental Impact Assessment in a trans-boundary Context, 1994)

INVOCATION OF THE PRECAUTIONARY PRINCIPLE

where there is a threat of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing measures to avoid or minimize such a threat (from the Biodiversity Convention)

ENUNCIATION OF THE PRINCIPLE OF DOUBT

Activities which are likely to pose a significant risk to nature shall be preceded by an exhaustive examination; their proponents shall demonstrate that expected benefits outweigh potential damage to nature, and where potential adverse effects are not fully understood, the activities should not proceed (World Charter of Nature)

ENUNCIATION OF THE "CAUTIONARY" PRINCIPLE

Every proponent of an intervention in the ecosystem must demonstrate that the intervention will not cause harm to the environment or will not create ecologically unsound wastes

ADOPTION OF "PREVENTION TECHNOLOGIES"

Prevention technologies - technologies that emphasize "protecting, conserving and sustaining the environment from the beginning, and thus avoiding the cycle of rectification of error.

Non introduction of hazardous products in the environment

the onus of proving the non-hazardous nature of the product will be on the proponent of this new type of product [after a full life cycle analysis of all the potential environmental harm by non-vested interest parties]

Environmental Assessment review

Introduce appropriate procedures requiring environmental impact assessment

of its proposed projects that are likely to have significant adverse effects on Biological diversity with a view to avoiding or minimizing such effects, and where appropriate, allow for public participation in such procedures (Article 14, 1A, Convention on Biological Diversity)

Assertion of the avoidance of activities

Activities which are likely to cause irreversible damage to nature shall be avoided (World Charter of Nature)

Affirmation of intergenerational equity

Reaffirming that man [humans] must acquire the knowledge to maintain and enhance their ability to use natural resources in a manner which ensures the preservation of the species and ecosystems for the benefit of present and future generations
(World Charter of Nature)

Commitment to non-transference of harmful substances and activities

States should [Shall] effectively cooperate to discourage or prevent the

relocation and transfer to other States of any activities and substances that cause severe environmental degradation or are found to be harmful to human health (Rio Declaration)

Affirmation of positive-duty-to-protect-indigenous-lands principle.
recognition that the lands of indigenous people and their communities should be protected from activities that are environmentally unsound or that the indigenous people concerned consider to be socially and culturally inappropriate (Agenda 21, 16.3. ii)

Elimination of weapons of mass destruction
Man [Humans] and their environment must be spared the effects of nuclear weapons and all other means of mass destruction . States must strive to reach prompt agreement in the relevant international organs on the elimination and complete destruction of such weapons (Principle 26)

Prepared by the ERA Ecological Rights Association
1230 St. Patrick St. Victoria, B.C. V8S 4Y4, CANADA, Ph. 604-380-2563 or
FAX 604-385-0068

X-POP3-Rcpt: jwight@island
Date: Wed, 21 Dec 94 11:34:28 -0800
Errors-To: pdh@u.washington.edu
Reply-To: consbio@u.washington.edu
Originator: consbio@u.washington.edu
Sender: consbio@u.washington.edu
Precedence: bulk
From: sequent!uswnvg!ghoward@uunet.uu.net (Gary Howard)
To: Multiple recipients of list <consbio@u.washington.edu
Subject: Re: ERA-Earth Charter
X-Listprocessor-Version: 6.0b -- ListProcessor by Anastasios Kotsikonas
X-Comment: Supports discussions in conservation biology.
X-To: uunet!u.washington.edu!consbio@uunet.uu.net

Include something on human population growth and negative consequences of high growth rates on harvest sustainability, ecological integrity, etc. Maybe make this item #1.

Note this is my view & does not necessarily reflect that of The Nature Conservancy.

Had I not thought this to be the view of the Nature Conservancy, then I wouldn't have become a lifetime member. Thanks.

Gary A Howard - Tonka Bay Minnesota

ghoward@uswnvg.com

Jackie Mohan
Vegetation Ecologist
The Nature Conservancy

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[clip]

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() **THAT in 1994** on December 19 I responded again to the request by Robin Round who was drafting a document on NGO involvement in the GEF process [Robin Round had probably received funding for the project. Commonly, funding would be given to the CEN secretariat for consultation processes and often the benefit would not be transferred to the provincial networks.

EXHIBIT
1994 DEC 19
ATTENTION: ROBIN ROUND

rjr@WEB.apc.org

Dear Robin,

Here are my comments.

Hope to hear from you soon.

Joan

CRITERIA FOR NGO SELF-SELECTION TO COUNCIL MEETINGS

“It may be possible to either draw up a set of criteria that would exclude these groups [industry-front], or have as a basis for participation as an NGO, a form of Covenant or Charter which would draw upon as a minimum principles agreed to internationally through UN resolutions— assembly resolutions and globally adopted agreements, treaties, Conventions; and international customary law.” Without a clarification of this distinction between genuinely non-profit NGOs, and industry front groups, the participation of NGOs in the GEF process will be brought into question. (Russow, FAX to Ian Johnson, December, 10, 1994).

The first step is to ensure that through the development of an appropriate definition of “NGO”, private-industry groups with a mandate of self-promotion **will not be officially designated as NGOs for the GEF Council meetings, and thus not be permitted to be at the meetings as attendees or observers with NGO accreditation.** Without a clarification of the distinction between genuinely non-profit non-governmental organizations representing public constituencies and private industry groups with a mandate of self-promotion, the participation of NGOs in the GEF will be brought into question. *Consideration should be given to the definition developed by UNDP*

to distinguish between private and public interests of UNCED-accredited NGOs. "Civic society organizations" or CSOs are organizations representing public constituencies only. [Do you have a copy of this document? I think we have to be very careful before we endorse these criteria; it is my understanding that organizations like World Vision which has used "conditional funding or aid" as a means of proselytizing their belief system].

The next step would be to select a NGO Selection Steering Committee composed of NGOs (and members of the GEF Secretariat) using a set of criteria developed by NGOs and approved by Council. This Committee would be given the responsibility of selecting NGOs, according to the approved criteria, for participation in GEF Council meetings as attendees or observers. [rephrased]

Criteria for selection shall be based on the demonstration through mission statements to the promotion of conservation of nature, ecologically sound and equitable employment, the protection of human rights, and the attainment of social justice.

The NGOs shall also have demonstrated that their mission statement has been reflected in the practice and activities of the organization. No funding source of the NGO, no funding of projects by the NGO, or no project supported by the NGOs shall have compromised the promotion of conservation of nature, ecologically sound and equitable employment, the protection of human rights, and the attainment of peace and social justice.

The NGOs shall demonstrate that since their inception their organization has not been using any "conditional funding or aid" in any part of the world in order to proselytize a particular belief system.

The NGOs shall demonstrate that since their inception their organization has not been using the "pornography of poverty" to facilitate the proselytizing of a particular belief system

All NGOs that participate shall demonstrate a commitment to the fulfillment of international obligations, and to the additional recommendations such as those agreed to in the documents emanating from the UNCED Prep Coms such as the Women's Action AGENDA for UNCED or documents from the Global Forum, such as the NGO Treaties.

All NGOs that participate shall demonstrate that nothing in their realm of activity and supported projects or associated funding foundations or institutions could contribute to the degradation of the environment, the violation of human rights, the escalation of war, or the denial of equity or social justice.

[for example an NGO group could be set up to promote zero car emissions through electric cars on the one hand, but could on the

other hand promote nuclear energy as the appropriate fuel for these electric vehicles]

Criteria for selection should take into consideration **the areas of expertise and experience related to equitable and ecological sound development, the promotion of peace, and the protection of human rights and equity**, the need for regional representation, a balance of international national /local representation,

NGOs must be able to participate in not just the application but also the formulation of all terms of reference. Terms of reference for participation and patterns and terms of rotation must be determined . roles and responsibilities of NGO participants including the development and implementation of strategies to communicate with the wider NGO constituency including meeting and consultation report writing and follow-up commitments must be articulated and sanctioned ;by NGOs themselves.

NGO should be consulted in the formulation of the terms of reference of the GEF.

WHO ARE THE NGOS AND WHAT IS THEIR ROLE ?

The comments and proposals for NGO participation and the Draft criteria for NGO self-selection should be solicited and circulated prior to the third Council meeting in January, 1995. *Because the time frame for consultation on these criteria is so short. Interim criteria shall then be established at the January meeting and then circulated to the wider NGO community for input before the criteria shall be finally adopted.*

CRITERIA FOR SELF-SELECTION FOR INDUSTRY PARTICIPANTS

No resource extraction industry or producer of hazardous, toxic or atomic wastes shall be able to sit on the Council.

The International Business Council of Sustainable Development shall be given the task to select enterprises that have demonstrated that they have been part of the solution not part of the problem. These industries would have to demonstrate that during their operation they have not in any way contributed to the degradation of the environment, the violation of human rights, the escalation of war (through the development, production or distribution of weapon parts or weapons) or to the denial of equity. These industries shall demonstrate that they **have called for high enforceable standards and prevention technology—technology that does it right the first time rather than low emission standards coupled with “rectification or mitigation technology” that attempts to address previous errors.**

GEF CONSULTATIONS

A consultation is not a public relations exercise for the GEF. GEF consultations, both global and regional, **need to be based on a set of fundamental principles. *need to be organized in a more professional and systematic manner than during the Pilot Phase.*** NGO “involvement” in the GEF in the form of consultations does not constitute meaningful participation if **established principles are not in place**, procedures are not formalized and expected outcomes not made clear.

To establish a principle base for the deliberations of the GEF Council, the GEF could consider the following suggestions:

Principles are often compromised with the current roundtable approach. The GEF consultation process should reflect not “an arena of competing vested interests of multiple stakeholders—the roundtable approach” but a coming together and collaboration of individuals and representatives with varying levels of experience and expertise, committed to addressing the urgency of the global situation.

Prior to setting up the GEF Council, the Council should consider as a minimum the adherence to international obligations. The GEF Council shall strive to abide by and be founded upon principles that have already been enunciated either through international customary law, International legal binding agreements, or globally adopted resolutions. [note I will put on the Internet a document entitled “Charter of Equitable and Ecologically Sound Rights and Responsibilities”]

In cases where the international standards are too low, the highest national standards shall prevail. No state with high standards related to the protection and preservation of the environment, the protection of human rights, and the attainment of social justice and equity, should ever be made to compromise these standards by being encouraged to “harmonize downward.”

One of the roles of the GEF Council could be to ensure that financial support coming from the GEF is dependent on a demonstration of state and donor compliance with international obligations.

The GEF Council should also ensure the following as the basis for the establishment of the Council:

The GEF Council shall ensure that no state relaxes the states environmental standards and technical regulations, or human rights protection, or social justice and equity provisions to attract financial benefit.

The GEF Council shall ensure that no state shall transfer substances or activities that could be harmful to human health or to the environment to other states (Rio Declaration)

The GEF Council shall not support the justification of the transfer of harmful substances to human health and to the environment on the grounds that the recipient state has granted permission for this transfer.

The GEF Council shall recognize the importance of the contribution of Indigenous peoples, and shall recognize that the transfer of ecologically sound technology from the South to the North might assist the North to live within the limits of the ecosystem.

The GEF Council shall acknowledge that the solution to global problems lies in the serious reduction of consumption of the North rather than in the transference of consumptive patterns to the South (or in the purchase of land in the South to offset Northern consumptive patterns).

The GEF Council shall encourage high enforceable standards and prevention technology—technology that does it right the first time rather than low emission standards coupled with “rectification or mitigation technology” that attempts to address previous errors.

In all activities, the anticipatory and precautionary principle shall prevail.

The GEF Council shall endorse the “reverse onus” principle which affirms that it is the proponent of an intervention into the ecosystem that must demonstrate the safety of the intervention rather than the opponent of an intervention, having to demonstrate harm (Note: a principle that was recently affirmed by the Hon. Shelia Copps).

The process of GEF Council consultation shall encourage fairness, mutual respect, and openness,

() **THAT in 1994** on December 19 I responded again to the request by Robin Round who was drafting a document on NGO involvement in the GEF process [Robin Round had probably received funding for the project. Commonly, funding would be given to the CEN secretariat for consultation processes and often the benefit would not be transferred to the provincial networks.

EXHIBIT
1994 DEC 19
ATTENTION: ROBIN ROUND

rjr@WEB.apc.org

Dear Robin,

Here are my comments.

Hope to hear from you soon.

Joan

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INTERNET COMMENT: SENT OUT THROUGH INFOTERRA

In response to the following press release there has been considerable interest in the arguments presented to the court in the Leave to Appeal application in the Appeal court of British Columbia, CANADA. The leave to appeal book with references to the affidavits (but without the actual affidavits) is being circulated through internet. Any comments and responses will be sent to Mr. Justice Carothers for his deliberation, and possibly to the Judicial Review Commission in Ottawa.

Note: that Mr. Justice Carothers judgment was only four pages long. The only reference to international law was the section reproduced in the press release.

() THAT on December 7, 1994, I wrote the following press release To Biodiversity Conference of the Parties, Bahamas.

PRINCIPLES IN BIODIVERSITY CONVENTION “NOT PERTINENT OR APPLICABLE” “WITHIN THE JUDICIAL CAPACITY AND FUNCTION OF THE COURTS OF THIS PROVINCE.” DECISION IN THE APPEAL COURT OF BRITISH COLUMBIA, CANADA

ASTOUNDING ADMISSION BY COURTS IN BRITISH COLUMBIA (CANADA) OF THE INAPPLICABILITY OF INTERNATIONAL LAW IN PROVINCIAL COURTS.

In September 1993, there was an application to set aside the Clayoquot Injunction in B.C. CANADA, on the grounds that there was a failure to inform the trial judge that the granting of the injunction could contravene Canada’s international obligations such as the Biodiversity Convention. Mr. Justice

Drake held that “international law not expressed in Canadian law is irrelevant in this inquiry.” Leave to appeal this decision was sought on October 25 before Mr. Justice Carrothers.

On December 7, 1994, Mr. Justice Carrothers held the following:

“this applicant suggested that, in the application before Mr. Justice Drake, for rescission of Mr. Justice Hall’s order (the injunction) Mr. Justice Drake erred in his assessment of international law, particularly in relation to biodiversity and climate change issues as affected by current forest industry practices.

The lengthy submission reflects the large assemblage of material contained in the applicants’ leave book, which cannot be summarized. I have taken the time to read and consider substantially all of it. I have not been shown and I have been quite unable to discern or identify any pertinent or applicable principle of international law, whether developed by custom and usage, treaty or convention, or legislative or judicial determination, which falls within the judicial capacity and function of the courts of this province. (Court of Appeal for British Columbia, case VI 01984 December 6, 1994)

It should be noted that the principles referred to in the submission were drawn from the “Convention of Law of Treaties”, the UN Convention for the Protection of Cultural and Natural Heritage, The Biodiversity Convention, the Framework Convention on Climate Change, (all treaties signed and ratified by Canada), as well as Agenda 21—the globally adopted action plan from UNCED.

The implications of this decision are far reaching because Canada signs and ratifies international agreements in areas over which provinces claim jurisdiction. Canada, as a federal state, claims that Biodiversity comes under section 92 of the Constitution and thus under provincial jurisdiction. Yet, the provincial judiciary holds that the principles contained in these agreements are not “within the judicial capacity and function of the courts of this province.” November 1994

() THAT in 1994 I drafted 10 commandments for CRIME (Christian Right Industrial Military Establishment)

1. Thou shalt clothe Intolerance in the cloak of “freedom of expression”
2. Thou shalt forsake social programs to reduce national debt; Thou shalt above all not tax the rich
3. Thou shalt privatize health care, beware of universal health care

4. Thou shalt be devoted to nationalism, military expansion and intervention, and thou shalt remove all UN restrictions to US actions, and thou shalt drastically cut foreign aid, discourage immigration and reduce support for the UN.

5. Thou shalt respect the gun and the right to bear arms, especially concealed and assault weapons

6. Thou shalt couch Anti-reproductive choice (right to choose abortion) as "right to life." Thou shalt sanction and ensure the Communion of religion and state, and thou shalt reinstate the school prayer

7. Thou shalt not honour the rights of indigenous peoples

8. Thou shalt protect private property privilege over environmental rights; thou shalt not allow environmental protection, equity or human rights to be a barrier to free trade; and thou shalt at all costs not impede economic progress. Thou shalt promote eternal nuclear energy

9. Thou shalt covet thy neighbour's resources

10. Thou shalt punish for crime rather than prevent crime, and thou shalt help the needy partners in free trade (NAFTA) by setting up prisons for American criminals on the sovereign territory of partner states

Any similarities between these 10 Commandments and the platform of any of the political parties of Canada are purely coincidental.

(The Changing Times, Fall, 1994)

N()THAT IN 1994, I made a presentation at the faculty of law on "Equitable and Ecological Terms" within the context of international obligations. Conference on Ecojustice at the Faculty of Law,

University of Victoria.

REDEFINITION OF DEVELOPMENT IN ETHICAL, EQUITABLE AND ECOLOGICAL TERMS PRESENTATION IN 1994 IN THE FACULTY OF LAW UNIVERSITY AT THE ECOJUSTICE CONFERENCE

UNDERTAKING TO REDEFINE DEVELOPMENT IN EQUITABLE AND ECOLOGICAL TERMS

(i) The degree to which a state has been able to integrate with the ecosystem through ecological sound practices causing its human activity to have little deleterious impact on the environment.

- (ii) The degree to which the right of other species to exist is protected, and the degree to which a biocentric rather than an anthropocentric view of society is adopted.
- (ii) The degree to which there is an equitable distribution of resources
- (iii) The extent to which a state respects the rights of indigenous peoples
- iv) The degree of condemnation, and avoidance of over-consumption
- (v) the ability to minimize the human impact on the environment through fulfilling fundamental rights and thus reducing population
- vi) The degree the right to socially equitable and environmentally sound development the right to food, to potable water, to universal health care, to education and to shelter, as well as the right to security, freedom of speech etc. is enshrined and implemented.
- (vii) The ability to live within the carrying capacity of the ecosystem and to refrain from contributing to global ecological harm
- (viii) The degree to which no or little funds are spent on the military and on arms production
- ix) The degree to which laws are enacted and enforced to protect environment, human rights, equity, justice and peace
- (x) The degree to which cooperation supersedes competition
- (xi) The degree to which support is given to alternative non-military preventive conflict reduction measures
- (xii) Degree to which citizens are listened to, and citizens make decisions within a framework of ecological principles
- (xiii) The degree to which there is the provision for sufficient income to meet basic needs
- (xiv) the degree to which there is affirmative action and equal access
- (xv) the degree to which there is the absence of discrimination based on gender, sexual orientation, disabilities, refugee or immigrant status, aboriginal ancestry, race, culture, ethnicity, religion or socio-economic conditions [age] and other ascriptive characteristics
- (xvi) the extent to which there is the political will to promote development in such a way that the strategy for the advancement of women seeks first and foremost to alter the current unequal conditions and structures that continue to define women as secondary persons and give women's issues a low priority. Development should **shall** now move to another plane in which women's pivotal role in society is recognized and given its true value. That will allow women to assume their legitimate and core positions in the strategies for effecting the changes necessary to promote and sustain development Socially equitable and environmentally sound development (ICPD) (Para 21, (Nairobi Forward Looking Strategy, 1995)

**End, end, ene,
part 1**