

1991 THE ECOLOGICAL RIGHT ASSOCIATION PROPOSAL TO ENSHRINE ECOLOGICAL RIGHTS IN THE CANADIAN CONSTITUTION

BACKGROUND

In 1991 the Ecological Rights Association was formed by Joan Russow and David White to propose the enshrining of ecological in the Constitution

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 "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 rather 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 ERA Ecological Rights Association urges international bodies and national governments to consider the following proposed ecological rights -- the right to a safe environment, the right to an ecological heritage, and the right "to not have present activities compromise the needs of future generations" (Bill C-78). 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 must 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 Bruntland Commission (United Commission on the Environment, 1987) has reiterated this responsibility by calling for the preservation of 12% of each representative ecosystem. The "right to not have present activities compromise the needs of future generations" could lead to more credibility and power being given to the Federal Environmental Assessment Review to opt for 0 probability when the outcome of a present activity could have immediate and/or long term disastrous effects.

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.

EXHIBIT

cc The Honorable, Brian Mulroney
cc The Honourable, Jean Chretien
cc cc Globe and Mail
September 1992
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 the "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 an 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 about "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
() NETWORKS
NET WORKS CANNOT MAKE RESOLUTIONS

THAT In 1992, as a member of the forest caucus of the BCEN, I attended AGM of BCEN

() **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 making it essentially a less effective organization.

COMMENT

1992 BCEN attended the BCEN meeting in Victoria. I spent most of my time in the Forest Caucus compiling recommendations made by members. I proposed that we should come up

with resolutions based on 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 and transferred to overheads in order to present them to the plenary of the Forest Caucus. No time was given to the resolutions. During 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 should 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 [cant and chips] from these lands cease immediately

5. Whereas the 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 should 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 in 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

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 as well as 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 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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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, at 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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() In 1992, the ERA received accreditation for UNCED AND IN1995 for the prep conference in New York and for the Women's convention In Beijing IN 1994

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 Eco-justice 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 ecologically 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 thus reducing population

vi) The degree that 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) The 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

IN 1995

1995 CHARTER ECOLOGICAL RIGHTS

January 5, 1995

This Charter draws upon obligations that have already been agreed upon internationally. The Charter draws from both obligations undertaken by states through UN resolutions such as the UN Resolution 37/7 "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), (Convention on Environmental Impact Assessment in a Transboundary (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 those 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 or proposed

Legend

Plain: "Alternative Earth Charter" prepared for UNCED by the ERA Ecological Rights Association

Underlined: what has already been agreed to internationally through globally adopted or legally binding agreements. (Agreed to principles)

BOLD: TITLES

Bold: what still needs to be done (proposed principles or changes)

Bold and underlined (proposed by international NGOs, or official panels, and from deep Ecology)

Italics: What should be left out

Prepared and circulated for comment by the ERA Ecological Rights Association (compiled by Joan Russow, David White, with input from Dr. Fred Knelman, and Tim Boston) For submission to the 1995 UN Earth Charter discussions

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385-0195; FAX (604) 385-0068

ACKNOWLEDGMENT OF INTERNATIONAL OBLIGATIONS AS MINIMUM

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)

Present human interference with the non-human world is excessive and the situation is rapidly worsening (DP)

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 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... (DP)

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 (FK)

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 (FK)

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. (ERA Ecological Rights Charter, 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 (UN Resolution 37/7 World Charter of Nature)

UNDERTAKING OF TRANSFERRING AGREED TO PRINCIPLES TO INDIVIDUAL ACTION OR RESPONSIBILITY-OF-INDIVIDUAL ACTION PRINCIPLE

All people must be held responsible for their own pollution and environmental degradation and created wastes.

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 (FK)

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 ... and conservation of biological diversity and the traditional forest habitats of indigenous people, forest dwellers and local communities; (Agenda 21, 11.15 b)

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)

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,

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.

MORAL IMPERATIVE TOWARDS 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)

Something is right when it protects nature and wrong when it tends otherwise

The life and death of one species should be seen as being equal to the life and death of another (TB)

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 (FK)

ACCEPTANCE OF NEED FOR MORAL CODE OF ACTION IN RESPECT OF NATURE

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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 transboundary context (Convention on Environmental Impact Assessment in a Transboundary Context, 1994)

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 (Convention on Biological Diversity)

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 BEST (Benign Environmentally Safe/Sound Technology/Techniques)

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]

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)

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 [human and non-human generations (TB)] (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)

RIGHT TO KNOW PRINCIPLE

Information is a necessary component of sustainability

"The obligation to survive gives us the right to know" (R. Carson) (FK)

ERA As a member of the BCEN APPLIED A CIDA EDSP GRANT BETWEEN THE BCEN International Affairs caucus and Ecotropic from Brazil . we were successful at receiving an explorative Grant to address the complexity of Issues In both countries

() THAT in April, 1995, I wrote an update on activities of the ERA Ecological Rights Association in response to a query from San Francisco
EXHIBIT

ERA ECOLOGICAL RIGHTS INFORMATION (UPDATE)

PURPOSE OF THE ORGANIZATION

1. To foster the recognition and enshrinement of ecological rights in municipal, provincial, national and international Charters and documents;
2. To work towards the establishing of an institutional framework that ensures that these rights are protected once they are enshrined in charters and documents.
3. To prepare educational materials which support the primacy of ecological rights
4. To offer a forum for information on ecological rights among members and the general public

operational activities

- to promote the examination of the interdependence of environment, peace, human rights, social justice and equity issues; to set up networks internationally and co-develop projects with groups that link these issues
- to persuade courts to consider the relevance of international, national and provincial obligations.

MAIN ENVIRONMENTAL SERVICE OR ACTIVITIES

- production of education materials linking environment, peace, human rights, social justice and equity issues.
- Setting up the International Law and Obligations Institute project for the monitoring of compliance with international obligations
- the inclusion of international obligations in provincial and federal guidelines, charters, standards, and technical regulations

ERA ECOLOGICAL RIGHTS ASSOCIATION

The ERA Ecological Rights Association has 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 UN. Covenant for the protection of Ecological Rights; for the inclusion of ecological rights within trade agreements; 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; for monitoring and reporting on compliance with international

obligations and with federal and provincial statutes and for documenting and compiling definitions and descriptions of what would constitute ecological rights.

ERA Ecological Rights Association, Victoria, B.C, Canada

Contacts:

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(604) 385-0195 FAX (604) 385-0068

Dr. Fred Knelman Director of Research 4-4631 Lochside Victoria, B.C.
Ph/FAX (604) 658-2740

PROJECTS:

ANALYSIS OF INTERNATIONAL OBLIGATIONS

- Carried out a content analysis of international documents. such as the following International legal instruments and UN resolutions:

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

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 Transboundary 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 "Overconsumption" (1992)*

- Reviewed international documents such as the UNCED Forest Principles document, and indicated its inconsistency with other international documents;
- Did a content analysis of the UNCED documents, and extracted over 200 principles enunciated in those documents.
- Prepared a content analysis of Agenda 21 and other UNCED documents for a work shop organized by the United Nations Assoc. (July 1992)
- Gave numerous workshops on international obligations to groups like the 1994 B.C.E.N. Annual General Meeting, Western Canada Wilderness Committee, the West Coast Environmental Youth Alliance, the Friends of Clayoquot Sound, and the Forest Action Camp, the Environmental Law Conference (University of Victoria), and the International Law Caucus, B.C. Bar Association

ANALYSIS OF FEDERAL LEGAL DOCUMENTS

- Reviewed federal documents such as the proposed Charlottetown Accord - the proposed Constitutional document, and submitted a proposal to extend "the right to security" to include the right to common security (including environment and human rights provisions)
- Sent a submission to Government for the entrenchment of ecological rights in the Charter of Rights and Freedoms, and presenting a brief to the Constitutional Committee.
- Proposed more stringent provisions drawn from international principles for the CIDA (Canadian International Development Agency) guidelines for international projects, and indicated the inconsistency of these documents with other international and federal documents.

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 "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 ERA Ecological Rights Association urges international bodies and national governments to consider the following proposed ecological rights -- the right to a safe environment, the right to an ecological heritage, and the right "to not have present activities compromise the needs of future generations" (Bill C-78). 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.

ANALYSIS OF PROVINCIAL DOCUMENTS

- Submitted to the CORE (Commission for Resources and the Environment) a document entitled "Statement of Obligations" where ERA indicated that these obligations should form the basis for the discussion - the minimum standards that had to be agreed to.
- Reviewed the CORE charter, and demonstrated the inconsistencies with internationally agreed to principles
- 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.

AN ANATOMY OF ANTI-ECOLOGICAL THOUGHT

- Preparing a manuscript for a publisher for a book which reports on content analyses of documents from organizations, institutions, and government documents

CANADIAN MILITARY POLICY

- participated in the review of Canada Military Policy representing the Vancouver Peace Society and the Greater Victoria Disarmament group.

CANADA/BRAZIL PROJECT: INTERDEPENDENCE OF ISSUES

Initiated a Canada/Brazil Project examining the Interdependence of Issues
Recently received a grant from EDSP to proceed with the exploratory phase of the project, and will be responsible for the administration of the project

CHARTERS

- Drafted an Earth Charter as part of the 1991 Royal Society of Canada Conference on Global Change. When the ERA suggested that a proposed Charter for UNCED should emerge from this conference, the President of the Royal Society challenged the ERA to prepare one. This Charter was presented at conferences, received input from different organizations, and was then distributed at the New York Prep Com and at the Earth Summit.
- Had input into the drafting of several international documents: the NGO Earth Charter at the UNCED Global Forum; and the IUCN "Covenant" prepared by the IUCN Commission on Environmental Law.
- Initiated and collaborated with different organization on the drafting the Nobel Laureate Proclamation— a Proclamation signed by 37 Nobel Laureates, and distributed the Proclamation at the Earth Summit (1992)
- Prepared a diagram of different charter proposals for UNCED at the "Path to Brazil Conference." This diagram delineated the contrast between the proposals from

the different countries, the NGO proposals and the Alternative Charter prepared by the ERA.

- Prepared a series of new charters based on principles already agreed to in international documents

CLIMATE CHANGE

- Worked on an international (8 country) project based in Harvard, on assessing Social Change in attitudes towards the issue of Climate Change in Canada.
- Prepared a diagram integrating different dimensions within the social learning project.
- Prepared charts linking climate change and forestry
- Participated in a panel discussion on Climate Change at the Public Interest and Environmental Law Conference.
- Submitted a proposal for "Option 6" — a proposed programme for addressing obligations under the Framework Convention on Climate Change

COMMUNITY PARTICIPATION ACT

- Participating in the Committee for promoting changes in legislation related to "Slapp suits"; This Committee has drafted an act and is negotiating with government to have it presented to the legislature in the next session.

CONNECTION WITH BRAZIL

- Submitted a proposal to the CEN (Canadian Environmental Network) for an exchange between the ERA and the Amazon Working Group in a community forest project.
- Worked with a Brazilian on a video on B.C. Forests.
- Currently drafting a proposal for a Brazil/Canada study of the "interdependence and complexity of issues"

CORE PROCESS

- Published an article criticizing the Core Process as an "arena of competing interests" where there was the "glorification of conflict of interest." In particular, there was a criticism of CORE (Commission on Resources and Environment) for failing to have as a basis to discussion, non-negotiable international obligations, and to seek expert advice beyond the table

ECO-INFORMATION TOURS

- Organized tours of community leaders and Members of the Legislature to the Walbran, an old growth forest on Southern Vancouver Island

ECOLOGICALLY SUSTAINABLE DEVELOPMENT

- Prepared a diagram criticizing the notion of "sustainable development" for university course in Global Issues
- Supported the change in the IUCN (World Conservation Union) mission statement from "sustainable development" to "ecologically sustainable development"

EDUCATION (REVIEW)

- Prepared an initial draft for a series of guidelines for the selection of materials for environmental education
- Reviewed and critiqued the Round Table document on Education for Sustainability
- Reviewed and Criticized educational materials prepared by the Ministry of Forests, called "All Things Considered" and published the review in "Ecology"

EDUCATION (DEVELOPMENT OF PROGRAM AND MATERIALS)

- Developed educational material for an environmental Studies course on Global issues. Different themes were selected and the relevant principles from international law were applied. A series was done on "Ozone", "Climate Change", "Equity" "Biodiversity" (1993-94)
- Extracted over 200 principles from the UNCED and other international documents and developed a method of teaching issues based on International principles. A proposal for a course in the Faculty of Education on "Principle Based Education" (1994-5) has been submitted.
- Presented a paper on "Principle-based" education at the IUCN (World Conservation Union, January, 1994)
- Presented papers at ECO ED October, 1992 on "Miseducation through Rhetoric: implications for Global Education" and on the "Role of Industry in Environmental Education."
- Preparing a paper on "Principle-based education" for the Tri-University Global Education

ENVIRONMENTAL ASSESSMENT REVIEW

- Participated in a consultation by government on the proposed Environmental Assessment Act.
- Presented a critique on the contrast between Preventive environmental assessment reviews (assessing whether the intervention should proceed or not) and mitigative environmental assessment reviews (assessing what can be done to minimize the impact of an intervention into the ecosystem).
- Involved in a court case calling for an environmental assessment review of nuclear powered and armed vessel visits in the urban Port of Victoria.
- Submitted Brief to FEARO review of the Deposit of Nuclear Waste

ECOLOGY BOOK

- Supporting the "story book of ecology" a method of teaching Ecology by Dr Fred Knelman, a Director of the ERA.

FOREST PRINCIPLES DOCUMENT (UNCED)

- Reviewed international documents such as the UNCED Forest Principles document, and indicated its inconsistency with other international documents; this document was circulated through the Canadian Environmental Network Forest Caucus

and was reported on in the Treeroots Network Newsletter. This document has been submitted to Dr. Jag Maini, Deputy Minister of Forests,

FOREST CODE

- Attended a BCEN workshop analyzing and commenting on proposed Forest Code. The ERA submitted review of the Code to the Ministry of Forests
- Prepared numerous documents calling for government to enforce sections 59, 60 and 61 of the Forest Act; these sections allow for suspensions of licenses if there has been misrepresentation, or damage caused to the natural environment. In addition, section 61 is a provision for suspension of licenses.
- Authored a paper on "Discrepancies within the NDP Environmental Policy.

FOREST PROTOCOL

- Supported IUCN resolution to call for a "Forest Protocol" associated with the Convention on Biological Diversity, rather than a "Forest Convention"

FREEDOM OF INFORMATION

- Has made several applications through the Freedom of Information act
- Obtained a document from the Freedom of Information Act which indicated that British Columbia had endorsed the UNCED Conventions at the Cabinet Level
- Exposed unpublished government document which indicated that Mac Millan Bloedel had overestimated the inventory in the Queen Charlotte island by over 40%, and used this inventory as the basis for forest extraction since 1963.

GLOBAL COMPLIANCE RESEARCH PROJECT

- Attended the conference on Women and Sustainable Development where the ERA Initiated a project called the Global Compliance Research Project in which a framework for examining international obligations has been devised and will be circulated to a committee with representation from Chili, China, Thailand, Pakistan, and Nepal. The project will involve determining which countries have signed agreements, which countries have both signed and ratified agreements, and how have different countries implemented these obligations. This is a project for the Beijing Conference on Women, September, 1995.

The project has currently been funded by CIDA, and is under the auspices of the BCCIC

GLOBAL EDUCATION (GLOBAL ISSUES COURSE)

- Developed a course on teaching global issues for fourth year course in the Environmental Studies Program. This course is closely related to examining issues within the context of interdependence of peace, environment, equity and human rights, drawing upon globally adopted principles, and the dualistic nature of science and technology — accommodation and criticism, and the dynamics of "global change" — from ecological perspective (a negative notion) and from the sociological (a positive notion).

HUMAN RIGHTS AND THE ENVIRONMENT

- Prepared a large diagram delineating international human rights as recognized in the Universal Declaration of Human Rights, the international Human Rights Covenants and extended the notion of Human Rights to include principles from UNCED. This diagram was circulated to the International Conference on Human Rights in Vienna June 1993
- Developed a course outline for an environmental program in the Master's program in Business Administration

INJUNCTIVE LAW

- Attempted (September 1993) to rescind the Clayoquot injunction which resulted in the arrest of over 800 citizens on the grounds that there was failure to inform the judge that the granting of the injunction could contribute to non-compliance with international obligations. Currently seeking leave to appeal a decision by the Chambers judge that "international law not expressed in Canadian Law is irrelevant in this case"

INNU ISSUES

- Submitted proposal for intervention in the Environmental Assessment of Low-level Flights over Innu territory in Labrador; this funding proposal examined the international obligations that were violated by the continuation of low-level flights
- Is currently assessing the Environmental Assessment Review Report on Low level Flights over Innu territory

INTERNATIONAL AFFAIRS CAUCUS BCEN

- Initiated and organized the "International Affairs Caucus" of the BCEN, and currently acting as chair
- Drafted mission statement

[Project report](#)