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**DEVELOPMENT ASSISTANCE AND  
INTERNATIONAL ENVIRONMENTAL LAW:  
EMERGING ECODEVELOPMENT NORMS**

Prepared for Canadian International  
Development Agency

Canadian Environmental Law Research  
Foundation

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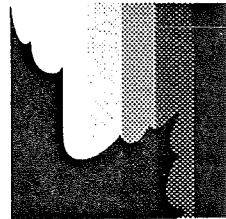
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February 27, 1986

Mr. Henri Duchesnay  
Director  
Natural Resources Division  
Canadian International Development Agency  
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Dear Mr. Duchesnay:

I am pleased to provide you with the report titled Development Assistance and International Environmental Law: Emerging Ecodevelopment Norms. I trust that it will be of assistance to the Canadian International Development Agency as it continues to review and develop policy in the environmental area.

As you know, this report was commissioned as a preliminary examination of legal issues which have bearing upon the development assistance activities of CIDA. The Canadian Environmental Law Research Foundation would be pleased to provide further assistance, should the decision be made to undertake more detailed legal research as part of the environmental policy development process.

My colleagues and I would like to thank you and all of the CIDA officials who provided information and advice during the course of this study.

Yours truly,

Doug Macdonald  
Executive Director

DEVELOPMENT ASSISTANCE AND INTERNATIONAL ENVIRONMENTAL LAW:

EMERGING ECODEVELOPMENT NORMS

EXECUTIVE SUMMARY

International law is the amalgam of principles and rules recognized as binding obligations by states in their relations with other states. The major difference between international and national law is that there is no agency capable of enforcing international law. There are, however, both moral and practical reasons compelling states to obey international law.

International law imposes obligations on states to protect the environment of neighbouring states. In recent years, and particularly since the Stockholm Conference on the Human Environment of 1972, obligations to carry out development activities in such a way as to minimize environmental harm have been established as an emerging body of international law.

At this time, it is more accurate to characterize many of these obligations as "norms" than as "law". These norms impose obligations in the context of development assistance upon donor agencies and, to the extent that they are complied with by such agencies, are established as international legal obligations.

Those norms are summarized with the term "Ecodevelopment" which encompasses those principles which dictate the compatibility

and interdependence of economic development and environmental protection. These principles can be traced to the Stockholm Conference of 1972. They have since been refined and strengthened by the statements and actions of a large number of actors in the development process.

Although the ecodevelopment principle is most accurately described as a "norm" it rests upon a firm foundation of international law.

Ecodevelopment norms impose the following four obligations upon development assistance agencies:

- the duty to integrate environmental considerations into policy objectives;
- the duty to improve the environmental capabilities of developing states;
- the duty to assess the potential environmental impacts of development projects;
- the duty to promote integrated regional planning.

All of the multi-lateral and national aid-giving agencies studied have expressed their commitment to the principle of ecodevelopment in policy statements. Each agency has acted, in varying degrees, to ensure that practice is in compliance with those statements.

It is expected that agency practice will continue to move toward greater implementation of ecodevelopment norms and as a result such norms will increasingly come to be regarded as an

integral component of international environmental law.

CIDA, in keeping with the Canadian tradition of leading the development of international law, has an opportunity to significantly contribute to this process.

It is recommended that CIDA play a leadership role in the establishment of ecodevelopment norms as a component of international law. To do this, additional and more detailed legal research should be undertaken. CIDA should continue to work with other national and multi-lateral agencies to develop and enunciate ecodevelopment principles.

CIDA should also undertake a comprehensive process, including consultation with all affected parties, to ensure that its own practices fully reflect ecodevelopment principles. This process should include opportunities for review and revision in years ahead.

**DEVELOPMENT ASSISTANCE AND INTERNATIONAL ENVIRONMENTAL LAW:  
EMERGING ECODEVELOPMENT NORMS**

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## A. INTRODUCTION

### 1. Purpose

This report provides the Canadian International Development Agency with an overview of international environmental law which has bearing upon the official development assistance process. As such, it is intended to provide the basis for further, more detailed, studies of obligations imposed by international law and steps which can be taken to ensure that goals of development assistance and global environmental protection can be achieved in a complementary manner.

### 2. Scope

The study provides a summary examination of all aspects of international law and practice, without providing detailed analysis in any given area. The study provides an historical narrative, chronicling the development of international environmental principles during the past decade and a half.

Practice of a limited but representative number of multi-lateral and national aid-giving agencies is reviewed in summary fashion. The agencies thus studied are the World Bank, InterAmerican Development Bank, United Nations Development Programme, U.S. Aid,

which may be bound by specific instruments such as codes of conduct for trans-national corporations operating in developing countries.

## 2. Obligations and Norms Under International Law

To find the particular rights and obligations governing international behaviour, one must go to the sources of international law. Consideration of the sources of international law usually starts with Article 38 of the Statute of the International Court of Justice which directs the Court, in deciding what the rules of international law are, to apply:-

- . international conventions
- . international custom as evidence of a general practice accepted as law
- . general principles of law recognized by civilized nations
- . judicial decisions
- . teachings of the most highly qualified publicists.

The two primary sources are convention and custom.

Under international conventional law, a state contractually binds itself with one or more other states through a treaty, agreement or other form of instrument. The states, by signing, agree to be bound by the rights and liabilities established pursuant to its provisions. Multilateral or "law-making" treaties can either create new rules of law, such as the Convention on International Civil Aviation and the Convention on the Law of the Sea, or codify existing rules of custom, such as major parts of the Hague and Geneva Conventions on the conduct of war. Strictly speaking, states are not bound by conventions they have not signed unless their actions express their intention to be so bound. In addition, in order for treaty provisions to be binding under domestic law, the treaty must be "implemented".

In Canada, this requires that legislation implementing the terms of the treaty be passed by the level of government with exclusive constitutional jurisdiction over the subject matter of the treaty.

Rules of custom are established by consistent usage by a majority of states ("state practice") coupled with acceptance by states of the rule as an obligation ("opinio juris"). It is difficult to be certain about the existence and exact content of a rule of custom. This is particularly so in matters which are rapidly evolving such as international environmental law, which, as a distinct body of law, is traced by many to the Stockholm Conference on Human Environment of 1972. In determining whether a practice is a rule of custom binding on all states, it is necessary to look for consistent usage and evidence of opinio juris in official pronouncements or domestic legislation. The resolutions, declarations and recommendations of the United Nations and other international governmental organizations do not create rules of law by themselves, but are evidence of the acceptance by the states adhering to them of the principles or rules of conduct expressed therein.

Many of the matters discussed in this report are neither embodied in conventions nor settled rules of custom, but are still evolving. Therefore, principles for which there is consistent repetition in numerous resolutions and declarations of international organizations and some practice by states and international organizations are referred to as "norms". The term is used with respect to rules of international law which are now coalescing but fall short of the traditional test for the establishment of custom. These are rules which have sufficient acceptance to be expected to form rules of custom in the future.

### 3. Role of Aid Agencies in Norm-creation

Aid agencies significantly influence the development of international legal

norms in at least two ways. First, aid agencies contribute to norm-creation through the content of their own policies, programmes and practices. Because national aid agencies are the agents of states, their activities are those of the states. In addition, actions and policies of the multilateral donor agencies may represent the collective policy of their member states to some extent. Thus, by for example, incorporating environmental concerns in their aid activities, donor agencies establish usage which sets precedents for other donors to follow and is an element in the development of a rule of customary international law. As more states and multilateral donors follow this trend, the practice may become accepted as obligatory and a rule of custom is fully established. Second, aid agencies influence the development of norms through their support of initiatives by international organizations which deal with development issues, such as the Organization for Economic Cooperation and Development (OECD). OECD has put forth a series of principles which, if adopted, would assist in creating duties directed toward sustainable development practices. Although these principles are only recommendatory in nature, they often "prefigure the rights and obligations which are progressively being introduced both domestically and internationally" because of their general acceptance by the international community (Environmental Law, An In-Depth Review, UNEP Report, No. 2 (1981), p. 157).

Moreover, the United Nations Environment Programme (UNEP) is specifically mandated to contribute toward the development and codification of a body of international law to meet new requirements stemming from the recognition of the relationship between environment and development. Assisting UNEP in its task are other U.N. agencies (such as the World Health Organization (WHO), the International Labour Organization (ILO), and the Food and Agricultural Organization (FAO)), multilateral donor agencies, (such as the International Union for the Conservation of Nature (IUCN) and the World Wildlife Fund (WWF)).

Actions by these international organizations establish norms in a very broad sense. While at times they assist in the preparation of obligatory judicial instruments such as international conventions and treaties, they also contribute a wide variety of less formal instruments such as recommendations, resolutions, guidelines, standards and codes of conduct. These less formal instruments are evidence of emerging norms and often the precursors to the more formal obligatory instruments.

## C. INTERNATIONAL NORMS RESPECTING ENVIRONMENT AND DEVELOPMENT

The purpose of this part is to explore those emerging international norms relating to environment and development, or "ecodevelopment" norms. For present purposes, the term "ecodevelopment" is used to describe those principles which assume economic development and environmental protection are compatible and necessarily inseparable goals. (CIDA/DOE, (I. Sachs), 1977; CIDA/DOE (O. Francis), 1977, pp. 5-10.).

The first section of this part will provide an overview to the emergence and progression of ecodevelopment norms. The overview will briefly describe the context upon which these norms have evolved. Having such an overview in mind, subsequent sections will more particularly examine the legal basis of these norms from the broader perspective of international law; then a more detailed review of the scope and substance of these norms will follow.

### 1. The Concept of Ecodevelopment in International Law

#### 1.1 Emergence of the Concept: The Stockholm Declaration

The relationship between development and environment has always been at least implicitly recognized. Formal recognition of this relationship, however, did not become evident until the late 1960's and early 1970's. During that period, a number of important reports surfaced linking the relationship of long-term development goals with that of environmental protection and conservation. The most important of these reports was the 1972 Founex Report, a milestone document of

ecodevelopment thinking. The Report was the result of a meeting of a panel of experts who were, in part, to set the agenda for the then upcoming United Nations Conference on the Human Environment. It made clear that environmental issues were of great importance to developing countries and pointed out why they must be considered as an integral aspect of the development process. Environmental problems were categorized as "pollution of poverty" (in the case of developing countries). Environmentally sound development strategies were considered as a means of addressing both of these concerns.

While the Founex Report identified the issues, and made some important recommendations, it was the United Nations Conference on the Human Environment held in Stockholm in 1972 (Stockholm Conference) that forms the foundation for the progression of international environmental policy and ecodevelopment norms. Developing Countries feared that the Conference would result in the curtailment of aid and the imposition of unilaterally dictated environmental standards by developed countries, (Founex, 1972, p. 29-33; Castro, pp. 411-15). The result, though, was quite to the contrary. Indeed, it is commonly asserted that the 26 principles and the 109 recommendations adopted in the Declaration of the United Nations Conference on the Human Environment stressed "development" rather than "environment." However, the term "development" itself was re-formulated to include three general imperatives:

1. there must be a broader definition of developmental goals other than just mere increases in gross national product;
2. there must be a redefinition of economic progress to ensure greater emphasis on income distribution, public health, nutritional standards, housing facilities, and other welfare-oriented public goals for developing nations; and
3. environmental policy must be integrated with development



planning so that it is regarded as part of an overall framework of socio-economic development. (Joyner, 1973, p. 344).

The significance of the Stockholm Declaration to development assistance was described by L.K. Caldwell, a renowned international scholar, in the following manner:-

Because dam building, land clearing, drainage, irrigation, agricultural cultivation had often been environmentally destructive, it was desirable to have a name that would distinguish the kind of ecologically sensitive development that had been advocated before and during the Stockholm Conference from conventional international economic-development projects. Ecodevelopment was the term adopted; its invention attributed to Maurice Strong, secretary-general of the Stockholm Conference. It has the advantage of symbolizing a synthesis of both development and environmental protection. Following Stockholm, the concept and terminology were adopted by the principal United Nations development agencies, the World Bank, UNDP, and UNEP.... Ecodevelopment more appropriately describes intended strategy rather than specific projects,.... (Caldwell, 1984, p. 175).

The concept of "ecodevelopment", although still in its formative stages, has progressed significantly from the time of the pronouncement of the Stockholm Declaration. Although the Stockholm principles and recommendations were not at the time a codification of customary law, many of these principles can now be considered "legal obligations" due to their wide acceptance by nations. Moreover, many of these principles have been further defined and refined in subsequent bilateral and multilateral treaties, conventions and agreements. (Williams, 1985, p.130).

As the Stockholm Declaration laid the foundation for the progression of ecodevelopment norms, their scope and substance was left to be defined through the work of various international governmental and non-governmental organizations, together with initiatives by developed and developing states.

1.2 Ecodevelopment as a Development Strategy: From Stockholm to  
Nairobi and Beyond

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One of the important consequences of the Stockholm Conference was the establishment of the United Nations Environment Programme (UNEP). UNEP set as one of its goals to develop the institutional and legal framework to promote ecodevelopment strategies. Most instrumentally in this regard has been its convening of international environmentally-related conferences and meetings, many of which have resulted in declarations and pronouncements which serve as guiding principles in resolving some of the most troublesome obstacles to development. Some of the most relevant conferences and meetings included the Symposium on Patterns of Resource Use, Environment and Development Strategies (Cocoyoc, 1974), World Population Conference (Bucharest, 1974), the World Food Conference, (Rome, 1974), the Second General Conference of UNIDO (Lima, 1975), UN Conferences on Human Settlements (Vancouver, 1976), Water (Mar del Plata, 1977), Desertification (Nairobi, 1977), Environmental Education (Tbilisi, 1977), Primary Health Care (Alma Ata, 1978), World Climate (1979), Agrarian Reform and Rural Development (Rome, 1979, Symposium on the Interrelations between Resources, Environment, Population and Development (Stockholm 1979), among numerous others.

In addition to these international conferences, UNEP has been instrumental, together with other international agencies, in concluding a number of important treaties and conventions related to environmental conservation.

In 1975, UNEP set up its Regional Seas Programme to address Marine pollution on a regional basis by convening conferences and encouraging the development of an action plan to clean up the regional sea.

In addition, in 1980, UNEP commissioned the preparation of the World Conservation Strategy, one of the most significant documents on policy on conservation and world development. UNEP acts as a depository of international environmental treaties. At present, there are some 113 conventions and protocols currently listed in the UNEP register of international treaties and other agreements in the field of the environment. Many of these international instruments formally recognize the Stockholm Declaration as their basis and impetus for action.

As the Stockholm Conference brought environmental concerns into prominence, the 1970's also witnessed other important trends related to development thinking and world economic relations. The traditional "trickle-down" theory of development, which postulated that economic growth for all could be ensured by providing a strong industrial infrastructure, gradually gave way to the "basic needs" approach. This approach emphasized the need to direct development aid and resources toward the most urgent needs in both the rural and developing areas. It also recognized that development must be sustainable in the sense that economic, social and environmental factors must be integrated into the development planning process. Sustainable development strategies assumed that, without environmentally sound natural resource policies, present development efforts would not serve to enhance and improve the quality of life in developing countries over the long-term. Priority was therefore allocated to agricultural development, education and health facilities for the poorest sectors of society and broadly conceived integrated rural development projects.

Sustainable development was viewed by developing countries as one of the most urgent goals in their overall economic strategies for global economic reform. Commencing in the United Nations Conference on Trade and Development (UNCTAD) which first met in 1964, developing countries first collectively articulated their views concerning the need for a drastic global redistribution of wealth and income. These concerns have been furthered through subsequent UNCTAD meetings and culminated in 1974 and 1975 with a series of UN General Assembly resolutions proposed by a coalition of non-aligned nations, often referred to as the Group of 77 (which now number over 100), calling for the establishment of a New International Economic Order (NIEO). Comprehensive reforms were proposed which essentially challenged the basis of the world economy by advocating the removal of the biases in the free trade system and the promotion of economic self-development.

One priority goal of the NIEO was the establishment of measures to ensure for the transfer of technology. Modest success in this goal was realized in 1979 at the World Conference on Science and Technology. A new United Nations Centre was created with a voluntary fund for technology development to be administered by the United Nations Development Programme. (Little, 1982, p. 353-4).

Another aspect of the movement for a NIEO is the progression of many international environmental law concepts, and most notably, the designation of areas of the global commons (such as the high seas, the deep seabed and outer space), for the benefit of all developed and developing nations as the "common heritage of mankind".

By the end of the 1970's, the interrelationships between environment and development became well recognized. The convergence of these concepts set the agenda in the 1980's for the implementation of these new development, or "ecodevelopment" strategies.

One of the more recent examples linking development and environment concerns was the inclusion of a provision in the Strategy for the Third United Nations Development Decade, adopted 23 October, 1980, by the General Assembly. This provision recognized the interrelationships among development, environment, population, health and resources as it declared:-

It is essential to avoid environmental degradation and give future generations the benefit of a sound environment. There is a need to ensure an economic development process which is environmentally sustainable over the long run and which protects the ecological balance. Determined efforts must be made to prevent deforestation, erosion, soil degradation and desertification. International cooperation in environmental protection should be increased. (UNGA, Development and International Co-operation, pp. 11-12).

A significant examination and synthesis of the issues related to differing stages of development in various parts of the world was made in 1980 by the Independent Commission on International Development Issues (the Brandt Commission). The report, among many other issues, stressed the mutual interest of developed and developing countries in accelerating development in less developed countries; relating development policies to population policies; ensuring the continuing viability of ecosystems; and bringing about an ordered reduction of dependence on scarce non-renewable energy sources. (Also, see: Stockholm Declaration, Principle 8; Nairobi Declaration, Article 4).

While the interrelationships between environment and economics were being explored generally, much work has been conducted more specifically in regard to the role of development assistance in promoting sustainable development. The Development Assistance Committee of the Organization for Economic Co-operation and Development (OECD) has prepared a number of studies and initiatives aimed at ensuring the environmental soundness of development assistance.

The World Conservation Strategy, prepared in 1980, by IUCN, placed particular emphasis on the importance of development assistance in attaining the goal of sustainable development. The Strategy has been widely accepted and not only laid out the principles needed to conserve global and regional environments, but also created an agenda for action for all nations. The U.N. Draft Charter for Nature paralleled the Strategy and emphasized the need for legal environmental protection mechanisms for all policies and programs affecting nature.

The framework for discussion of emerging ecodevelopment norms for development assistance agencies was created in 1980 with the Declaration on Environmental Policies and Procedures relating to Economic Development. The Declaration, which was concluded by the World Bank, regional multilateral donor agencies together with UNEP and the United Nations Development Programme (UNDP), established three sets of objectives:-

1. to improve the environmental quality of their funding activities, including the systematic review of their policies, programs and projects to ensure their environmental appropriateness;

2. support project proposals specially designed to improve environmental quality and resource productivity;
3. provide technical assistance and training to governments in developing countries so that they may have the indigenous and independent capacity to ensure for environmentally sustainable development.

In order to translate this Declaration into action and to provide a permanent review machinery, the "Committee of International Development Institutions on the Environment" (CIDIE) was established in 1980 with UNEP entrusted as the secretariat.

While the international financial institutions began to formalize ecocodevelopment goals, other actors in the international community also recognized the importance of the environment-development relationships. Most notably, much work has been done by various organizations, including the United Nations, in developing voluntary codes of conduct for transnational corporations investing in developing countries. (Pearson, 1985, chapt. 3-4 ). Further, the World Industry Conference on Environmental Management (WICEM) resulted in 15 major recommendations which support ecocodevelopment and the 1984 ECO International Conference on Environment and Economics looked at the relationship between environmental and economic issues and discussed ways of integrating environmental and economic policy within and between nations.

In 1982, a conference was assembled in Nairobi by the United Nations to commemorate the tenth anniversary of the Stockholm Declaration. This Conference resulted in the Nairobi Declaration which in addition to noting the achievements of the previous decade, set an agenda for the 1980's. The Declaration codified many of the eco-development principles and noted in Article 1 that: "the principles

of the Stockholm Declaration are as valid today as they were in 1972. They provide a basic code of environmental conduct for the years to come".

Ecodevelopment policies have also been reflected at the national level of both developed and developing states. Various countries, and most notably, the United States, have instituted substantial initiatives to ensure the environmental soundness of their development assistance. Moreover, the infrastructure for environmental planning and management has also drastically increased in developing countries. At the time of the Stockholm Conference, less than 25 countries had governmental agencies with a specific mandate over environmental management. Today, that number has climbed to over 140.

The recognition by states and international organizations of eco-development principles, and in particular, in regard to development assistance, appears to be steadily gathering momentum. Important declarations, recommendations and reports are appearing continually. Important recent ones of which include the recommendations of the 1984 Nairobi Interparliamentary Conference on Environment and the forthcoming report by the World Commission on Environment and Development (Brundtland Commission). The result of this trend is that the consensus (opinio juris) necessary to constitute these principles as norms of international law is in place.

## 2. The Legal Foundations for Ecodevelopment Norms

Ecodevelopment norms can best be understood as a convergence and synthesis of a number of international law principles. Essentially eco-development norms relate to the management of global, regional



and national natural resources on a sustainable basis, i.e., one which ensures preservation of the resource base and compatibility with the local and global environment. Such norms are affected by the major underlying tensions within the state system such as the concept of national sovereignty versus global economic and ecological interdependence; of the goal of quantitative industrial growth versus the promotion of sustainable development; and of the desire for modernization versus the need for social and cultural preservation. It is not surprising, therefore, that the role of development assistance is only one of many and more expansive dimensions to ecodevelopment.

In order to fully understand the legal foundations and bases for the ecodevelopment norms, it is necessary to briefly review the more general existing and emerging international legal framework in which development assistance operates.

## 2.1 International Law of Development

International law has a number of fundamental principles concerning development. For the most part, these principles reflect a reconciliation of the concept of territorial sovereignty of nations with the reality of global interdependence. Two important principles in this regard pertain to the notions of "permanent sovereignty over natural resources" and "international entitlement".

### "Permanent Sovereignty over Natural Resources"

Flowing from the concept of state sovereignty itself, it has long been asserted that a nation has a right under international law to exploit its own natural resources in conformity with its national

policies. Although there are various U.N. General Assembly resolutions to this effect, the issue was sharply posed by the 1974 Declaration on the Establishment of a New International Economic Order (NIEO) and the 1975 Charter of Economic Rights and Duties of States. In substance, these documents are aimed at re-shaping the world economy to make it more equitable and just for developing countries.

In relation to environmental policy, the NIEO advocated continuation and expansion of developed states' technical assistance for development; formulation of an international program to assist developing countries utilize vast potentials of unexploited land and the initiation of projects to arrest desertification, salination in addition to other similar phenomena; measures for conservation of nonrenewable resources of the seabed and ocean floor; and most significantly, reaffirmation of the sovereignty of states over their economies and natural resources. (Charter of Economic Rights). The NIEO would also provide for a system of consultation for a "more just international social and economic order" within the United Nations Industrial Development Organization (UNIDO) as recommended by the 1975 Lima Declaration and Plan of Action.

The thrust of the NIEO, therefore, is that development must be viewed from a holistic policy perspective which may require a re-evaluation of the existing economic, social and natural resource policy assumptions and institutional arrangements. For example, in the 1974 Cocoyoc Declaration, adopted by the 1974 UNEP/UNCTAD Symposium on Patterns of Resources Use, Environment and Development Strategies, advocated a new approach to development to include "imaginative research in alternative consumption patterns, technological life styles, land-use strategies, as well as institutional frameworks

and education requirements to sustain them".

Articles 1 and 2 of the Charter of Economic Rights and Duties of States reveal the basic principles in regard to the concept of sovereignty over natural resources:-

1. Every state has and shall freely exercise full permanent sovereignty including possession, use disposal, over all its wealth, natural resources and economic activities;
2. Each state has the right:-
  - a) to regulate and exercise authority over foreign investment within its national jurisdiction in accordance with its laws and regulations and in conformity with its national objectives and priorities...
  - b) to regulate and supervise the activities of trans-national corporations within its national jurisdiction and take measures to ensure that such activities comply with its laws, rules regulations and conform with its economic and social policies.....

The legal effect of these instruments as a whole, and the degree of acceptance by developed nations, has always been a matter of debate, especially with regard to issues pertaining to expropriation and compensation of foreign investment. Nevertheless, the principle of sovereignty over resources is entrenched in Principle 21 of the Stockholm Declaration.

Natural resource sovereignty mandates, therefore, that it is state policies which have the ultimate authority to dictate how, and to what extent, the resources of a state will be exploited. This fundamental principal has the potential to cause considerable tension in the implementation of environmentally-sound development assistance policies. For example, a donor agency may demand more stringent environmental safeguards than those required under the laws

of the recipient country. The recipient then may allege that such pre-conditions interfere with its sovereign right to exploit its resources as it sees fit. In practice, however, such problems can be avoided through negotiations early in the project cycle or settled by way of an agreement or through a set of specific conditions in the loan agreement. Nevertheless, it can be expected as the environmental capabilities in developing countries increases, there exists greater potential for disagreement as to the appropriateness of the environmental precautions proposed. In this regard, donors do have significant influence over these issues, since they can ultimately refuse to fund the project.

"International Entitlement Based Upon Need"

Each state is under a "duty to cooperate for the well-being of mankind". The basis of this duty is found in Article 55 and 56 of the United Nations Charter. According to these provisions, each nation is obliged to promote:-

- a) higher standards of living, full employment and conditions of economic and social progress and development;
- b) solutions of international economic, social, health and related problems; and international cultural and educational co-operation;.....

These general duties have been further particularized in U.N. General Assembly resolutions, including those proclaiming the First, Second and Third Development Decades (1960 - 1990).

Moreover, the Declaration calling for a NIEO called for a global international economy that will "make it possible to eliminate the widening gap between the developed and the developing countries and ensure steadily accelerating economic and social development and peace and justice...." Such principles are re-iterated in the Declaration of Economic Rights and Duties and States.

Through these instruments, a perception has arisen, especially from developing countries, that the right to economic growth and industrialization is more than a privilege; it is a right with the corresponding obligation of states to assist each other to realize this entitlement to economic development. (Baxi, 1983; von Muench, 1983; Nanda, 1984). In more practical terms, it has been argued that although development assistance may not be the best means to realize international economic equity, it is perhaps the most accepted mechanism. It follows, therefore, that mechanisms such as development assistance ought to be treated as an "obligation and not as a charity". (Haq., 1979, pp. 421-23)

The nature and scope of this "international entitlement" has often been the focus of debate. Developed nations are reluctant to unequivocally accede this right. Nevertheless, an American international law scholar observed:-

....there appears to be a fairly broad consensus within the international community that very rich nations should share part of this wealth through economic assistance to needy nations. It is interesting that certain wealthy developed nations, such as Sweden, Canada and the Netherlands, and even certain wealthy developing nations....seem to view assistance to others as an obligation. Some developing nations frequently phrase requests for aid in terms of claims, obligations and duties. (Bilder, 1980, p.468)

Similarly, another authority noted:-

What is striking about this conception is not so much its espousal by the large majority of poor and handicapped countries but the fact that it has been accepted--by and large--by the more affluent countries to whom the demands are addressed. The evidence for this can be found not only in international resolutions with which the rich countries have concurred but also, and more convincingly, in the series of actions by them to grant assistance and preferences to those in the less-developed world. Though it may well be the case that these actions fall short of meeting the actual requirements of many of the recipient countries, the scale and duration of the response have been substantial enough to demonstrate the practical acceptance of a responsibility based on the entitlement of those in need. (Schachter, 1976, pp.7-8)

Most commentators agree, however, that the international entitlement to development assistance has not progressed to the extent that there is a duty to transfer wealth between nations; on the other hand, development assistance has moved a considerable distance on the spectrum between "charity" and "obligation".

Ecodevelopment norms are complementary to this notion of "international entitlement" to the extent it qualifies the nature of assistance that ought to be appropriate. Essentially, development assistance must be of a kind that conforms to the principles of environmentally-sound, sustainable development.

One of the most dramatic developments in favour of this notion of international entitlement relates to the existing and emerging regimes governing the global commons, such as the oceans, outer space and Antarctica. Inequities in the international economic system are sought to be addressed by restructuring the legal regimes pertaining to the global commons to ensure that developing countries "...will receive the benefits of exploitation prior to their own ability to

invest". (Larschan, 1983, p. 132). It has been thought such regimes do not conform to the strict traditional regime of the control of resources based upon the sovereignty and independence of states.

## 2.2 International Environmental Law

International environmental law is a fairly recent innovation within the central body of international law. Although its basis can be traced back to long before the 1970's, its legitimacy soon became recognized following the Stockholm Conference in 1972. Many principles of international environmental law are viewed as limitations on the principle of national sovereignty. To the extent that each state owes an obligation to other states to protect and conserve the environment, state actions are circumscribed. This limitation of state sovereignty however, has been justified on the principle that, to the extent a state causes injury to another, the territorial integrity of the injured state is violated.

International environmental law comprises a number of duties which go beyond protecting the interests of other states; individually states also owe duties to protect those areas not under the jurisdiction of any state, or the global commons.

### a) Obligations of States Toward Each Other

Generally, a state is obliged under international environmental law to abate and compensate transfrontier pollution injury, to enlist measures to prevent such pollution, in addition to those duties stemming from the use of shared natural resources and other corrolary duties to inform and consult.

-Duty to abate and compensate for transfrontier environmental injury

Principles 21 and 22 of the Stockholm Declaration reveal the basic obligation each state has toward other states. Principle 21 provides that:-

States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign rights 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 areas beyond the limits of national jurisdiction.

This principle can be viewed as codifying already well-established principles that had been accepted through international caselaw, (for example, the Trail Smelter Arbitration, Corfu Channel Case and Lac Lanoux Arbitration) various international conventions and agreements, and state practice. In particular, Article 194(2) of the U.N. Convention on Law of the Sea creates a duty not to "cause damage by pollution to other states and their environment" which coupled with Article 235 on state responsibility will make states liable for damage attributable directly to them. Moreover, the duty to "abate and compensate for tranfrontier pollution" can be viewed as a modern application of other traditional international law principles such as the obligation of due diligence (which mandate a state to enact laws designed to protect extr-territorial interest), abuse of rights and the principle of good neighbourliness.

Despite the recognition of this general principle, its actual scope and content has always been a matter of debate. Some of the issues evolve around the definition of "pollution"; to what extent



must there be environmental "damage" before international liability will ensue; whether this duty applies to all domestic activities or only those of an ultra-hazardous nature; and the proper means for enforcement of these duties. Most of these problems result from the lack of specific international standards and rules which would assist in determining when nations are in breach of the obligations. In most instances, these obligations only take on practical significance in cases of grave transfrontier environmental injury, or when two or more countries enact more specific standards pursuant to an international convention.

It is clear that a state's responsibility extends to its agencies, including its development assistance agencies. Moreover, the duty to abate and compensate is probably applicable irrespective of the actual location of the polluting or injurious activities, so long as a state sponsors or is directly involved in that activity.

-Duty to prevent environmental injury

Although not mutually exclusive from the duty to abate and compensate for environmental injury, it has been put forth that each state is under a duty to prevent its polluting activities from having an adverse environmental impact on other states. This duty is derived from customary law, as well as a number of judicial pronouncements to this effect (such as the Trail Smelter and Corfu Channel cases). Further, international commitments toward prevention can be found in the Helsinki Rules (discussed below) and international conventions, such as the 1982 Law of the Sea Treaty and the 1974 Nordic Convention.

The emergence of the duty to prevent suggests that environmental law is now becoming more comprehensive in scope, moving away from those duties designed to address environmental injury toward more sophisticated and anticipatory approaches. For donor agencies, this duty would suggest that there may be some minimal requirement to have in place a procedure to assess the environmental consequences of its development projects.

-Duties concerning shared natural resources

Where two or more states share a common natural resource, a community of interest arises with respect to that natural resource which entails a corresponding legal relationship between them. This legal relationship may subject a state to a set of substantive and procedural restraints flowing from the principle of equitable use (or solidarity), (Handl, in OECD, 1981, p.98). For the most part, this principle has developed in the context of international river basin law, although there is now some support for the view that the doctrine should apply to all shared natural resources. (Scott and Branson, in OECD, 1974).

The most authoritative statement of the legal rules governing shared natural resources is found in the Helsinki Rules on International Drainage Basins, which were adopted by the International Law Association in 1966. Article V states the basic principle: "each basin State is entitled, within its territory, to a reasonable and equitable share in the beneficial use of the waters of an international drainage basin." Article IV further provides that "what is a reasonable equitable share...is to be determined in light of all relevant factors in each particular case." It then enunciates a set of factors deemed

to be relevant.

With respect to pollution, the Helsinki rules provide in Article X that States:

- a) must prevent any new form of pollution or any increase in the degree of existing water pollution in an international drainage basin which could cause substantial injury in the territory of a co-basin State, and
- b) should take all reasonable measures to abate water pollution in an international drainage basin to such an extent that no substantive damage is caused in the territory of a co-basin State.

Duties arising from the use of shared natural resources suggests that river basin developments must be a co-operative effort by all co-basin states.

#### -Duties to Inform and Consult

When a state has actual or constructive knowledge of new or increased levels of pollution that might give rise to a substantial risk of transfrontier pollution, it is then under a duty to inform neighbouring states of such dangers. This duty is operative for all forms of pollution and all types of polluting activities.

Flowing from the duty to inform, states are obliged to consult with the states which may be affected by transfrontier pollution. In such instances, states are not obliged to come to an agreement, but only to consult in good faith.

Both the duty to inform and consult are applicable and complementary to all of the duties and in particular, duties pertaining to

the use of shared natural resources. These duties are triggered whenever one state acts in such a way so as to affect the use of those resources by another sharing state.

b) Duties With Respect to the Global Commons

It is clear that states are under certain duties with respect to those areas not under the jurisdiction of any one nation. Various legal regimes have been established, which include environmental protection measures, for the high seas and marine environment (Convention on the Law of the Sea, 1982), outer space (Larschan, 1983, p. 327), and Antarctica (Antarctic Treaty, 1959). These areas have been, to varying degrees, regarded as the "common heritage of mankind" and hence, subject to collective global protection. The Convention on the Law of the Sea is perhaps the most advanced application of this concept. In addition to its environmental protection provisions, it establishes institutions for exploitation of deep seabed resources together with measures to ensure that the benefits from those resources are distributed equitably among all nations, even those who are unable to invest in such ventures and landlocked states. As mentioned above, it was the Group of 77 that was instrumental in ensuring the introduction of these concepts at the Law of the Sea Conference based upon the same thinking which led to the proposal for the NIEO.

3. Scope and Substance of Ecodevelopment Norms

While the abovementioned legal rights and duties describe the general framework by which states are to be guided, eco-development norms supplement this framework in regard to global, regional and national environmental and natural resource management strategies,

including those aspects relating to development assistance where such norms progress beyond the discussion of whether development assistance is obliged as an "international entitlement." Instead they give guidance as to what kinds of concerns ought to be given in devising aid policies, programs and projects. Over and above defining what general obligations exist to prevent and abate pollution, eco-development norms suggest what are the current acceptable environmental safeguards in this regard to development assistance activities.

The precise scope, content and substance of these norms are still evolving. It is clear, however, that these norms, while representing the leading edge of a new paradigm, are evolving at a rapid pace. Ecodevelopment norms which can now be delineated include: 1) the duty to integrate environmental considerations in development policies; (2) the duty to increase environmental capabilities; (3) the duty to take a regional planning perspective; and (4) the duty to ensure an appraisal procedure is in place to assess the impacts of development projects on the environment and natural resources of the state.

### 3.1 Duty to Integrate Environmental Consideration in Development Policies

It has long been recognized that goals aiming at sustainable development can only be achieved to the extent that environmental and natural resource considerations are integrated into a state's economic development policies. International law suggests that all states, both developed and developing, are subject to this obligation. In regard to development assistance, however, it is presumed that this duty extends to the need for such environmental and natural resource

Section 9 of the World Conservation Strategy, similarly, instills the need for an integrative approach. This section recognizes the need for anticipatory environmental policies, and in particular, development assistance policies sensitive to the ecological and natural resource needs and imperatives of developing countries.

Also of interest is Article 3 of the Nairobi Declaration which states that "a comprehensive and regionally integrated approach that emphasizes this interrelationship between environment, development, population and resources can lead to environmentally sound and sustainable socio-economic development."

The Interparliamentary Union Conference Report furthered this thinking by declaring that governments should be urged to "...establish a well-defined focus for environmental issues at a high level within their policy-making and administrative system." (recommendation 8). Further, recommendation 7 urged governments to "...(a) ensure that environmental considerations are taken properly into account in national economic planning, and (b) avoid rights to long-term sustainable production in pursuit of short-term economic gains." In a 1984 OECD International Conference in Environment and Development, the participants concluded that "environmental considerations should as a priority, be brought effectively into the center of national decision-making on overall economic policy."

The World Commission on Environment and Development (Bruntland Commission), which is scheduled to report in late 1986, first met

in October 1984 to determine the course of its programme of work. This meeting produced a preliminary report setting out its Mandate, Key Issues and Strategy and Workplan. The chief theme of the preliminary report was the classification of issues into a working agenda. The Commission is critical of what it calls the "Standard Agenda" in which issues are classified according to their consequences, (ie., pollution, natural resources depletion, etc.). Reliance on the Standard Agenda has been widespread (with the noted exception of the World Conservation Strategy) and has limited the effectiveness of environmental action. The Commission concludes:-

56. Whatever the intentions of a decade ago, with few exceptions, environmental policy has come through as a limited policy field, essentially an "add-on" to other policy fields, whose mission is to react to damage done and to cure it after the fact.
57. There is clearly a need now to shift the focus from the effects of environmental problems to their policy sources. Environmental policy needs to become a comprehensive, horizontal policy field, an integral component of economic and social policy.

As it will be further explored in the Part D of this study, the World Bank and the regional multilateral donor agencies have committed themselves to this principle by way of signing the "Declaration of Environmental Policies and Procedures Relating to Economic Development." This Declaration may soon be further supplemented by the "Draft Recommendations Regarding Environmental Concerns Associated with Multilateral Development Bank Activity" proposed by the U.S. Subcommittee on International Development Institutions. Many bilateral donor agencies have also accepted this duty as a basic ecocodevelopment norm.

The duty to integrate environmental considerations into development policies manifests itself in a number of ways. Initially, it

requires an explicit policy statement committing the agency to the implementation of such principles. Further, it requires a systematic and comprehensive review of all existing policies (eg., for forestry, water resources, human settlements, hydro-dams, river development schemes, among others), in terms of their environmental soundness, including sectoral policy documents which govern project design and execution. Third, there is need to build in a focal point for ongoing environmental responsibility in each agency.

### 3.2 Duty to Improve Environmental Capabilities

There is ample authority, and almost universal consensus, for the proposition that every country is obliged, to the extent practicable, to improve its environmental capabilities in order to be able to identify, assess and resolve environmental and natural resource problems, essential for planning, implementing the World Cooperation Strategy and generally ensuring for sustainable development. It follows, therefore, that in the context of development assistance, aid agencies are under a duty to ensure that the highest priority is given to fostering environment concern in developing countries, and in particular, assisting them in building up their indigenous physical, managerial and institutional capacity to address their own environmental problems above and beyond those related to development projects.

This duty has many dimensions to it. First, aid agencies would seem to be obliged to ensure that sufficient funding be given to ensure a strengthening of the institutional capacity for developing countries to manage their natural resources and environment. This institutional support includes formal educative measures, environmental



training programs, promoting the development and implementation of environmental legislation and adequate information networks. Correspondingly, it is necessary that adequate programs be put in place to assist developing countries in compiling natural resource inventories and accounting mechanisms, and other measures to identify and take into account ecological conditions and changes.

Support for this ecodevelopment norm is found in a number of sources. Most notably, the Principle 12 of the Stockholm Declaration and numerous recommendations in its Plan of Action (for example, recommendations 69 to 108) recognized this need as a precursor to the establishment and maintenance of environmentally sustainable policies. Such needs are also identified by the OECD (most recently, recommendation 12 of its 1984 International Conference on Environment and Economics), the World Conservation Strategy (sections 12 and 13), the Nairobi Declaration (articles 6 and 7) and the recommendations of the World Industry Conference on Environmental Management (WICEM, recommendation 5). Further, recommendations within the Interparliamentary Union Report (recommendations 5, 55, 62) and various provisions of the Declaration of Environmental Policies and Procedures Relating to Economic Development (sections 3 and 5) give particular emphasis on the role of aid agencies in realizing these goals.

In December 1985, the U.S. House of Representatives passed a bill designed to force multilateral lending institutions to improve environmental capabilities both within their own agencies and in developing countries. The provision formed part of House Joint Resolution 465, "Further Continuing Appropriations for Fiscal Year 1986 (99th Cong., 1st. Sess., s. 540), and requires the secretary of the Treasury to instruct the U.S. Executive Directors of the

multi-lateral development banks to, in part:

1. strengthen the number of environmentally-related staff;
2. involve environmental and health ministers in the planning process, and regularly use the resources of non-governmental conservation and indigenous peoples' organizations in project preparation;
3. increase the proportion of lending for environmentally beneficial projects and appropriate light capital technology;
4. provide training in environmental and natural resource planning and program development;
5. thoroughly evaluate within the U.S. the potential environmental problems of projected loans.

These provisions illustrate another dimension of the duty to increase environmental capabilities, that which relates to the need for aid agencies to ensure the establishment and promotion of programs designed to protect, conserve and rehabilitate natural resources or the environment. In particular, major coordinated programs are required to address problems such as desertification, deforestation, soil loss and the conservation of living resources and biological diversity both within national jurisdictions and the global commons. A number of broadly accepted general and regional conventions and treaties support this goal (for example, Convention on the Protection of the World Cultural and Natural Heritage, CITES, and the Convention of Wetlands of International Importance). Further, recognition of the need for these programs can be found in the U.N. draft World Charter for Nature, the World Conservation Strategy (sections, 11, 16-18) and the recommendations of the Interparliamentary Union Conference (recommendations 24 -50), among many other sources.

### 3.3 Duty to Assess Environmental Impacts of Development Projects

Environmental assessment procedures are viewed as an important part of any environmental management process since they aim to prevent environmental disruption caused by specific projects and not simply address problems after the fact. Most developed countries, and an increasing number of developing countries, now have environmental assessment procedures. Emerging ecodevelopment norms build upon these initiatives and require that development agencies institute procedures to ensure that projects are screened for potential environmental impacts, then if necessary, subjected to a more detailed environmental assessment and if there is no way to prevent or ameliorate the harm to disband the project. This norm has its most direct basis in the general international law obligation to prevent transfrontier pollution.

This ecodevelopment norm is implicit in Principle 11 of the Stockholm Declaration and a number of the recommendations in its Action Plan. Further, this norm is supported in the U.N. draft World Charter for Nature, which requires those activities that pose a high risk to nature be first examined against the benefits of the particular action and "[w]here potential adverse effects are not fully understood, the activities should not proceed." (Section 10). Environmental assessments are promoted generally in the World Conservation Strategy (Section 10), WICEM (recommendation 10), the Nairobi Declaration (article 9) and the Interparliamentary Union Conference report (recommendations 60, 65-66). Further, the Report of the Independent Commission on

International Development Issues (Brandt Commission) recommended as follows:

Environmental impact assessment should be undertaken whenever investments or other development activities may have adverse environmental consequences whether within national territory concerned, for the environment of neighbouring countries, there should be an obligation to consult with them. (1980,p.115).

Not only has there been support for the principle of environmental assessment for development projects, but there have been various initiatives to particularize the nature, scope and contents of these assessment procedures. For instance, in 1978, the United States proposed a "Draft Treaty on International Environmental Assessments." More recently, the UNDP released a 1984 report describing the draft "Goals and Principles of Environmental Impact Assessment" and in 1985, the Development Assistance Committee of the OECD issued its recommendations for "Environmental Assessment of Development Assistance Projects and Programmes." These proposals and recommendations exhibit many common characteristics such as requiring that the procedures be legally mandated, as opposed to simply advisory in nature; that the evaluation be conducted early in the approval process; that there be consultation with both recipient country and the public; that proper monitoring procedures be a part of the process; and that post-project audits are conducted to serve as a basis to evaluate the project and as a guide for future project planning.

At present, most multi-lateral donor agencies have some type of environmental screening procedure in place as do a number of bilateral donor agencies.

It can be expected that, as both developed and developing countries implement this ecodevelopment norm, the potential for difficulties in its implementation and conflicts between duties may arise. For example, developing countries may argue that, based upon the concept of sovereignty over natural resources, it is their prerogative to ensure adequate environmental safeguards for development projects. For this reason, there is a need for procedures to be flexible and include requirements of notification and consultation.

#### 3.4 Duty to Promote Integrated Regional Planning (Spatial Planning)

From the legal concept of the principle of equitable use of shared natural resources and the legal concept of riparian rights, development policies, programs and activities should be viewed from a regional perspective. Most often, this duty is operative in the context of river basin developments, requiring all concerned to ensure that the proposed use is reasonable and to take into consideration the effects of the development on co-basin states. Where the development will affect existing uses (whether because of altering water quantities, water flows or increased levels of pollution), then there is a duty to notify and consult with the affected states.

These principles are fairly well-entrenched in international law (Helsinki Rules, 1966, articles IV, V, X) and are equally applicable to donor agencies undertaking development projects.

(Stockholm, recommendation 51; World Conservation Strategy, section 19 and Interparliamentarian Union Conference Report, recommendation 12).

The World Bank, in addition to a number of regional Banks have been cognizant of this duty as reflected in various of their policies. Although bilateral agencies advocated such a view, often such views are not committed to explicit policy.

#### 4. Summary

In summary fashion, this section has attempted to briefly outline the setting in which ecodevelopment norms have evolved, describe the legal basis upon which they have developed and identify their basic content and contours. Of course, the ecodevelopment norms identified are not exclusive; it can be expected they will further be refined and supplemented as they continue to evolve and more research is conducted to determine their implications in regard to development strategies.

The policy level addresses the overall policy of a donor agency applicable to all countries and organizations to which aid is given. It can be expected that this policy will be expansive in scope and will determine how the ecocodevelopment norms are realized at the program and project levels. The program level is more specific in nature and focuses upon the development objectives at the regional or national level. The project level examines what procedures are in place for implementing ecocodevelopment norms with respect to specific projects.

The ecocodevelopment norms described in the previous section are not specifically directed to any one level. Even though they could be reflected at all levels, some of the norms have more direct relevance to one level as opposed to another.

In regard to the ecocodevelopment norm to integrate environmental considerations in development policies, each agency under review will be examined to assess the extent to which it has made a formal policy commitment to incorporate environmental concerns in its mandate; whether the agency has undertaken a comprehensive review of all of its policies to ensure their consistency with the agency's stated environmental commitments; and the degree to which it has provided a central internal institutional focal point for the promotion of these policies. Implicit at this level also is the degree to which these policies reflect the agency's commitment to take a regional planning approach in its development policies.

agency has become more cognizant of ecocodevelopment norms and the role they play in attaining the goal of sustainable development. However, each agency is still at a point of coming to grips with how it ought to meet this challenge in light of their own particular mandate and structure.

## 1.2 Nature and Description of Agencies

(a) World Bank: The World Bank was a leader in recognizing the relationship between environment and development when it created the Office of Environmental Advisor in 1970. The function of this Office is to review and possibly modify every project funded by the World Bank which may have a significant environmental, health or human ecological impact. The Office, however, has been criticized as being drastically under-staffed and over-worked. However, the Office's work is supplemented in the field by project officers who are instructed to take environmental considerations in account at the project design and implementation stages. Moreover, the World Bank has made some considerable efforts to raise the environmental consciousness of its staff through in-house training and education.

In response to environmental concerns, the Bank has, over the years, reoriented its emphasis from large-scale, mega-development projects to projects aimed at integrated rural development.

(b) Inter-American Development Bank (IDB): The IDB does not have any central department or office as a focal point for



environmental affairs, as in the World Bank. Instead, in light of the IDB's decentralized structure, regional offices are given the bulk of responsibility to take environmental considerations into account in the development planning process. Over the last few years, environmental awareness in the IDB has markedly improved, although it has not been institutionalized in the form of policy and programs as in the World Bank.

(c) United Nations Development Program (UNDP): Like the IDB, the UNDP does not have a specific institutional body responsible for environmental affairs. However, the UNDP does heavily rely on other U.N. agencies for technical support and advise for matters affecting the environment. Moreover, UNDP has been a proponent of the "basic needs" approach, together with the World Bank, for some time. However, because of its decentralized nature, environmental planning and programming at UNDP has been subject to criticism. In response, UNDP has committed to a major review of its process in the near future to ensure environmental concerns are integrated into the agency's operation.

(d) United States Agency for International Development (U.S. AID): U.S. AID is one of the largest aid agencies in the world. Its environmental policies have been developing since the 1970's, in response to both internal and public pressures. For example, AID was brought to court in 1975 to determine whether the agency is bound to follow U.S. environmental laws while funding a project in a developing country. AID has a number of interesting operational characteristics relevant to ecocodevelopment. First,

the agency works on the basis of, and is bound by, a body or formal regulations on environmental matters. It has created an Office of Environmental Coordinator whose main task is to provide an agency focus for reviewing, coordinating and interpreting AID environmental policies and programs and for strengthening its competence to deal with environmental problems in developing countries. In addition to the Office of Environmental Coordinator, there are environmental staff positions in each Bureau, Mission and other major office to coordinate and advise on environmental matters.

(e) United Kingdom Overseas Development Administration, (ODA):

ODA's operational and institutional characteristics are, in many ways, in direct contrast to that of U.S. AID. For the most part, ODA remains fairly insulated from both Parliamentary and non-governmental scrutiny. While an environmental advisor position was created, it often remains vacant due to the failure to appoint a successor. Its role is primarily to consult on all significant environmental issues arising in the administration of bilateral and multi-lateral aid. A Natural Resource Advisory Group forms a pool from which experts can be consulted in regard to specific projects.

(f) The Netherlands - Ministry of Foreign Affairs, Directorate General for International Cooperation (DGIC) (Dutch Aid):

Unlike other agencies, Dutch Aid is integrated in its practical operations within the Foreign Ministry, although a considerable proportion of the Netherland's aid program is managed by other institutions. Dutch Aid has tended not to develop its own in-house expertise in environmental matters, but instead, has relied upon

expertise from the public and private sectors. This decentralized aid fragmented structure has made it difficult to establish and implement uniform and coherent procedures and practices in regard to ecodevelopment norms. Hence, despite its growing concern for environmental matters, Dutch Aid has had to cope with an organizational structure that is difficult to systematize environmental concerns within its operation.

## 2. Multi-lateral Donor Agencies

### 2.1 Agency Policies

#### 2.1.1 Overview

All of the multi-lateral agencies under examination have at least given a commitment to the ecodevelopment norm of integrating environmental considerations in their development policies. This commitment is evidenced by their signing the 1980 Declaration of Environmental Policies and Procedures Relating to Economic Development, and to varying degrees beyond this, through their respective policy statement and directives.

The key paragraphs of the 1980 Declaration state that the donor agencies:

1. reaffirm their support for the principles and recommendations for action of the United Nations Conference (on the Human Environment), and will, to the best of their abilities, endeavour to:
2. institute procedures for systematic examination of all development activities, including policies, programs and projects under consideration for financing to ensure that

that appropriate measures are proposed for compliance with section 1 above;

3. enter into cooperative negotiations with governments and relevant international organizations and agencies to ensure integration of appropriate environmental measures in the design and implementation of economic development activities.

This Declaration, although an important statement of intention, does not necessarily impose obligatory duties to carry out its provisions as it only commands the agencies to achieve the goals "to the best of their abilities".

The World Bank has attempted to implement these intentions more than any other multi-lateral donor agency. Since 1970, when the World Bank established the Office of Environmental Affairs, has intended to make environmental, health and socio-cultural concerns an integral part of its economic assistance programs (World Bank, 1983a, p.1). The Bank had often pronounced that "[e]nvironmental work becomes a continuous process during development, and not necessarily a discrete component of a project -- or even less effective -- an add-on." (World Bank, 1983a, p.2). The Bank therefore strives to factor environmental criteria into project design decisions together with economic and engineering criteria from the earliest stages of the project.

In 1984, the World Bank adopted its first official statement on the environmental aspects of its work. (World Bank, 1984). Rather than adopting environmental standards, the Bank's approach is tailored to local circumstances and respects vast differences among its developing member countries. The Bank's policy is to

consider each project unique with respect to its total setting and to the ability of the authorities concerned to manage the environment.

In conformity with this policy, the Bank will not finance any project that:

1. seriously compromises public health or safety, causes severe or irreversible environmental deterioration;
2. displaces people or seriously disadvantages certain vulnerable groups without undertaking mitigation measures acceptable to the Bank as outlined in separate notes on involuntary resettlement, and on tribal peoples;
3. contravene any international environmental agreements to which the member concerned is a party;
4. could significantly harm the environment of a neighbouring country without the consent of that country. The Bank is willing to assist neighbouring members to find an appropriate solution in cases where such harm could result;
5. would significantly modify natural areas designated by international conventions as World Heritage sites or Biosphere Reserves, by national legislation as national parks, wildlife refuges, or other protected areas. (World Bank, 1984, p.4).

In addition, the Bank endeavours to ensure:

6. that each project affecting renewable natural resources does not exceed the regenerative capacities of the environment;
7. that projects with unavoidable adverse consequences for the environment are sited in areas where the environmental damage is minimized, even at somewhat greater initial cost. (World Bank, 1984, p.4).

The 1984 policy is of considerable importance since it consolidates previous policies and pronouncements on environmental matters and incorporates them in a formal and binding document.

The Bank periodically publishes environmental guidelines for projects which are distilled from a wide range of national and international recommendations and standards. (World Bank, 1978a; 1978b; 1979; 1980b; 1981a; 1981b; 1982a to 1982c; 1983a to 1983c). These guidelines suggest acceptable ranges to be followed in Bank operations pertaining to planning, assessing and implementing of projects unless the borrowing country's standards are stricter. In particular, mention should be made of the Preliminary Guidelines for Designing Watershed Rehabilitation Projects for Financing (World Bank, 1980b). These guidelines discuss the importance of looking at the watershed as a whole to produce an integrated management policy.

In addition to these existing policies, the World Bank is in the process of revamping its procedures with respect to project in shared water basins. Essentially, the thrust of the reform will be directed to ensuring for the protection of co-basin states through prior notification and consultation and agreements with co-basin states as to the water uses and flows. (World Bank, 1985).

Apart from the World Bank, the other two multi-lateral agencies under study have demonstrated their commitment to integrating environmental considerations in their development policies, although they have yet to carry out this commitment to its fullest extent.

The IDB's Operation Policy 713 (Environment) calls for the "rational use of ecological systems, protection of air, land and

water quality and of human health" by meeting the following objectives:

- (a) ensuring all projects are reviewed for their environmental factors to avoid negative impacts;
- (b) assisting member countries to improve their environment through financing and technical cooperation in projects that protect and improve the environment;
- (c) assisting member countries to identify environmental problems and to formulate solutions to them;
- (d) assisting in formulating, transferring and utilizing science and technology for environmental management. (IDB, 1983, pp.4-5; IDB, Operational Policies Manual).

IDB Operational Policies Manual also indicates that assistance can take the form of environmental projects, environmental components of projects and technical assistance.

UNDP has made a number of pronouncements emphasizing its commitment to the strategy that environmental considerations are an integral part of the project design and appraisal process. (UNDP, 1986, p. 1). However, this commitment has not found expression in any formal or binding agency document. Nevertheless, a process of staff education, both at headquarters and in the field, through the provision of appropriate guidelines and directives has been undertaken. Most notably, UNDP's Environmental Operational Guidelines from 1981 are incorporated into the Policies and Procedures Manual which assists staff in particular sectors. (UNDP, 1981). UNDP's recognition of national sovereignty is reflected in its emphasis on the importance of flexibility to facilitate response to the short term needs of government.

### 2.1.2 Evaluation

It may be said that all of the multi-lateral donors have, in principle, recognized the duty to integrate environmental considerations into development policies. However, it seems clear that the agencies are still in the process of implementing them in their respective day-to-day operations.

The first problem which has been identified for multi-lateral donors is that the institutional infrastructure needed to translate the policy commitments into concrete action is lacking. For example, the staff in the environmental office at the World Bank has often been criticized as very small in relation to the nature and extent of the Bank's activities. Requests for additional staff to assist in implementing and furthering the environmental capability of the Bank have been rejected.

The IDB has often been subject to criticism over its absence of any type of "environmental coordination unit". This absence disallows continuity in the application of environmental policies and impedes the furtherance of agency capabilities.

Similarly, UNDP relies upon sister agencies to assist in implementing its environmental policies and training staff personnel. Its decentralized structure has made it difficult to ensure that its policy commitments have been implemented. Moreover, UNDP has not made conscious efforts to design programs and procedures to implement its environmental policies. However, it is reported



that UNDP is in the process of transition and is expected to announce a "blueprint" of how it intends to translate its environmental policy commitments into concrete action in the near future.

Another problem is that, light of the environmental policies, there has been little re-evaluation of the type of projects supported by the banks. Most are still supporting large, capital intensive projects which inherently cause ecological disruption as opposed to other more environmentally sound projects designed to achieve the same purposes.

## 2.2 Environmental Programs

### 2.2.1 Overview

All of the donor agencies have placed special emphasis on attempting to improve the environmental capabilities of their aid recipients, and in particular, special programs formulated to address some of the major regional and local environmental problems they face. It will be recalled that all of the agencies under review are signatories to the Declaration of Environmental Policies and Procedures Relating to Economic Development. Paragraphs 4 and 5 of this document state that each agency will:

4. provide technical assistance, including training on environmental matters to developing countries at their request, thus developing their indigenous capacity and facilitating technical cooperation among developing countries;
5. give active consideration to and, if appropriate, support project proposals that are specially designed to protect, rehabilitate, manage or otherwise enhance the human environment, the quality of life and resources thereto.

According to the environmental requirements of the World Bank, country economic and sector work should start with an assessment of the ability of environmental systems and the natural resources base to sustain present and proposed patterns of economic development. As experience with such assessments accumulates, they should be incorporated in country economic and sector papers. In pursuit of these program goals, the World Bank is currently involved in identifying and preparing for financing projects that aim to restore, rehabilitate, protect and improve the management of the natural environment and human settlement, and others directed toward reforestation, soil erosion, watershed protection, genetic diversity, fisheries, among others.

Also, it should be noted that the Environment, Science and Technology Unit of the Bank publishes advisory environmental guidelines for staff people in the regional offices.

The IDB funds programs and projects whose direct objectives are to improve or preserve the environment. They include projects such as urban sanitation and water and air pollution control reforestation programs, and soil erosion. The IDB also supports technical cooperation projects in environmental areas in the field of (a) institutional strengthening; (b) research; (c) training; and (d) problem identification and solving. (IDB, 1983, pp.4-5; IDB, 1985).

UNDP's activities are incorporated in country, regional, and inter-country programs, which reflect the priorities for recipient

countries for technical cooperation. When such programs are being prepared, a dialogue is initiated between the government and the resident representative as to the possible orientation of UNDP assistance. The responsibility then rests with the resident representative to ensure that all possible steps are taken in preparation of the programs and that the governments are aware of the need to integrate environmental management policies into their economic development policies. (UNDP, 1986, p. 2).

Although UNDP has not articulated a comprehensive program specifically dealing with the environment, it is noted for its support of environmentally related projects. These include those dealing with environmental rehabilitation (desertification, reforestation), technical assistance (anti-pollution control, fisheries, forestry, technical clearing house, hydrology, housing), research and development (selective energy technology, sanitation technologies, integrated resource recovery), training (agrometeorological, hydrometeorological, meteorology and tropical diseases), and environmental management (sanitation, drinking water, wildlife protection, genetic resources and chemicals).

### 2.2.2 Evaluation

Again, although each of the agencies has made policy commitments to improving environmental capabilities, often they have not been translated into their development programs. Progress has been made, however, with respect to goals aimed directly at training, educating and increased funding for environmental manage-

ment. Limited progress has also been made at providing means for resource inventory and data bases and measures to arrest regional natural resource use problems. However, these programs have often not been the result of conscious long-term planning, but instead were in response to the immediate needs of recipient countries.

Further, the effectiveness of these programs depends, to a significant degree, upon the level of awareness by the agency and field personnel of the agency itself. The lack of an institutional infrastructure for environmental management within most of the agencies, as noted above, lessens the impact of these programs.

## 2.3 AGENCY PROJECTS

### 2.3.1 Overview

Project assessment and appraisal is the most fully implemented of all ecodevelopment norms.

In the context of the multi-lateral donor agencies, the World Bank has led the way in developing and applying an environmental impact assessment process for development projects. Environmental considerations are integrated into each of the six stages of the Bank's project approval process, as follows:

1. Identification: Any project proposed or considered by the Bank is reviewed to determine whether, and to what extent it may have significant impacts on the environment. During this review process, it is determined what investigations are required in an attempt to minimize any adverse environmental impacts and whether the environmental costs or risks can be mitigated and exceeded by the projects's benefits.

2. Preparation: While the borrower is responsible for project preparation, the Bank assists the borrower to the extent necessary to ensure that any adverse impacts can be minimized or eliminated.
3. Appraisal: During the appraisal process, the environmental findings are assessed, together with the future magnitude and timing of the adverse effects and a determination is made as to whether the remedial or mitigation measures are adequate. Once the appraisal is complete, the measures are incorporated into the overall design and operation of the project.
4. Loan Negotiation: Where project issues have not been settled through prior negotiation, environmental requirements are discussed at the loan negotiation stage. The loan agreement may contain covenants or other provisions concerned with the environmental aspects of the project.
5. Implementation: Often field missions are employed to determine the extent to which the environmental measures are being properly administered and to determine whether further measures are required.
6. Environmental Post-Audits: At the end of the project, a report is submitted commenting on the appropriateness, costs, adequacy and administration and any other problems stemming from the environmental measures provided in the project. The audit process provides a basis for assessing at least the shorter-term efficacy of the environmental measures and thereby serve to improve similar future projects.

As with the World Bank, the IDB has a project appraisal process as part of its project approval cycle. However, this process is not found in a formal document and follows a rather flexible format. The stages of this process can be described as follows:

1. Project Planning: At the project planning stage, the IDB issues guidelines to borrowers for loan stipulations for each development sector which includes environmental aspects. (IDB, 1981). Further, during the process, Environmental Checklists are used to help establish the need for more specific studies and measures. Recipient countries can propose measures needed to mitigate any potential environmental impact. Environmental factors are then incorporated into the project proposal. (IDB, Checklists).
2. Project Approval: Before approving proposed projects, the Bank determines if they meet the following basic criteria: (a) that the project is designed so as to

address effectively the existing problems in the entire urban or rural zone involved; (b) that the air, water and soil affected by the project are properly protected and the environmental measures adopted are economically and socially beneficial; (c) that the environmental measures are properly incorporated into the specific project design; and (d) that due consideration is given to the regional environmental effects of the project. (IDB, 1983, p.5).

3. Project Assessment: Field missions assess and verify the technical, economic, financial, legal, institutional, and environmental feasibility of proposed projects. Further, these missions determine the need for specific investments for environmental protection and recommend means to avoid or minimize potentially negative environmental impacts. Missions also determine if there are local norms for the protection of the environment that must be adhered to during project execution.
4. Implementation: Monitoring is done during implementation by field missions to ensure compliance with provisions of loan contracts and technical cooperation agreements.
5. Post-Project Evaluation: Upon completion of the project, the IDB compares the objective of the project with its actual accomplishments. Though no time frame for the project audit is mentioned, experience obtained from the project is often applied to future projects.

The environmental assessment procedures for projects by UNDP are not as extensive or complete as is the case with World Bank or IDB. The UNDP Policies and Procedures Manual in Section 3437 provides that the project documents must contain a section describing any "special considerations" which are relevant, and included with this heading, specific mention is made of "preservation or improvement of environmental conditions". (UNDP, 1981; UNDP, 1986, p.2)

### 2.3.3 Evaluation

Two problems are apparent in regard to environmental assessment norms. First, it is clear that much progress is still needed to formalize the procedures. With the possible exception of the

World Bank, assessments of environmental impacts of projects have not been made a formal part of the project approval process, and leave open the potential to be by-passed. Although each agency is committed to furthering this norm, further and more consistent implementation is needed. This is particularly the situation in regard to the UNDP.

The second problem stems from the application of the procedures themselves in practice. In the World Bank, for instance, the common practice is to attach loan stipulations or conditions to ensure that proper environmental considerations are incorporated into the project design. However, these stipulations may not be stringent enough, or may eventually be ignored if they are seen to usurp the sovereignty of the recipient country. It has also been noted that the environmental assessments upon which the stipulations are based are not as thorough as they could be or are based upon incomplete environmental data. Further, post-project audits often de-emphasize environmental consequences in favour of other economically related ones.

These implementation problems are also apparent with the IDB, where "environmental impact assessment" seems to refer to identifying "possible adverse effects" rather than to a hard core detailed analysis. Moreover, in several cases, environmental assessments have not been completed until after a project was completed, thus making it impossible to integrate the assessment results in the project design.

### 3. Bilateral Donor Agencies

#### 3.1 Agency Policies

##### 3.1.1 Overview of Environmental Policies

Like the multilateral institutions, the bilateral donor agencies have taken some significant steps in integrating environmental considerations into their development policies. However, in regard to the agencies under study, this commitment ranges from an explicit one (as in the U.S.) to one of considerably less certainty (as in the U.K.).

The leading bilateral agency in regard to implementing eco-development norms is U.S. AID. Through such statutes as the National Environmental Policy Act of 1969, the Foreign Assistance Act, the International Environmental Protection Act of 1983 and the Endangered Species Act, among others, U.S. AID is directed to:

- (a) provide assistance for environmental and natural resource protection and management;
- (b) make efforts to maintain and restore the natural resources of the less developed countries;
- (c) consider the environmental impacts of its development activities;
- (d) identify the major environmental and natural resources problems in less developed countries and improve the capability of recipients to solve them;
- (e) undertake forestry and soil conservation projects;
- (f) prepare and take into account an environmental impact



statement for any program significantly affecting the global commons; and

- (g) prepare and take into account an environmental assessment for any program significantly affecting the environment of any foreign country;
- (h) provide assistance in the conservation of endangered species and biological diversity in developing countries.

Various Presidential directives support and supplement this statutory mandate.

In response to this mandate, U.S.AID has articulated policies attempting to further incorporate environmental protection, improvement and management measures in its operations. The thrust of these policy initiatives assumes that sustainable development can only be achieved through sound environmental planning and on a clear understanding of a country's natural resource potential and limitations. (See: U.S. AID, Policy Determinations 6;51,63,74; A Strategy for a More Effective Bilateral Development Assistance Program; 1983a; 1984a; 1984b).

In contrast to the many ecodevelopment norms statutorily entrenched in U.S. AID's mandate, U.K.'s ODA enabling statute, the Overseas Development Cooperation Act of 1980 is silent as to the environmental considerations in the development process. However, Policy Guidance Note No. 24, entitled "Aid Projects and the Environment" commits ODA to:

- (a) avoid serious and irreversible damage to the environment in its development activities;
- (b) overall improvements in the quality of the atmosphere, water sources and life itself;

- (c) inform the potential recipient of the environmental impacts of the development project ODA is considering funding.

Other policy statements, such as the "Guide to Economic Appraisal of Projects in Developing Countries", "Policy Guidance Note No. 13 on Appropriate Technology" (1977) and various Country Sector Papers, contain only passing reference to environmental considerations. Earlier discussion papers within ODA, however, do specifically recognize the relationship between environment and development. In one paper, "ODA's Work Concerning the Environment" (1973a), the agency was urged to pay careful attention to the "environmental dimension of aid projects" and "ensure that the relevant environmental aspects of projects are brought into the appraisal of projects and negotiations with recipient Governments about them." Other discussion papers reiterate such general stances. (ODA 1973b; 1974). In the most recent paper, which seems to reflect ODA's policy position, it states:

In considering the contribution which we [ODA] can make the key factor is that it is for the governments of the developing countries themselves to decide what priority they wish to give environmental factors within their own development programmes ... [ODA] is prepared to give, indeed does give, assistance and advice on environmental matters to developing countries, strictly on request .... In these (and all relevant) cases we seek to take into account the environmental implications at every stage in the planning and execution of a project and we encourage aid recipients to be aware of them also. (ODA, 1979).

Unfortunately, the policy statements found in these discussion papers are not required to be followed and may not in fact be followed in practice. In one study of ODA, it was found that many of these documents were either not easily accessible to agency staff or applied on a day-to-day basis. (O'Riordan, 1980, pp.33-34).

Dutch Aid, in its Memorandum on Bilateral Development Cooperation (1976), has articulated the need to integrate environmental policies in the development process, and in particular this documents noted that "in general, in addition to economic aspects, much more attention will be given to social aspects, including the care for the environment; and what social cost benefit analyses ought to consider the influences of a project on the environment." (p.16) The Dutch Government in its 1979 Budget Memorandum announced its intention to initiate instruments and procedures for systematic evaluation of project proposals for their environmental impact.

In a report commissioned by the Netherlands Minister of Development Cooperation, it noted that Dutch Aid has made little progress in developing the necessary policy instruments with which to implements these policy intentions. It is further observed that, while there has been some significant accomplishments, "much remains to be done in terms of systematizing the incorporation of environmental concerns in activities of bilateral development cooperation." (Raay, 1980, pp. 6-7).

### 3.1.2 Evaluation

It would seem that all of the bilateral donor agencies have committed to policy the need to integrate environmental concerns in their development policies. However, with the exception of U.S. AID, most of these policies are more statements of intention than binding agency policy. Moreover, it is clear that neither U.K. ODA or Dutch Aid has made any thorough or systematic review

of its existing policies . to ensure that its ecocodevelopment policies are consistently applied or meaningfully incorporated into the development process. Instead, reliance is placed upon the good fiath of agency stafff to follow the general and often vague environmental policies.

Another weakness is the fact that, especially in the case of U.K. ODA and Dutch Aid, the absence of any central department or internal institution with responsibility over environmental affairs which makes the implementation of policy difficult, especially in light of their already decentralized structures. However, both of these agencies have made assurances they are gradually addressing these concerns to ensure that environmental and natural resource considerations are an integral aspect of their process.

### 3.2 Agency Programs

#### 3.2.1 Overview

Not surprisingly, it is U.S. AID which has progressed the furtherest in implementing programs to adhere to emerging ecocodevelopment norms. The main emphasis of these programs has been on natural resource assistance and environmental planning and management. These planning and management activities are assisted through country and regional environmental profiles and natural resource sector assessment.

Country Environmental Profiles (CEP), which are mandated by

Congress, are to provide a comprehensive picture of a country's state of the environment and natural resource base, including a description of the environmental and natural resource problems and the country's capacity to deal with them. Through CEP, support ofr major AID natural resource management projects can be justified. They also provide a means to inform host country institutions as well as AID mission staff and consultants of existing needs and priorities.

In addition to CEP, U.S AID is also in the process of preparing Regional Environmental Profiles (REPs). The purpose of CEPs is to amalgamate the completed set of CEPs in each region and to provide region-wide analysis of natural resource-based problems and opportunities for solutions covering international issues such as human and faunal migration, and exploitation of shared resources (eg. lands, watersheds, fisheries).

Natural Resource Sector Assessments are aimed at facilitating policy development by identifying existing information gaps, institutional constraints and implementation needs.

U.S. AID also seeks to implement ecodevelopment norms at the program level through environmental and resource conservation and rehabilitation programs. Some of these programs include forestry projects, coastal resource management, energy and environmental management. In regard to environmental management, various programs such as the program of scientific and technological cooperation which seeks to identify, protect and develop genetic

resources in less developed countries; institution building; personnell training and pollution control.

Neither U.K. ODA or Dutch Aid have comprehensive programs aimed at implementing ecodevelopment norms. Dutch Aid does have some programs aimed at resource conservation and rehabilitation, although they cannot be considered as extensive and primarily center upon land surveys, resource conservation, salinity control, urban and rural water supply and regional and integrated rural development.

### 3.2.2 Evaluation

It is clear that while U.S. AID has taken the leading role in furthering the ecodevelopment norms through various program initiatives, U.K. ODA and Dutch Aid would seem to be quite slow in establishing such programs. Despite the lack of formal programs, aimed at improving environmental capabilities, however, both agencies have been conscious of the need for environmental and natural resource programs and have made some attempts to further these goals through less formal initiatives.

## 3.3 Environmental Assessment of Projects

### 3.3.1 Overview

As with the multi-lateral donor agencies, the bilateral agencies under study have strongly emphasized the need for environmental

project appraisals.

For U.S. AID, Planning Environmental Review Regulations have been drawn up. This procedure proceeds through four basic stages:

1. Project Planning: An Initial Environmental Examination (IEE) is the first step taken concurrently with the Project Identification Document (PID). Its objective is to identify potential direct and indirect environmental impacts of projects identified in the PID. At this point, a threshold decision is made as to whether further analysis or an Environmental Assessment (EA) or an Environmental Impact Statement (EIS) may be made. If there is a negative determination, that is the end of the procedure.
2. Assessment: If the PID is approved and threshold decision is positive, the mission office originating the project proposed is responsible for the preparation of an EA or draft EIS. An EA or EIS must be completed and considered before the project is finally approved. The draft EIS must circulate to U.S. Federal agencies, to the public and to the affected recipient country's government and their comments must be considered. All IEEs, threshold decisions and EAs are to be reviewed by the regional environmental office.
3. Implementation: The procedure governing the assessment procedure has measures to ensure for the monitoring of the project and a method of measuring changes in the environmental quality during project implementation.
4. Evaluation: An evaluation is provided to determine both anticipated and unanticipated environmental effects. Such information is then stored in a data bank.

The environmental assessment process under U.K. ODA is far less formalized than that for U.S. AID. The four general stages of this process are as follows:

1. Planning: Project proposals are formulated by an informal process involving ODA administrators, professionals, officials of recipient countries and staff of other agencies. A "Checklist for Screening Environmental Aspects in Aid Activities" is provided as a guide for those involved at the various stages for the project cycle. It is the Geographical Desk Officer who guides the course of the project to advisors for comment. It is up to the Desk Officer to choose which particular professional is to be consulted, and at what phase of the formulation stage.

2. **Assessment:** ODA's guiding assessment principle states that "whenever a project has indirect effects, they should be taken into account and quantified when that is possible without inordinate expense". The Geographical Department of Development Division is responsible for the project and for identifying the significance of potential environmental effects of a project as well as determining the amount of time and money to be spent on the assessment. Large proposals go to the project committee in a summarized document called the Project Committee Submission. The submission contains a section describing the environmental consequences. The terms of reference and membership of the projects committee determine the decisions made; however, neither the Environmental Advisor nor any of the Natural Resource Advisors are members of the committee by right, although such persons are often invited to attend. The Guide to Economic Appraisal (ODA, 1977), a document guiding the committee, places strong emphasis on economic information, and fails to take into account environmental externalities in its cost-benefit analysis.
3. **Implementation:** Monitoring of environmental factors during implementation is largely determined by the specific methods and parameters chosen by those responsible for the project implementation. Ecological monitoring is often funded or carried out as a separate program.
4. **Post-Project Evaluation:** Environmental effects is one of many factors considered in the project evaluation.

Like U.K. ODA, Dutch Aid has a somewhat informal and less than comprehensive project assessment procedure.

1. **Planning:** Proposed projects go through a preliminary screening to determine whether the proposed activity falls within the poverty sector in development of country, and whether it corresponds to Dutch policy and goals. It is then up to the project officer to decide whether it would be worthwhile to commit resources to find out more about it and to increase the data base. After initial project screening, the proposal is then submitted to specialized Dutch agencies for advise. For projects that do not fall clearly within an agency mandate, and ad hoc advisory group of experts is set up. Based on the advise received from the other agencies, the project is shaped and prepared under the Ministry of Foreign Affairs or subcontracted out to other agencies if necessary.
2. **Approval:** Financial commitment to the proposed project is based upon an agreement between the Ministry for Development Cooperation and the Minister for Economic Affairs regarding issues affecting interests of the Nether-



#### 4. Summary

It was the intent of this section to review six donor agencies to determine the extent to which they have recognized ecocodevelopment norms and made efforts to implement them in their policies, programs and projects. From the review, it is clear that all agencies have given their commitment to the norms although the scope and depth of this commitment among the agencies varies considerably. The World Bank and U.D. AID have made the most progress in furthering the ecocodevelopment norms in their policies, programs and projects. While the remaining agencies have yet to keep pace with the World Bank and U.S. AID, improvements have been demonstrable over recent years.

The review in this section has not attempted to analyze the extent to which ecocodevelopment norms have been further in practice; this task is left to a more in-depth review at a later time.

E. FINDINGS AND CONCLUSIONS

International law grants rights to and imposes obligations upon states and agencies acting on their behalf and upon international organizations.

With respect to protection of the environment, some duties are now entrenched in international law, including the duty to refrain from harming the environment of neighbouring states.

The duty to ensure that economic development does not result in environmental harm is emerging as an obligation imposed by international law on both developed and developing states.

At this time, it is more accurate to characterize this obligation as a "norm" than as a rule of law. This is because it is not consistently put into practice despite uniform acceptance of the principle.

The term "ecodevelopment" is used to refer to this norm. It encompasses the duty to ensure that development is sustainable, in that it does not destroy the underlying resource base and does not ~~do~~ irreparable harm to the regional or global environment, and meets basic needs.

In the context of development assistance, ecocodevelopment imposes four obligations on both aid donors and recipients:

- the duty to integrate environmental considerations into policy objectives
- the duty to improve the environmental capabilities of developing states
- the duty to assess the potential environmental impacts of development projects
- the duty to promote integrated regional planning

Each of the six development assistance donors studied has adopted policy statements expressing its commitment to the elements of ecocodevelopment.

However, implementation of that policy in agency practice lags behind. Each of the donor agencies has taken some steps toward implementation but there is a wide range in the extent of such steps. No agency can be said to have fully implemented the norm in practice and much remains to be done, for example, by ensuring adequate staffing resources.

Aid agencies play an important role in the norm-creation process. They are both bound by existing norms and, to the extent that they follow a particular practice, strengthen the status of

norms as a rule of international law and contribute to the development of the content of the rule.

It is expected that implementation of ecocodevelopment obligations in the practice of development assistance will continue and expand. This in turn will strengthen the trend toward establishment of the ecocodevelopment obligations as binding rules of international law. As the environmental capabilities of aid recipients increase, the potential for conflict between donors and recipients over the proper interpretation of the norm of ecocodevelopment also increases.

CIDA, in keeping with the Canadian tradition of leading in the development of international law, has an opportunity to significantly contribute to this process. To do so, however, requires a comprehensive and detailed knowledge of international law and the domestic law of recipient countries. In addition, consideration must be given to the bearing which Canadian law has upon the process and in particular the extent to which the federal Environmental Assessment Review Process (EARP) applies to CIDA's activities. CIDA officials have been working, with assistance from the federal Environmental Assessment Review Office, to develop a plan for application of EARP in a manner which most appropriately reflects the circumstances of CIDA's activities. That process should be carried through to completion.

F. RECOMMENDATIONS

It is recommended that CIDA play a leadership role in the development and implementation of international environmental law as it pertains to the development assistance process. It is recommended that this be done both by playing an active role in the various international fora which provide an opportunity for consideration of international environmental legal principles and by working to ensure that its own practices fully comply with the obligations imposed by ecodevelopment norms.

To do this, it is recommended that CIDA undertake more detailed research in the following areas of national and international law:

- . Canadian law and policy to identify potential constraints due to the application of Canadian domestic law. In particular, with respect to the ecodevelopment norm to assess the environmental impacts of development assistance projects, the application of the federal Environmental Assessment and Review Process (EARP) to CIDA's activities must be further explored. The dialogue between FEARO and CIDA should continue in order to determine the most suitable application of EARP to CIDA activities.
  
- . obligations imposed by emerging international environmental law

- . national environmental law of CIDA core-aid countries and the implications which such law has for development assistance provided by CIDA
  
- . international and national legal issues which must be addressed as part of co-ordinated, integrated river-basin development

With respect to its own activities, it is recommended that the following be undertaken:

- . a review of current practices at the policy, program and project level to determine the extent to which they allow implementation of ecodevelopment norms
  
- . implementation of a consultative process intended to set objectives for changes in CIDA practice which will accomplish full implementation of ecodevelopment norms. In particular, these objectives should allow for improvement of the environmental capabilities of developing countries; adoption of a regional planning perspective for internationally shared resources such as river-basins; incorporation of ecodevelopment principles at the policy, program and project levels

- . implementation of a planning process for achievement of the objectives thus set

Because this is an emerging and developing part of international law, it will be necessary to continually review, revise and update practice to reflect the changing legal ambience within which CIDA functions.

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