



**Canadian  
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Environmental Assessment of International  
Development Projects : A preliminary proposal  
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ENVIRONMENTAL ASSESSMENT OF  
INTERNATIONAL DEVELOPMENT PROJECTS

Environmental Assessment of  
International Development  
Projects: Influences of  
International and Domestic  
Law

A preliminary proposal  
submitted by the Canadian  
Environmental Law Research  
Foundation.

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ENVIRONMENTAL ASSESSMENT OF  
INTERNATIONAL DEVELOPMENT PROJECTS

PROJECT SUMMARY

1. Statement of the problem

There is increasing awareness of local and global environmental problems associated with development projects carried out in third world countries with foreign-aid assistance. As a result, many aid-giving nations are moving to incorporate environmental assessment and review procedures in their planning process for such projects.

The concept of environmental assessment is itself a relatively new one. Its application in the international arena, however, is a new innovation and as such, there is a need for additional research and consultation to allow its successful application.

2. Project objectives

a) To carry out research into ways in which international law and domestic environmental law and policy of both aid-giving and aid-receiving nations can influence such environmental assessment of international development projects.

b) To establish a series of consultations which will allow

a exchange of perspectives and experience among representatives of aid-giving and aid-receiving nations.

c) To stimulate broader public discussion of the issue.

### 3. Workplan, timeline and budget

Although not yet developed in detail, in general terms, as follows:

Workplan: work in partnership with environmental law and policy professionals from other nations, as required, to carry out research in Canada, the United States, France and three still to be chosen developing nations

to present study findings at a series of small group discussions attended by representatives from the six countries referenced above

to hold a major public conference

to present detailed and viable recommendations to the governments of Canada and other countries

Timeline: 2 years

Budget: in the neighborhood of \$300,000

#### 4. The Canadian Environmental Law Research Foundation

As one of Canada's senior environmental law and policy organizations, the Canadian Environmental Law Research Foundation has undertaken extensive and detailed work both with respect to environmental assessment and a variety of international issues. In addition, the Foundation has been the facilitator of many discussions between representatives of all sectors involved with environmental issues.

The project outlined here would draw upon these areas of experience and expertise to allow successful completion of an important and timely undertaking.

TABLE OF CONTENTS

	<u>Page</u>
Introduction . . . . .	1
Statement of the problem . . . . .	3
Steps required to address these problems . .	11
Objectives . . . . .	13
Conclusions . . . . .	15
Notes . . . . .	16

INTRODUCTION

The project proposed here is intended to examine existing and potential legal mechanisms and procedures designed to protect developing countries from the adverse environmental impacts of development projects financed with assistance from industrialized nations. Although the study's parameters will be broad, it is proposed to view the issues from a basically Canadian perspective.

The primary purpose of the project is to examine ways in which international law, Canadian environmental law and domestic environmental law of aid-receiving nations can be interrelated so as to provide a viable framework for the planning and execution of a sustainable development process.

This concentration upon environmental law has been chosen in light of the background and expertise of the Canadian Environmental Law Research Foundation.

The project includes primary and secondary research and analysis, followed by discussion among small groups of decision-makers in Canada and other countries and concludes with a broader public discussion intended to involve all sectors of Canadian society.

As presently envisaged, the project requires a substantial commitment of time and financial resources. Given the inherent importance of the subject addressed, however, this commitment is fully justified.



STATEMENT OF THE PROBLEM

During the past two decades, as environmental awareness on the part of the public and private sector decision-making in the industrialized world has increased, the concept of "sustainable development" has gained increasing credence. "Sustainability" in this sense refers to the realization that economies based solely upon exploitation of natural resources, without regard to other social, environmental and physical factors, will eventually be counter-productive and regressive. As a consequence of this realization, virtually all western countries now have implemented various mechanisms to ensure that ecological impacts will be assessed during the planning stages of public and, in many cases, private-sector undertakings.

In Canada, this has resulted in establishment of the Federal Environmental Assessment Review Office and, at the provincial level, the enactment of legislation such as the Ontario Environmental Assessment Act.<sup>1</sup> All other Canadian provinces have enacted comparable environmental assessment legislation.

Although they will undoubtedly be refined and modified during coming years, procedures for environmental assessment of public and much private-sector development are now firmly established in Canada. It is only in recent years, however,

that consideration has been given to the need for the implementation of procedures which will allow a comparable process to be undertaken with respect to international development projects. This need reflects a growing concern that sustainable, ecologically sound development must be the basis for international development assistance efforts. Global and regional environmental problems have intensified as the pressures of population, pollution, natural resource exploitation and environmental degradation have increased. Indeed, recognized global and regional problems include:

° Deforestation

Twenty years ago, one quarter of the world's land surface was covered by forests. Today, this figure is reduced to one-fifth, and by the year 2000, only one-sixth of the land surface will be covered by forests. It is expected the most drastic changes in forest resource inventory will be in developing countries. For example, only one hectare is planted for every 29 hectares deforested in tropical Africa. In South and South East Asia, present predictions indicate that less than half of the forest resources that existed in 1973 will remain by 2000. Such drastic changes will have significant implications for water and nutrient cycles, soil erosion and flooding.<sup>2</sup>

° Soil Degradation

Topsoil, as a key factor in agricultural productivity, is a valuable resource. It is steadily being eroded in many developing areas with the expansion of agriculture into marginal lands and the mismanagement of prime farmland. It is estimated that there will be no new cultivable land to expand into by the 1990's in South Asia, China, North Africa, the Middle East and parts of Central America and East Asia. The quest to maintain and improve the productivity of land which is already under cultivation to meet growing food demands is of vital importance.<sup>3</sup>

° Drinking Water and Sanitation

Drinking water is a precious commodity in developing countries - over one-half of the people in those countries are without clean water while three-quarters of those inhabitants have no sanitation facilities. These problems have led to many types of water and sanitation related diseases - including typhoid, cholera, dysentery, diarrhea and infective hepatitis.

Other significant environmental problems include desertification, human settlements and atmospheric degradation.

It is becoming clearly recognized that many of these global and regional ecological crises are being caused and exasperated by the multitude of projects being undertaken in developing countries with the financial assistance of the industrialized world. Although the development projects are meant to aid "have-not" nations, in fact, they are paying a serious environmental price, due to the lack of proper environmental planning. Some examples of the serious adverse ecological consequences of many development projects funded with foreign aid serve well to illustrate the problem:

- ° the Polonoreste project in Brazil, a World Bank funded venture intended to settle small farmers in the Amazonian rain forest, is now seen as a source of a multitude of ecological and human problems such as ill-considered highway construction, disruption of tribal people and deforestation, a problem of global concern referred to above; <sup>4</sup>

- ° the gargantuan Mahaweli water project in Sri Lanka proceeded for over two decades with multilateral aid before forestry experts were consulted even though most of the project was centered in a forested area - the extent of the damages to these foresting resources is still being calculated;

° as part of Indonesia's "transmigration" program, designed to help relieve that country's population and resource pressure, a swamp reclamation project has yet to undergo an ecological input study despite the fact that the project commenced two years ago and that the area is environmentally sensitive;<sup>5</sup>

° a project aided with Canadian financial assistance the Douala Port extension in Cameroon, carried out in the mid-1970's, has been extensively criticized because of the ecological disruption it caused. Neither the donor states and agencies nor the government of Cameroon considered the environmental impacts of the development during its planning stages.<sup>6</sup>

These kind of problems have caused in recent years a significant change in attitudes toward international development assistance. Sustainability of economic growth, local participation in project formulation and the application of appropriate levels of technology are all becoming watchwords of current development thinking.

Indeed, it is this thinking in recent years which has led to the recognition for the need to establish environmental impact procedures for foreign aid projects at both the multilateral

and bilateral level. Two of the most important examples include the World Bank and the United States.

° The World Bank, which is in itself something of a hybrid - part bank and part development agency - has made noticeable progress toward recognizing the environmental costs of projects. For some years the Bank has had an Environmental, Science and Technology Unit whose staff screen development projects and recommend environmental mitigation measures.<sup>7</sup> Moreover, comprehensive procedural requirements and environmental policies to be followed by the Bank were adopted in May, 1984.<sup>8</sup>

° In the United States, the Agency of International Development (U.S. AID) began to seriously consider ways of assessing the impacts of its aid policies as a result of a court suit filed by environmental groups.<sup>9</sup> Eventually, that suit produced an agreement to establish formal environmental assessment procedures. Later President Carter issued Executive Order No. 12114 which was intended to ensure application of the National Environmental Policy Act<sup>10</sup> to international activities of U.S. federal agencies.

At present, in Canada, there is no formal procedure or mechanism to assess the environmental consequences of its foreign assistance. However, during the past year the Canadian International Development Agency has taken initial steps to develop such procedures.

As is the case with domestic environmental assessment, there are a number of issues and problems which must be addressed if such procedures are to be successfully put in place, and particularly so in the Canadian context. Many of these are policy and technical matters which lie outside the scope of the project proposed here. Others, however, are more directly of a legal nature. Although various of the above noted issues are currently being explored, there has yet to be any legally oriented, comprehensive, independent work conducted in this area. Examples of such legal issues which must be addressed, include the following:

1. What rights and duties do the principles of international law impose upon aid-giving nations to consider environmental consequences of foreign aid-development project?
2. More specifically, to what extent does the accepted principle that a nation must guard against trans-

boundary pollution, caused by in-state pollution generating activities, apply to policies or programs of that state which may influence the degree of environmental damage in non-contiguous states?

3. To what extent is it possible or desirable to apply domestic environmental law of the aid-giving nation to foreign-aid projects? Or, to what extent is it possible to attach safeguards in the form of terms or conditions on the foreign assistance?
4. Can such an application of domestic law or conditions be made without infringing upon the sovereignty of the aid-receiving nation?
5. How can the aid-giving nation incorporate environmental considerations into its planning process in such a way as to be fully consonant with the domestic environmental legislation of the aid-receiving nation?



STEPS REQUIRED TO ADDRESS THESE PROBLEMS

A thorough and comprehensive examination of the principles and practices of international law is required to determine rights and obligations respecting transboundary pollution and, more specifically, the extension of the transboundary pollution principle to incorporate foreign-aid practices.

Examination should be made of the policy procedures followed by other aid-giving nations and the relationship between those procedures and the domestic environmental law of those nations. The project proposed here would include an examination of procedures followed in the United States and France. A similar examination, naturally, would be made of Canadian policy and environmental law.

In the same manner, an examination should be made of environmental policy and legislation in several aid-receiving nations. These countries, yet to be selected, would be representative of the types of laws in place to protect the environment of developing countries and the sophistication of those legal frameworks.

Further examination will then be required of potential

mechanisms which can promote the interface between the domestic environmental law of the aid-giving and the aid-receiving nations which have been chosen for study.

An initial report setting forth findings and conclusions of the research outlined above would then be prepared. Findings and conclusions would then be further developed by means of a consultative process involving those professionals working in this area who can bring to bear experience and expertise which is directly germane. It is important that this consultation include not only Canadian perspectives but also those of other aid-giving and aid-receiving nations.

Finally, any implementation of policy arising from this process must be based upon a foundation of public understanding and support. For this reason there is value in providing opportunities for broader public discussion of the issue. Given the nature of the problem and the steps required to address it, the following objectives have been formulated.

OBJECTIVES

1. To do research sufficient to establish the influence which international law has upon consideration of environmental implications during planning of foreign aid projects.
2. To do research sufficient to establish, in general terms, the ways in which domestic and environmental law of aid-giving nations can be applied to the foreign-aid process.
3. To do research sufficient to establish, in general terms, the ways in which domestic environmental legislation of an aid-receiving nation will influence the process of considering environmental implications during development of foreign-aid projects.
4. To develop preliminary findings, conclusions and recommendations based upon the above noted research.
5. To engage in a series of small group discussion with Canadian - non-Canadian professionals in the field in order to further develop and refine the conclusions and recommendations.

6. To stimulate public understanding and discussion of this issue.

CONCLUSIONS

Although detailed planning has not yet been done, it is likely that the project outlined above would be, at a minimum, of two years duration and would require total funding in the neighborhood of three hundred thousand dollars. Such an expenditure of time and financial resources cannot be undertaken lightly.

However, there is no longer any doubt that the preservation of the ecological foundation for life upon this planet has become one of the most pressing issues facing all of us today. Environmental law - both international and domestic - is one of the most powerful tools available to us for making the concept of sustainable development a reality.

Given these imperatives and opportunities, the commitment of time and resources required to carry this project through to a successful completion is more than warranted.

NOTES

1. Revised Statutes of Ontario 1980, chapter 140.
2. Gail Paine, "An Environmental Perspective on Development".  
A paper prepared for the Canadian International  
Development Agency, draft, August, 1983, pp. 4-6.
3. Ibid, pp. 6-8.
4. See: Hearings of House Committee on Science and  
Technology, Subcommittee on Natural Resources, U.S.  
Congress, September 19, 1984; "Critics Fault World Bank  
for Ecological Neglect" Conservation Foundation Letter  
Nov. - Dec. 1984, p. 3.
5. Ibid., Conservation Foundation Newsletter, p. 4.
6. Roger Ehrhardt, et al. Canadian Aid and the Environment  
(Ottawa-Halifax: The North-South Institute and the Institute  
for Environmental Studies, Dalhousie University, 1981),  
pp. 82-3.

7. See generally: Robert E. Stein and Brian Johnson, Banking in the Biosphere? Environmental Procedures and Practices of Nine Multilateral Development Agency. (Toronto: Lexington Books, 1979).
8. See the Bank's Operational Manual Statement No.2.36.
9. Environmental Defense Fund v. AID (1975), 6 Environmental Law Reporter 20121.
10. 42 U.S. Code ss. 4321 to 4361 (1976). See generally: Comment, " President Orders Environmental Review of International Actions " (1979), 9 Environmental Law Reporter 10011; J.H. Head, "Federal Agency Responsibility to Assess Extraterritorial Environmental Impacts" (1979), 14 Texas International Law Journal 425.

