

Written by Joan Russow

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Socially Equitable and Environmentally Sound Development

Prepared by Dr. Joan E. Russow AUG 15 1997

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The year 1999 ends the decade dedicated to the respect and furtherance of international law. This respect and furtherance can only be realized if member states of the United Nations discharge obligations and fulfill expectations through signing and ratifying what they have not yet signed and ratified; and through enacting the necessary legislation to ensure the discharging of obligations; and the fulfilling of expectations and the realizing of commitments.

For over fifty years through international agreements, the member states of the United Nations have undertaken: to promote and fully guarantee respect for human rights; to ensure the preservation and protection of the environment; to create a global structure that respects the rule of law, to achieve a state of peace; justice and security, and to participate in socially equitable and environmentally sound development. International agreements include both obligations incurred through the United Nations Charter, the United Nations Conventions, Treaties, and Covenants; and expectations created through the United Nations Declarations, Conference action plans and General Assembly Resolutions. If these years of obligations had been discharged, if these fifty years of expectations had been fulfilled, and if years of commitments had been realized, respect for human rights could have been guaranteed, preservation and protection of the environment could have been ensured, threats to peace prevented and removed, disarmament achieved, and socially equitable and environmentally sound development could have been enabled.

Circulated in draft form at numerous conferences since the United Nations Conference on Environment and Development (UNCED), and on the internet. Included as part of the Charter of Obligations circulated to state delegations at the UN Conference on Women: Equality, Development and Peace, 1995. Submitted to the Working Group for Establishing Criteria for Discharge Emissions, B.C. Canada, 1996. Submitted to the Canadian Standards Association meeting of the Western Caucus

March 29, 1996 and extended, May 7, 1996, and distributed at May 11, 12 Canadian Standards Association meeting on ISO 14000 in Toronto, distributed to the May 24 meeting of the Western Caucus meeting of the CSA on ISO in Vancouver; and presented in summary form

PRINCIPLES OF COMPLIANCE: MANDATORY INTERNATIONAL NORMATIVE STANDARDS (MINS)

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to the Committee II partnership consultation meeting at the Habitat II Conference in Istanbul; and updated with principles from Habitat for the British Columbia Ministry of Environment, CANADA, submitted to public consultation meeting on “Cost Recovery and Process efficiency in Environmental Assessment” Canadian

Environmental Assessment Agency in September 1996, and given to a representative from CIDA (Canadian International Development Agency); displayed at the Forest and Sustainable Ecosystems Conference in Victoria, September, 1996, and circulated in draft form for comment as the environmental section of the “Istanbul Manifesto”. Presented in part at various sessions of the IUCN World Congress of Nature, 1996. These principles have also been submitted to Andrew Speer, the Director of Environment from the World Bank and sent to Maurice Strong from the Earth Council ; and to Dr Wiwa from the Ogoni tribe in Nigeria. Referred to at consultation meeting with External Affairs about submission to Commission on Sustainable Development, and presented to Ambassador John Fraser, Canadian Ambassador on the Environment to the UN. Sent to Earthwatch, Maurice Strong (Earth Council), and Elizabeth Dowdeswell (UNEP). Submitted it to Steven Rockefeller for consideration for the Earth Council’s Earth Charter. Circulated for input into the Canada report to the Commission on Sustainable Development.; Circulated to Environment Canada for discussion about Canadian policy for Sustainable Development; Placed on Environment Canada’s web site. Left in disk for inclusion on UN NGO Web s

REPORT ON PRINCIPLES OF COMPLIANCE DERIVED FROM INTERNATIONAL OBLIGATIONS AND EXPECTATIONS: BASIS FOR ESTABLISHMENT OF MANDATORY INTERNATIONAL NORMATIVE STANDARDS (MINS)

LEGEND

plain: International Conventions, Treaties and Covenants; Declarations, Conference Agendas, and General Assembly Resolutions

Plain Italics: sections proposed for deletion

plain: underlined: Proposals by NGOs

Outline: sections that have been proposed in documents but may not have been agreed to

bold: categories and proposals made by Global Compliance Research Project

OVERVIEW

It is necessary for citizens to reveal that years of obligations incurred through the Charter of the United Nations, conventions, treaties and covenants, and expectations created through General Assembly resolutions, and commitments made through Conference Action

plans have NOT been undertaken, and that most of the obligations, expectations and commitments have neither been discharged nor fulfilled, and that it is time for compliance through action.

The year 1999 ends the decade dedicated to the respect and furtherance of international law. This respect and furtherance can only be realized if member states of the United Nations discharge obligations and fulfill expectations through signing and ratifying what they have not yet signed and ratified; and through enacting the necessary legislation to ensure the discharging of obligations; and the fulfilling of expectations and the realizing of commitments.

For over fifty years through international agreements, the member states of the United Nations have undertaken: to promote and fully guarantee respect for human rights; to ensure the preservation and protection of the environment; to create a global structure that respects the rule of law, to achieve a state of peace; justice and common security, and to participate in socially equitable and environmentally sound development. International agreements include both obligations incurred through the United Nations Charter, the United Nations Conventions, Treaties, and Covenants; and expectations created through the United Nations Declarations, Conference action plans and General Assembly Resolutions. If these years of obligations had been discharged, if these fifty years of expectations had been fulfilled, and if years of commitments had been realized, respect for human rights could have been guaranteed, preservation and protection of the environment could have been ensured, threats to peace prevented and removed, disarmament achieved, and socially equitable and environmentally sound development could have been enabled.

In international agreements member states of the United Nations are deemed responsible for the discharging of obligations and for the fulfilling of expectations, and of commitments through enacting the necessary legislation and through enforcing this legislation.

In the Platform of Action from the UN Conference on Women: Equality, Development and Peace(1995) and in the Habitat II Agenda from the Habitat II Conference (1996) member states have undertaken “to ensure that corporations,

including transnational corporations, comply with national laws and codes, social security regulations, applicable international agreements and conventions, including those related to the environment, and other relevant laws. (Article 167). In Habitat II this undertaking was reaffirmed and then extended to include the undertaking by states to ensure that the “private sector” also comply (Article 148).

Member states that have ratified Conventions, Treaties and Covenants are held to be legally responsible for discharging all obligations under these agreements. Also, members states that have signed but not ratified agreements are required under Article 18 of the Convention on the Law of Treaties to not defeat the purpose of the convention in the interim between the signing and the coming into force of the convention. There is no provision, however, for states to be bound to appear before the International Court of Justice or to be bound by its decision. In addition there is no provision for an international court of Compliance where citizens could take evidence of state and corporate non-compliance.

Expectations that have been created from General Assembly Resolutions, Declarations, and commitments made through Conference Action plans could be judiciable under the Doctrine of Legitimate Expectation. The Doctrine of Legitimate Expectation justifies the considering of what is usually deemed to be only of moral suasion in a legal context. The Doctrine of Legitimate Expectation has been recognized in Common Law and has been described in the following way:

To create an expectation is an empty gesture without a promise to fulfill it. Before creating an expectation, an organization must assure itself of its ability to fulfill the promise it implies" (Introduction, Ombudsman Annual Report, British Columbia, Canada, 1991)

In this report principles related to environmental preservation and protection have been extracted from a synthesis of international obligations derived from the UN Charter, UN Conventions, treaties Covenants; and of expectations derived from

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United Nations Declarations, Conference action plans and General Assembly Resolutions. In addition, consideration has also been given to Non Governmental Organization submissions.

As a result of the commitments made in recent United Nations Conferences including UN Conference on Women, and Habitat for states to ensure private sector, corporate including transnational compliance with international agreements, this report is advocating the establishing of Mandatory International Normative Standards (MINS) drawn from international principles. The establishment of mandatory international normative standards-and-technical regulations (MINS) will drive the corporations, including transnationals, and funding agencies such as the development banks to ensure socially equitable and environmentally sound development. Currently the concept of sustainable development appears to justify the continuation of the currently over-consumptive model of development with a coupling “clean-up environmental technology” which is moving the global community away from adopting BEST (Best Environmentally Sound Traditions) practices from the outset. Only when there is the global political will to agree to high global mandatory regulations and standards, and only when these regulations and standards are in place to drive industry will there be the needed shift towards a real cooperation based on the highest tenable principles. Global mandatory regulations and standards are essential to drive corporations including transnationals to participate in socially equitable and environmentally sound development.

The international community, including multilateral financial institutions, has an important role to play in providing funding that is conditional on the adherence to high mandatory international normative standards-and-technical -regulations (MINS) based on principles established over the past 50 years in international instruments.

In section 167 of the Platform of Action of the United Nations Conference on Women: Equality, Development and Peace, states undertook to ensure that all corporations including transnational corporations, comply with national laws and codes, social security regulations, applicable international agreements, instruments and conventions, including those related to the environment, and other relevant laws.”. In addition the lending institutions shall not support the “clean-up environment industries” which thrive on the relaxing of regulations related to toxic, hazardous and atomic wastes, and which continue to perpetuate the old world order of over-consumption, inequity and environmental destruction, and intrastate and interstate conflict. It is only through promoting socially equitable and environmentally sound development through global mandatory standards and regulations with additional resources for Best environmentally sound traditions that national efforts to foster and achieve the objectives of socially equitable and environmentally sound development will be achieved.

This report delineates a series of principles drawn from international agreements, and couples this series with additional principles suggested

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by non-governmental organization. Non-governmental Organization principles are included as a reflection of a new development in United Nations Conferences. In the Habitat II Conference a second committee had been set up to receive input from “partners” one of whom was the non-governmental organization community, and for the first time a submission from the NGOs was included in the official documentation to be circulated by the United Nations.

□□□□□□□□□□□□□□□□ This report is a preliminary report where the principles are enunciated, and where some of the actions that would need to be undertaken to ensure the adherence to these principles have been proposed. A second report which will delineate further□ on what would constitute compliance with the principles□ is being prepared. In addition a book entitled “ Global Non- Compliance: Over 50 years of obligations incurred and expectations created” linking environment, peace, human rights and social justice issues. is being proposed. This book is a follow-up to the “Charter of Obligations”— 350 pages,□ which was officially distributed at the UN conference on Women: Equality, Development and Peace; and to the “ Comment on Habitat II Agenda: moving beyond Habitat I to discharging Obligations and to fulfilling expectations” which was circulated to state delegations at Habitat II.

□□□□□□□□□□ Following a series of meetings of the Urbanization Caucus at the NGO forum at Habitat II, the members of the Caucus decided to prepare “An Istanbul Manifesto”; this Manifesto will be a 400 page book comprising a collection of resolutions with the preambles drawn from international instruments, and the operative clauses drawn from resolutions from non-governmental sources. Sections from this document will be used to evaluate State compliance with undertakings through various conferences such as UNCED, World Conference on Human Rights, and Habitat II.

PRINCIPLES REFLECTED IN INTERNATIONAL AGREEMENTS: OBLIGATIONS INCURRED AND EXPECTATIONS CREATED

**GENERAL GLOBAL URGENCY RECOGNIZED IN INTERNATIONAL AGREEMENTS BY
THE UNITED NATIONS AND NON-GOVERNMENTAL ORGANIZATIONS**

(See Charter of Obligations, 1995 for a comprehensive list of global recognition of the urgency of the global situation)

**ACKNOWLEDGING THE PERPETUATION OF INEQUALITY AND THE DETERIORATION
OF THE ECOSYSTEM**

1. Humanity stands at a defining moment in history. We are confronted with a perpetuation of disparities between and within nations, a worsening of poverty, hunger, ill health and illiteracy and the continuing deterioration of the ecosystem on which we depend for our well being (Preamble, Agenda 21, UNCED, 1992)

**ACKNOWLEDGING THE NEGATIVE IMPACT OF UNSUSTAINABLE PATTERNS OF
CONSUMPTION PARTICULARLY IN INDUSTRIALIZED COUNTRIES**

2. We recognize that “the major cause of the continued deterioration of the global environment is the unsustainable pattern of consumption and production, particularly in industrialized countries, which is a matter of grave concern, aggravating poverty and imbalances. (4.3. Changing Consumption Patterns, Agenda 21. 1992, UNCED)

RECOGNIZING INCREASED ECOLOGICAL THREATS TO FUTURE GENERATIONS

Ecological problems, such as global climate change, largely driven by unsustainable patterns of production and consumption, are adding to the threats to the well-being of future generations. (Preamble, 1.2 International Conference on Population and Development, 1994)

PRINCIPLES

A goal could be described as the final purpose or end to which a design tends or which a person, institution or any other body aims to attain. Principles, however, do not establish a goal or vision which is unattainable, and which is to be compromised through trade-offs. A principle is a foundation from which anything proceeds, a comprehensive law or doctrine from which others are derived or on which others are founded. Principles give substance to standards. A standard is that which is set up and established by authority as a rule for the measure of value, or that which is established by authority, custom or general consent as an example or criterion. The principle provides the foundation for the standards.

(1)

INTERDEPENDENCE PRINCIPLE

The interdependence principle affirms the interdependence of **promoting and fully guaranteeing respect for human rights; ensuring the preservation and protection of the environment; creating a global structure that respects the rule of law, achieving a state of peace; justice and common security , and participating in socially equitable and environmentally sound development.** These issues will be perceived to be interdependent facets of a potentially viable solution. It is no longer possible to consider in isolation: threats and impacts of war; the use of ecologically unsafe and unsound energy; the loss of ecological integrity; the disposal of toxic and hazardous wastes, including nuclear waste, the disregard for intergenerational and gender equality/equity; the ignoring of health issues related to population and environmental degradation; the perpetuation of the current model of development; the inequitable distribution of resources; the disenfranchised and the enfranchised gap etc.

1.1. RECOGNIZING THE GROWING AWARENESS OF THE INTERCONNECTION OF ISSUES

... reflects[ing] the growing awareness that population, poverty, patterns of production and consumption and other threats to the environment are so closely interconnected that none of them can be considered in isolation. (Preamble, 1.5., International Conference on Population and Development, 1994)

1.2. UNDERTAKING RESEARCH INTO LINKAGES

Research *should shall* be undertaken on the linkages among population, consumption and production, the environment and natural resources and human health as a guide to effective **socially equitable and environmentally-sound**

sustainable development

policies (3.31., International Conference on Population and Development, 1994)

1.3. RECOGNIZING DEPENDENCE ON NATURE

mankind humankind is a part of nature and life depends on the uninterrupted functioning of natural systems which ensure the supply of energy and nutrients (Preamble (a) UN Resolution, 37/7, World Charter of

Nature, 1982)

1.4. RECOGNISING THE PRESENT AND FUTURE IMPACT OF ENVIRONMENTAL CONTAMINANTS

(a) (Article 95 bis. Many environmental contaminants, such as radioactive materials and persistent organic pollutants, work their way into the food chain and eventually into human beings, thus compromising the health of present and future generations. (Habitat II)

(2)

ECOSYSTEM PRIMACY PRINCIPLE

Through mandatory international standards, states shall undertake that, in all decisions made about interventions into the ecosystem, the ecosystem shall be given primacy. Through a 1982 General Assembly Resolution 37/7, the majority of states undertook to “Ensur[e] ing that every form of life is unique, warranting respect regardless of its worth to humans” (World Charter of Nature, 1982). Also through General Assembly resolution 37/7
it was recognized that humankind is a part of nature and life depends on the uninterrupted functioning of natural systems which ensure the supply of energy and nutrients.

“Ecosystem” is defined in the Convention on Biological Diversity as a dynamic complex of plant, animal and micro-organism communities and their non-living environment interacting as a functional unit (Convention on Biological Diversity, UNCED, 1992). Biodiversity is defined as “the variability among living organisms from all sources including terrestrial, marine and other aquatic ecosystems, and the ecological complexes of which they are part; this includes diversity within species, between species and of ecosystems (Convention on Biological Diversity, UNCED, 1992)

Interdependence of biota and the delicate balance and interaction among various ecosystems shall be ensured as well as the integrity of the components themselves.

2.1. RESPECTING OF INHERENT WORTH OF NATURE

Every form of life is unique, warranting respect regardless of its worth to man [Humanity], and to accord other organisms such recognition's, man [humans] must be guided by a moral code of action (Preamble, UN Resolution, 37/7, World Charter of Nature, 1982)

Nature shall be respected and its essential processes shall not be impaired (Principle 1, UN Resolution, 37/7, World Charter of Nature, 1982) World Charter of Nature, 1982)

2.3. REDUCING THE ECOLOGICAL FOOTPRINT PRINCIPLE

Promoting changes in unsustainable production and consumption patterns, particularly in industrialized countries...settlement structures that are more sustainable, reduce environmental stress , promote the efficient and rational use of natural resources- including water, air, biodiversity, forests, energy sources and land - and meet basic needs thereby providing a healthy living and working environment for all and reducing the ecological footprint of human settlements; (27 b, Habitat II, 1996)

2.4. ACTING UPON THE ACKNOWLEDGMENT THAT THERE ARE LIMITS-TO GROWTH: LIVING WITHIN THE CARRYING CAPACITY OF THE ECOSYSTEM

There are real limits to consumption, population and pollution. Although their precise

quantification is uncertain, there are serious indications that these limits have long since passed, and failure to act upon this acknowledgment is negligence.

* [Find: Quote from Club of Rome]

2.5. RESPECTING THE CARRYING CAPACITY OF ECOSYSTEMS

Sustainable human settlements development incorporates... the precautionary principle, pollution prevention, respect for the carrying capacity of ecosystems and preservation of opportunities for future generations. (16, Habitat II). **Respecting the carrying capacity of ecosystems also entails acknowledging that there are limits to growth, and respecting the inherent worth of nature, and thus does not justify increased pollution in pristine areas, or give a licence to pollute less polluted areas.**

2.6. KNOWING ECO-CYCLES

To facilitate capacity-building and institutional development for the improvement of human settlements planning and management, governments at the appropriate levels, including local authorities and their associations, should: * be encouraged to increase their knowledge about the eco-cycles involving their cities so as to prevent environmental damage (Art. 135, Habitat II, 1996)

2.7. PROMOTING THE CONSERVATION AND SUSTAINABLE USE OF URBAN AND PERIURBAN BIODIVERSITY

In order to promote a healthy environment that will continue to support adequate shelter for all and sustainable human settlements for current and future generations, Governments at the appropriate levels, in partnership with all relevant interested parties, should:

(a) Promote the conservation and sustainable use of urban and peri-urban biodiversity, including forests, local habitats and species biodiversity; the protection of biodiversity should be included within local sustainable development planning activities

(b) encourage, where appropriate, the establishment of productive and recreational green belts around urban and rural agglomerations in order to protect their environment and contribute to the provision of food products. (Article* 98 bis Habitat II, 1996)

2.8. ENSURING EQUAL ACCESS TO... GREEN SPACES

Formulate and implement human settlement development policies that ensure equal access to and maintenance of basic services, including those related to the provision of food security; education; employment and livelihood; primary health care [changed to basic health care, June 14], including reproductive and sexual health care and services [deleted June 14]; safe drinking water and sanitations; adequate shelter; and access to open and green spaces; giving special priority to the needs and rights of women and children, who often bear the greatest burden of poverty (Article *87(a) Habitat)

2.9 BEING ENTITLED TO ... HEALTHY PRODUCTIVE LIFE IN HARMONY WITH NATURE

human beings are entitled to a healthy and productive life in harmony with nature (Article 23, Habitat II, 1996)

2.10. ENSURING SOCIAL PROGRESS IN HARMONY WITH THE ENVIRONMENT

Sustainable settlements development ensures economic development, employment opportunities and social progress in harmony with the environment

(3)

GLOBE-WIDE STANDARDS PRINCIPLE

3.1. ESTABLISHING GLOBE-WIDE STANDARDS

Through mandatory international normative standards (MINS), the invalid argument that, in a pristine environment that has not yet been polluted by industrial activity, emission standards shall be relaxed. A licence to pollute in a pristine area shall not be given to industry because the area has not yet officially been designated as being polluted would be discredited.

Polluting industries that have been regulated under statutory law, shall not through redefinition of practice be excluded from the previous regulations

States shall ensure consistency so that point source discharges, no matter where they are located will be equally affected by the standards.

Standards must ensure acceptable ambient environmental conditions globally. No particular area should be penalized due to a pre-existing high quality environment

In no way shall the requirement to ensure consistency be used as a justification for the relaxing of globe-wide standards and technical regulations

3.2. HARMONIZING UPWARD OF THE “PLAYING FIELD”

Through mandatory international standards (MINS) , states shall ensure that the regional, national, and international targets with the highest possible socially equitable and environmentally sound standards shall be drawn upon.

3.3. ENFORCING GLOBE-WIDE PREVENTION, REDUCTION AND ELIMINATION

Through mandatory international standards (MINS), states shall establish and enforce reduction and elimination targets and ensure that corporations including transnationals meet or exceed, globe-wide reduction and elimination targets , Ambient criteria, or environmental quality standards referring to levels of contaminants in the environment must be zero use, production, and release in all cases where a toxic substance is persistent or bioaccumulative, or where substance will generate persistent or bioaccumulative toxic byproducts or breakdown products during its productions, use or disposal (paraphrase of Zero Toxics Alliance Statement of Principles)

Given that local and regional goals and targets may not have taken into consideration pollution prevention, the goals and targets, consequently, shall be reassessed in the light of the precautionary, anticipatory principle, and other principles such as those advocated by the Zero Toxics Alliance in their Statement of principles from July 26, 1994:

Zero Toxics Statement of Principles from the “Zero Toxics Alliance Statement of Principles”
7/26/94

1. ... zero use, production , and release of persistent and /or bioaccumulative toxic substances in the environment, workplace and home. Zero does not mean below some arbitrary level, or even beneath the level of detection. Zero means Zero.

2. ... elimination and reduction of the use, production , and release of other toxics substances in the environment, workplace and home.

3.the goal of zero use, production, and release applies in all cases where a toxic substances is persistent or bioaccumulative. It also applies when a substance will generate persistent or bioaccumulative toxic byproducts or breakdown products during its production, use or disposal

4. ... advocat[ing] programs that achieve ...goals through reformulation of industrial processes associated with toxics use and production. Limiting discharges and shifting toxics from one environmental medium to another do not protect people or the environment

5. ...reject[ion] of risk assessments which claim that exposures to toxic substances are safe

In addition, in establishing international standards, drafters shall give serious consideration to “bioconcentration”. For example the discharge of mercury was deemed to be at an acceptable level. The mercury, however, was taken up by small organisms becoming more highly concentrated as it moved up the food chain. Biopathways must always be examined”.

3.4.. STRIVING TO ENSURE THAT THE LOCAL, REGIONAL AND NATIONAL TARGETS IN EACH STATE SHALL DRAW UPON THE HIGHEST POSSIBLE SOCIALLY EQUITABLE AND ENVIRONMENTALLY SOUND STANDARDS

Collectively the member states of the United Nations are in a position to drive industry through regulations which establish the highest possible equitable and ecological standards and technical regulations, and to promote the highest possible level global playing field.

3.5. ENSURING GLOBE-WIDE CONSISTENT PROTECTION OF AMBIENT AIR, WATER, AND SOIL QUALITY

Through mandatory international standards, states shall ensure consistent protection considering both variation in air water and soil conditions locally, regionally, nationally and globally ; and the variation in effects of different substances emitted. However, ensuring consistent protection also means that states will not transfer their pollution problems onto other jurisdictions nor will states relax or change their standards or technical regulations in order to attract industry.□

regulations.

(4)

COMPLIANCE PRINCIPLE

States shall discharge obligations, and fulfill expectations, and shall enact the necessary to ensure the discharging of obligations and the fulfilling of expectations. In , through mandatory international normative standards (MINS) , legislation to ensure that corporations comply .

In Art. 60 of the Convention of Treaties, states are bound to not create situations in which it would be impossible to fulfill treaty obligations; in many cases current ecologically unsound practices result in the impossibility of fulfilling treaty obligations. Also, under the Convention of the Law of Treaties, states are bound, unless specifically mentioned, not to invoke internal law to justify non performance of a treaty obligation (Art. 27).

Through mandatory international normative standards (MINS), states shall comply with all international, national, bilateral and regional agreements, protocols and conventions as a minimum. If there is a conflict between international, national, bilateral and regional agreements, the most stringent environmental provisions shall prevail. In 1995, in the Platform of Action, UN Convention on Women: Equality, Development and Peace, States undertook to ensure that “all corporations including transnational corporations, comply with national laws and codes, social security regulations, applicable international agreements, instruments and conventions, including those related to the environment, and other relevant laws” (Section 167). This undertaking was reaffirmed and extended in the Habitat II Agenda to include the “private sector”.

A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose (Art.1.Convention on the Law of Treaties, 1968)

Rules of customary international law will continue to govern questions not regulated by the provisions of the present Convention have agreed as follows (Article 29 territorial scope of treaties, Convention on the Law of Treaties)

4.1. REFRAINING FROM ACTS THAT WOULD DEFEAT THE PURPOSE

The Law of Treaties has established that there exists an

obligation not to defeat the object and purpose of a treaty prior to its entry into force

A state is obliged to refrain from acts which would defeat the object and purpose of a treaty when:

(i) it has signed the treaty or has exchanged instruments constituting the treaty subject to ratification, acceptance or approval, until it shall have made its intention clear not to become a party to the treaty a); or

(ii) it has expressed its consent to be bound by the treaty, pending the entry into force of the treaty and provided that such entry into force is not unduly delayed b)

(Art. 18, Convention on the Law of Treaties, 1968)

4.2. APPLYING THE DOCTRINE OF LEGITIMATE EXPECTATIONS

The Doctrine of Legitimate Expectations has established an institutional obligation to citizens:

(i) "To create an expectation is an empty gesture without a promise to fulfill it. Before creating an expectation, an organization must assure itself of its ability to fulfill the promise it implies" (Introduction, B.C. Ombudsman Annual Report, 1991)

and that

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(ii) If a government holds itself out to do something even if not legally required to do so, it will be expected to act carefully and appropriately without negligence, and the citizens have the legitimate expectation that the government will discharge its obligations (Ombudsman Office, Personal Communication).

(See Russow, J. (1995) Charter of Obligations for A survey of obligations compiled by the Global Compliance Research project.

4.3. ENACTING INTERNATIONAL PRINCIPLES IN STATE LAW AND PRACTICE

The obligation to enact the necessary legislation to ensure compliance has been established in international Conventions, Protocols, Declarations, Covenants, and Resolutions, and has thus become a principle of international customary law. Through international mandatory standards states shall ensure that international obligations are reflected in the law and practice of each State. This international customary law principle has been expressed in numerous international documents for over 20 years. An example of the enunciation of the principle can be found in the UN Resolution 37/7. and reads as follows:

The principles set forth in the present Charter shall be reflected in the law and practice of each State, as well as at the international level (UN Resolution 37/7)

If there is a conflict between international, national, bilateral and regional agreements, the most stringent environmental provisions shall prevail.

4.4 ACKNOWLEDGING THE NEED FOR MORAL CODE OF ACTION IN RESPECT OF NATURE

The World Charter of Nature provided guidance for human respect for and action towards nature:

Ensuring that every form of life is unique, warranting respect regardless of its worth to man [humans] , and to accord other organisms such recognition's, man [human] must be guided by a moral code of action (UN Resolution 37/7), 1982)

4.5. ADOPTING PERFORMANCE STANDARDS

Join with professional societies to review and revise building codes and regulations based on current standards of engineering, building and planning practices, local conditions and ease of administration, and adopt performance standards **for all industrial activity**, as appropriate (Art. 169 n, Habitat II, 1996)

4.6. ESTABLISHING POLICIES, LAWS AND REGULATIONS

Governments at all appropriate levels, including local authorities have a responsibility to ensure access to education and to protect their population's health, safety and general welfare. This requires, as appropriate, establishing policies, laws and regulation for both public and private activities...(Article 19, Habitat II, 1996)

4.7 ESTABLISHING AND ADOPTING A REGULATORY FRAMEWORK

establish and adopt a regulatory framework, and provide institutional support for facilitating participation and partnership arrangements at all levels. (Article 50 e, Habitat II)

4.8 ESTABLISHING LEGISLATIVE AND REGULATORY FRAMEWORKS

* Establishing legislative and regulatory frameworks, institutional arrangements and consultative mechanisms for involving organizations in the design, implementation and evaluation of human settlements strategies and programmes (Art. 180 (a), Habitat II, 1996)

4.9 ENSURING OF COMPLIANCE OF PRIVATE SECTOR

Encourage the adoption of policies for the creation and development of the private sector and promote strategies for substantial and well-directed public and private investments in construction and development of shelter, infrastructure, health, education and other basic services through, inter alia, the provision of appropriate technical and financial assistance; in addition encourage Governments to promote strategies to ensure that the private sector, including transnational corporations, comply with national laws and codes, social security regulations, applicable international agreements, instruments and conventions, including those related to the environment, and other relevant laws, and adopt policies and establish mechanisms to grant contracts on a non-discriminatory basis; recruit women for leadership, decision-making and management and provide training programmes, all on a equal basis with men; and observe national labour, environment, consumer, health and safety laws, particularly those that affect women and children (Article 148 * e, Habitat II)

4.10 PROMOTING ...ETHICAL PRACTICES

promote transparency, accountability and ethical practices in financial transactions through support from effective legal and regulatory frameworks (Article 61* (d) Habitat II)

4.11. ESTABLISHING MONITORING AND EVALUATING COMPLIANCE WITH ENVIRONMENTAL REGULATIONS AND EFFECTIVENESS OF ENFORCEMENT AT ALL LEVELS

Establish, equip and build capacity for monitoring and evaluating compliance with environmental regulations and effectiveness of enforcement at all levels (Article 97 (c) Habitat II);

4.12. IMPLEMENTING LOCAL ENVIRONMENTAL PLANS AND LOCAL AGENDA 21

support mechanisms for consultations and partnerships among interested parties to prepare and implement local environmental plans and local Agenda 21s and specific cross-sectoral environmental health programmes (Article 97 (h)Habitat II)

4.13. PROMOTING COMPLIANCE AND ENFORCEMENT

Promote, where appropriate, compliance with and enforcement of all health and environmental laws, especially in low-income areas with vulnerable groups (Article 75 d Habitat)

(5)

REGULATOR MUST NOT BE PROMOTER PRINCIPLE

This principle holds that regulators must not promote the continuance of the object or activity over which they regulate. For example, IAEA (The International Atomic Energy Association) that has the responsibility of regulating the civil nuclear industry promotes

the use of nuclear energy.

(6)

STANDARDS-DRIVING INDUSTRY PRINCIPLE

Through mandatory international normative standards (MINS) , states shall ensure that standards drive industry rather than industry driving standards. States in conjunction with international standards shall establish regulations that will drive industry. The cost to the environment of continued degradation as a result of not enforcing standards and regulations rather than the cost to industry of environmental regulations shall be paramount.

□□□□□□□□□□ Socially equitable and sound environmental performance will be determined by mandatory international normative standards (MINS) and technical regulations. These standards and technical regulations have as a foundation international principles related to promoting and fully guaranteeing respect for human rights; to ensuring of the preservation , conservation and protection of the environment; to creating a global structure that respects the rule of law, to achieving a state of peace; justice and common security , and to participating in socially equitable and environmentally sound development.

There shall be continuous monitoring to ensure that corporation including transnationals, as well as small operations and the private sector generally are complying with international normative standards and technical regulations. In the event of non-compliance with MINS, the charters of all the corporations including the transnationals that contribute to conflict, to the escalation of war, to the violation of human rights and to the degradation of the environment shall be revoked. The emphasis

of the international mandatory and normative regulatory policy is to ensure that standards drive industry not industry driving standards. To this end all promotion shall focus on developing and implementing BEST (Best Environmentally-Sound Traditions) practices. The environment and ecosystem will determine BEST practices not be “managed”

MINS establishes absolute requirements for environmental performance to satisfy socially equitable and environmentally-sound development.

“Socio-economic needs”, when referred to in international documents shall be limited to socially equitable and environmentally sound development principles, including fundamental international rights but shall not include a professed right to engage in socially inequitable and environmentally unsound practices.

All impacts of the corporation or business shall be examined even those impacts that normally would be deemed beyond objective quantification. Ignorance by corporations, including transnationals of the deleterious consequences arising from inequitable/ecologically unsound practices shall not absolve corporations from legal responsibility.

6.2 REVOCATION OF CHARTERS PRINCIPLE

In the event of non-compliance with MINS, the charters of all the corporations including the transnationals that contribute to conflict, to the escalation of war, to the violation of human rights and to the degradation of the environment shall be revoked.

(7)

NON-PROSECUTING FOR DEMONSTRATING FOR COMPLIANCE WITH STANDARDS

States shall not prosecute citizens for demonstrating to protest non-compliance with regional, national or international standards.

(8)

NON-TRANSFERENCE OF MEDIA

Through mandatory international normative standards (MINS) , states shall ensure that polluting substances are not transferred from one media to another (for example from water to air). in other words pollution prevention is complete prevention instead of displacement of problem

(9)

INCLUSIVENESS OF ACTIVITIES AND SUBSTANCES PRINCIPLE

Through mandatory international standards (MINS) , states shall ensure that every activity or substance that could prevent the protection and , conservation of the environment will be included under regulatory schemes, regardless of whether the activity or substance is presumed to be covered under another Act. For example, “atomic wastes” have not been included under the Basel Conventions dealing with hazardous wastes, and currently “forestry” is proposed for exclusion from the Biodiversity Convention rather than being a protocol linked with the Biodiversity Convention, Climate Change Convention, Convention on Desertification or other relative conventions.

(10)

PRECAUTIONARY PRINCIPLE

Through mandatory international standards, states shall invoke and ensure compliance with the precautionary principle.

The precautionary principle has been enunciated in international documents since at least the 1972 United Nations Conference on Humans and the Environment (Stockholm Convention), where it appeared in a rudimentary form; it was then reinforced in the 1982

UN Resolution 37/7, the World Charter of Nature, and then re-enunciated throughout the UNCED documents.

The precautionary principle has been enunciated ” as follows:

where there is a threat of significant reduction or loss of biological diversity, lack of full scientific certainty should not be used as a reason for postponing measures to avoid or minimize such a threat” (Convention on Biological Diversity, UNCED, 1992)

This could be generalized into the following form:

where there are threats of serious or irreversible damage, the lack of full scientific certainty shall not be used as a reason for postponing measures to prevent environmental degradation

(Note: that the precautionary principle shall not be misconstrued to mean” that there is evidence but not scientific certainty that a particular practice, substance or activity is causing harm therefore we shall continue the practice; or the precautionary principle should not be used to justify not using an environmentally sound practice because it is not scientifically based.)

The precautionary principle shall be applied to all potentially harmful emissions, contaminants, agents of pollutants, or reconcentrated substances—created through imbalance in biogeochemical cycles

(11)

ANTICIPATORY PRINCIPLE

States shall ensure that in all their activities and in the activities of corporations including transnational corporations there is adherence to the anticipatory principle.

In the international documents different aspects of the anticipatory principle are enunciated: proceeding with doubt, prevention and avoidance of costly subsequent means:

11.1. ENSURING DOUBT-DRIVEN ACTION

Activities which are likely to pose a significant risk to nature shall be preceded by an exhaustive examination; their proponents shall demonstrate that expected benefits outweigh potential damage to nature, and where potential adverse effect are not fully understood, the activities should not proceed (General Assembly Resolution, 37/7, 1982)

11.2. ENSURING PREVENTIVE MEASURES

A preventive approach, where appropriate, is crucial to the avoiding of costly subsequent measures to rehabilitate, treat and develop new water supplies. (18.45 Fresh water, Agenda 21)

Undertake measures to prevent soil erosion and promote erosion-control activities in all sectors. (13.16 Fragile ecosystem, Agenda 21)

11.3. TAKING INTO ACCOUNT CRADLE-TO-GRAVE APPROACH

taking into account the cradle-to-grave approach **by phasing out and eventually eliminating the production and consumption of hazardous waste** *to the management of hazardous wastes,* **in order to identify BEST practices for phasing out and eventually eliminating options for minimizing**

the generation of hazardous wastes

, through safer handling, storage, disposal and destruction
(20.20 e Hazardous wastes, Agenda 21).

11.4. ENSURING THE MONITORING FROM CRADLE TO GRAVE

Governments, in collaboration with industry and appropriate international organizations, and **through the establishment of Mandatory International Normative standards** should develop procedures for monitoring the application of the cradle to grave approach, including environmental audits (20.20 e Hazardous wastes)

11.5. ENSURING FULL LIFE CYCLE CARE

promote efficient use of materials and resources, taking into account all aspects related to life cycles of products **including the phasing out and eventual elimination of toxic chemicals and the ensuring of BEST (Best Environmentally Sound Traditions) practices** (19.15 e, Toxic Chemicals, Agenda 21)

11.6. PROMOTING A CULTURE OF SAFETY

to promote a 'culture of safety" in all countries, especially those that are disaster-prone, the following activities should be carried out: (7.60, Disasters, Agenda 21)

11.7. ENSURING RESPONSIBLE CARE

Industry **shall be required** *should be encouraged* to (19.51 Toxic chemicals)) "develop application of a 'responsible care' approach by producers and manufacturers towards chemical products, taking into account the total life cycle of such products (19.51 b. Toxic chemicals, Agenda 2 **1)**

11.8. REVISITING INSUFFICIENT OR OUTDATED CRITERIA OF ACCEPTANCE

Governments, in cooperation with relevant international organizations and programmes, should carry out national reviews, as appropriate, of previously accepted pesticides whose acceptance was based on criteria now recognized as insufficient or outdated and of their possible replacement with other pest control methods, particularly in the case of pesticides that are toxic, persistent and/or bio-accumulative. (19.55 b Toxic chemicals, Agenda 21)

11.9. RECOGNIZING THE NEED OF ANTICIPATORY POLICIES

Mindful of the need and importance to develop anticipatory policies and of preventing, mitigating and monitoring significant adverse environmental impact in general and more specifically in a transboundary context (Convention on Environmental Impact Assessment in a Transboundary Context, 1994)

The anticipatory principle shall be followed as a pro-active measure to ensure that substances and processes which are harmful to the environment or to human health are prevented from entering the environment. One aspect of the anticipatory principle is to determine in advance before extracting resources whether the extraction causes environmental harm or is culturally inappropriate to indigenous peoples whose territory is beyond the treaty frontier.

(12)

PREVENTION PRINCIPLE AND “REVERSE ONUS “ PRINCIPLE

Through mandatory international normative standards (MINS), states shall ensure that in all its activities and in the activities of corporations, including transnational corporations, there is adherence to the “ prevention “ principle and “reverse onus “ principle

12.1. PREVENTION PRINCIPLE

Mandatory standards and technical regulations will be developed to prevent adverse effects of substances on the ecosystem including the adverse effects on the health of human and non-human species.

Adverse effects include, but are not limited to, toxicity, bioaccumulation, bioconcentration; persistence, destruction [depletion] of the stratospheric ozone layer, reduction of carbon sinks, increased greenhouse gases, increased human-induced climate change and global climate change, reduction or loss of biodiversity, as well as heat, light and electro-magnetic radiation, atomic radiation, thermal discharges, hormone mimicry, egg-shell thinning

Adverse effects include the above environmental effects and effect and impacts on human health.

NOTE: DEFINITION OF 'ENVIRONMENT"

Environment

means the components of the earth and includes:

(a) air, land, water, sediment, soils

(b) all organic and inorganic matter, including living organisms such as humans and non-humans

(c) the interacting ecological systems that include components referred to in subclauses (a) and (b)

Adverse effects include the above environmental effects and effect and impacts on human health

12.2. INVOKING THE REVERSE-ONUS PRINCIPLE

Through mandatory international standards, states shall adopt the reverse-onus principle. With the reverse onus, the onus of proof shall shift from the opponents of an intervention having to demonstrate harm to the proponents of an intervention having to demonstrate safety.

13

DISASTER PREVENTION PRINCIPLE

13.1. ENSURING ADEQUATE REGULATORY ...MEASURES TO PREVENT DISASTERS

PREVENTION OF DISASTERS, including major technological disasters by ensuring adequate regulatory and other measures to avoid their occurrence and reducing the impacts of natural disasters and other emergencies on human settlements... (27 i, Habitat II, 1996)

13.2. PROMOTING THE USE OF TOOLS FOR DISASTER PREVENTION

OF NATURAL, ANTHROPOGENIC AND INDUSTRIAL DISASTERS

Promote the use of tools for disaster prevention, mitigation, and preparedness in order to reduce the vulnerability of populations to natural, man-made and technological disasters (Article 75 (g) Habitat II, 1996) .

The impact on people and human settlements of natural and human-made disasters is on the increase. Disasters are frequently caused by vulnerabilities created by human actions, **such as the consumption and production of ozone-depleting substances, of green-house gas emissions, of toxic, hazardous and atomic wastes;**

such as uncontrolled or inadequately planned human settlements, lack of basic infrastructure and the occupation of disaster-prone areas,

and such as the continued production of arms and weapons of mass destruction, and the continued visits of nuclear powered vessels in urban ports.

Armed conflicts also have consequences that affect human settlements and the country as a whole and call for specific rehabilitation and reconstruction processes that may necessitate

international involvement, at the request of the Government of the concerned country. The impact of such disasters and emergencies is especially severe in countries where prevention, preparedness, mitigation and response capacities are ineffective in dealing with such situations (Article 24. Habitat II, 1996) .

13.3. IMPROVING NATURAL AND HUMAN-MADE DISASTER PREVENTION

In improving natural and human-made disaster prevention, preparedness, mitigation and response, Governments at the appropriate levels, including local authorities, and in close consultation and cooperation with such entities as insurance companies, non-governmental organizations, community-based organizations, organized communities, the academic, health and scientific communities, **shall should:** (Article 126, Habitat II, 1996)

13.4. INCLUDING PARTICIPATION IN RECOGNIZING VULNERABILITY TO HUMAN-MADE AND NATURAL DISASTERS

Ensure that serious public concern about an activity or technology that could lead to preventable disaster be taken into consideration and the activity or technology shall be prevented or banned, and ensure that the participation in preparing and planning for non-preventable disaster *plannin*
g and management
of all
[stakeholders
individuals and organizations of civil society with a wide range of experience and expertise, including particularly marginalized members of society such as.
]
, including women, children, the elderly, and people with disabilities, in recognition of their particular vulnerability to human-made and natural disasters (Article 126 a bis Habitat II, 1996) ;

13.5 ENSURING REGULATIONS THAT WILL PREVENT PREVENTABLE ANTHROPOGENIC DISASTERS

ensuring regulations that will prevent preventable anthropogenic disasters and encourage continued mobilization of domestic and international resources for disaster reduction activities for non-preventable disasters
(Article 126 (b) Habitat II, 1996) ;

Given that since the development of nuclear technology the most significant preventable anthropogenic disaster has been the preventing of nuclear-related disasters, and given that the outcome of nuclear disasters, including from nuclear arms and nuclear civil reactors, has had irreversible consequences that cannot be considered to have been remediated other than by forced reallocation ; and continues to have unexpected consequences; the global community, if it is to embark upon the prevention of preventable disaster, shall prevent the continued production of nuclear arms, the mining of uranium for the producing of nuclear arms, the testing of nuclear arms, the circulating and harbouring of nuclear-armed or nuclear-powered military vessels, and the using of civil nuclear reactors. It should be noted that at the 1972 UN Conference on Human Environment (UNCHE) held in Stockholm the states globally adopted the commitment in Article 26 to “eliminate the production of weapons of mass destruction” and twenty years later a Nobel Laureate Declaration called for the phasing out of civil nuclear reactors, and in 1994, and 1996 resolutions from the IUCN have called for the phasing out of the use of civil nuclear reactors. As a consequence of the development and testing of nuclear weapons, disasters with irreversible environmental consequences have occurred and communities have been displaced, there has to be an acknowledgment that there is no acceptable remediation to these nuclear disasters. The least that can be done for those who have been affected by nuclear disasters is to ensure the safe resettlement of displaced populations especially those from small island developing States and coastal regions. There also has to be an acknowledgment that there is no real restoration of sites that have been exposed to radiation from nuclear disasters, otherwise the perpetuation of the belief in the possibility of restoration could justify the continued nuclear associated technologies.

13.6 PREVENTING DISASTERS THROUGH BUILDING A CULTURE OF SAFETY

Promote and encourage all parts of society to participate in disaster preparedness planning in such areas as water and food storage, fuel and first-aid, and in disaster prevention through activities that build a culture of safety (Article * 127 (d) Habitat II, 1996)

In order to prevent technological and industrial disasters, governments at the appropriate levels, including local authorities, as appropriate, should

(Article * 127 bis :

Pursue the objectives of preventing major technological accidents and limiting their consequences through, inter alia, land-use policies and the promotion of safe technology (Article 127 (a) Habitat II, 1996)

13.7. REMOVING IMMEDIATELY ANTI-PERSONNEL LAND MINES

Support work for immediate removal of anti-personnel land mines following the cessation of armed conflict (Article 128 (i) Habitat II, 1996) ;

13.8. PREVENTING POLLUTION AND EXPOSURE TO POLLUTION

DISCOURAGING DISPROPORTIONATE SITINGS

Prevent or minimize pollution and exposure to pollution from industrial facilities, while also promoting urban planning, housing and industrial siting initiatives that discourage the disproportionate sitings of polluting industrial facilities in areas inhabited by people living in poverty or those belonging to vulnerable and disadvantaged groups (Article * 84 e ter Habitat II, 1996)

13.9. PREVENTING AND MITIGATING ADVERSE ENVIRONMENTAL IMPACTS

Increasingly, cities have a network of linkages that extends far beyond their boundaries. Sustainable urban development requires consideration of the carrying capacity of the entire ecosystem supporting such development including the prevention and mitigation of adverse environmental impacts occurring outside urban areas. All transboundary movements of hazardous waste and substances should be carried out in accordance with relevant international agreements by parties to those agreements. Rapid urbanization in coastal areas is causing the rapid deterioration of coastal and marine ecosystems (Article * 79 Habitat II, 1996) .

13.10. REDUCING SIGNIFICANTLY OR ELIMINATING ENVIRONMENTALLY HARMFUL SUBSIDIES

Reduce significantly or eliminate environmentally harmful **technologies**, subsidies and other programmes, such as those which stimulate the excessive use of pesticides and chemical fertilizers, and price control or subsidy systems that perpetuate unsustainable practices and production systems in rural and agricultural economies. (Article 122 (e) Habitat II)

13.11. TAKING INTO ACCOUNT INTERNATIONAL AGREEMENTS AND INSTRUMENTS

In seeking to prevent transboundary pollution and minimize its impacts on human settlements when it does occur, Governments should cooperate to develop appropriate mechanisms for assessing the environmental impact of proposed activities that are likely to have a significant adverse impact on the environment, including an evaluation of relevant comments provided by other potentially affected countries. Governments should also cooperate to develop and implement mechanisms for prior and timely notification, exchange of information and consultation in good faith, and mitigation of the potential adverse effects regarding those activities, taking into account existing international agreements and instruments. (Article 99 bis Habitat II)

Through various international instruments states have undertaken to ban the use of production and consumption of ozone depleting substances (Vienna Convention on depletion of the ozone layer, 1985); to reduce the production of greenhouse gases and to conserve carbon sinks (Framework Convention on Climate Change, 1992); to identify biodiversity and to carry out and environmental impact assessment of activities that could contribute to the loss or reduction of biodiversity; to combat desertification

(Convention on the Combating of desertification); to promote renewal energy (Chapter 9, Agenda 21) and to phase out fossil fuel (Habitat 1). To preserve cultural and natural heritage (Convention on the Protection of Cultural and Natural Heritage, 1972)

In addition states have agreed to the precautionary principle, the anticipatory principle, the internalizing of environmental costs (environmental audit). Yet few states if any have taken the necessary measures.

13.12. INVOKING THE REVERSE-ONUS PRINCIPLE

Through mandatory international standards, states shall adopt the reverse-onus principle. With the reverse onus, the onus of proof shall shift from the opponents of an intervention having to demonstrate harm to the proponents of an intervention having to demonstrate safety.

Every proponent of an intervention in the ecosystem must demonstrate that the intervention will not cause harm to the environment or will not create ecologically unsound wastes

[NOTE THAT THE HONORABLE SHEILA COPPS, WHEN SHE WAS THE MINISTER OF ENVIRONMENT OF CANADA HAS CALLED FOR THE IMPLEMENTATION OF THE REVERSE ONUS.]

BUTTER FINGERS

(14)

REFUSE OR REUSE TO AVOID MISUSE AND ABUSE PRINCIPLE

□□□□□□□□□□ Citizens should be encouraged to refuse to use products that originate from inequitable and ecologically-unsound development, and□□□ . In other cases where the products have been derived from equitable and ecologically sound development and practices, every effort shall be made to reuse the products.

(15)

NON-TRANSFERENCE OF HARMFUL SUBSTANCES OR ACTIVITIES PRINCIPLE

Through mandatory international normative standards (MINS) , states shall ensure the prevention of the transference of substances or activities, harmful to the environment or human health to other parts of the state or to other states.

15.1. PREVENTING THE TRANSFER OF SUBSTANCES AND ACTIVITIES THAT ARE HARMFUL TO HUMAN HEALTH AND THE ENVIRONMENT

This principle was globally adopted at the UNCED:

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

This principle shall never be qualified by the excuse that the recipient state is willing to accept the harmful substances or activities. Also the excuse of “Extraterritoriality” shall not be used as a device to justify the transferring these harmful substances and activities (i.e. what right do we have to impose our standards on other communities, regions or states—self-serving extraterritorialism-avoidance).

15.2. ENSURE AVOIDANCE OF DUMPING OF ENVIRONMENTALLY UNSOUND TECHNOLOGIES

Seeking to ensure that the process of technology transfer avoids the dumping of environmentally-unsound technologies on the recipients and that the transfer of environmentally-sound technologies and corresponding know-how in particular to developing countries, is on favourable terms, as mutually agreed, taking into account the need to protect intellectual property rights (Article *151 b Habitat II)

15.3. RECOGNIZING THAT THE USE AND TRANSFER OF ENVIRONMENTALLY SOUND TECHNOLOGIES IS A PREREQUISITE FOR “SOCIALY EQUITABLE AND ENVIRONMENTALLY SOUND DEVELOPMENT”

The use and transfer of environmentally sound *technologies* and **practices** which have a profound impact on consumption and production patterns are prerequisites for **socially equitable and environmentally sound**

sustainable

human settlements

developmen

t.

Advanced BEST (Best Environmentally Sound Traditions) practices and appropriate technologies

and the knowledge-based systems which support their application offer new opportunities for more efficient use of human, financial and material resources, more sustainable industrial practices

and new sources of meaningful employment. International agencies including UNCHS (Habitat) have an essential role in disseminating and facilitating access to information on BEST practices

available technologies

and options for their transfer. It is understood that the transfer of technology

includes assurances of adequate protection of intellectual property and mutually agreed allocation of commercial

benefits, particularly those benefits that shall accrue to developing countries for traditional practices including those related to biodiversity, and biotechnology].

(Article 151. Habitat II, 1966)

the use and transfer of environmentally-sound technologies that have a profound impact consumption and production patterns are prerequisites for sustainable human settlements development. Advanced and appropriate technologies and the knowledge-based systems that support their application offer new opportunities for more efficient use of human, financial and material resources, more sustainable industrial practices and new sources of employment. International organizations have an important role to play in disseminating and facilitating access to information on technologies available for transfer. It is understood that the transfer of technology will take into account the need to protect intellectual property rights (Article 151 *Habitat II, 1966)

NOT RELAXING STANDARDS TO ATTRACT INDUSTRY PRINCIPLE

Through mandatory international normative standards (MINS), states shall not relax or change standards and technical regulations to attract industry.

This principle was enunciated in NAFTA:

The Parties recognize that it is inappropriate to encourage investment by relaxing domestic health, safety or environmental measures. Accordingly, a Party should not waive or otherwise derogate from, or offer to waive or otherwise derogate from such measures as an encouragement for the establishment, acquisition, expansion or retention in its territory of an investment of an investor. IF a Party considers that another Party has offered such an encouragement, it may requires consultations with the other Party and the two Parties shall consult with a view to avoiding any such encouragement. (NAFTA Article 1114 ss 2)

In addition states shall not refrain from establishing the highest standards to correspond to Mandatory International Normative Standards and Technical Regulations based on international principles, or not change existing high standards so as to attract industry

(17)

TRANSBOUNDARY PRINCIPLE

Through mandatory international normative standards, states shall take all measures necessary to ensure that activities under their jurisdiction or control are so conducted as not to cause damage by pollution to other States and their environment, and that pollution arising from incidents or activities under their jurisdiction or control does not spread beyond the areas where they exercise sovereign rights in accordance with this Convention. (Art. 194. 2., Law of the Seas, 1982)

(18)

RENEWABILITY PRINCIPLE

All use of non-renewable resources shall be phased out, with firm timelines. Renewable resources shall be harvested according to socially equitable and environmentally sound development principles:

(19)

BEST (BEST ENVIRONMENTALLY SOUND TRADITIONS) PRACTICES

ENVIRONMENTAL SOUNDNESS PRINCIPLE

Through mandatory international normative standards (MINS), states shall ensure that they use and that corporations including transnationals use BEST technology (best environmentally sound traditions)

There is no guarantee that the Best Available Technology will be ecologically sound. BAT may be the best available but it may not be good enough. It is important to support and promote the development of and the use of BEST (Best Environmentally Sound Traditions). In the event that there is no BEST practice which can prevent the release of persistent or bioaccumulative toxics then the extractive or productive activities which produce the product or substance process should be changed; the activities and product phased out/outlawed, or the demand for the product reduced through public education. In this case, the industry involved shall be assisted in the conversion to alternative processes or products involving BEST practices.

Presumably, if there is a commitment to develop alternatives, there will be a concomitant responsibility to relocate funding from the current practices of mitigating of ecologically unsound practices of the “environment industry” to the preventing of ecologically unsound practices and thus to the development of BEST practices.

19.1.SUBSTITUTING ENVIRONMENTALLY SOUND ALTERNATIVES

In the international documents there is a commitment to develop ecologically sound alternatives. In particular, in Agenda 21 (UNCED) alternative ecologically sound practices have been advocated in the following way in the following sections:

There are often alternatives to toxic chemicals currently in use. Thus risk reduction can sometimes be achieved by using other chemicals or even non-chemical technologies. The classic example of risk reduction is the substitution of harmless or less harmful substances for harmful ones. Establishment of pollution prevention procedures and setting standards for chemicals in each environmental medium, including food and water, and in consumer goods, constitute another example of risk reduction (19.45 Toxic chemicals)

Reduce overdependence on the use of agricultural chemicals through alternative farming practices, integrated pest management and other appropriate means (19.50, Toxic chemicals)

Utilizing and producing environmentally [safe and] sound renewable energy resources, such as solar, wind, geothermal, hydropower and biomass (9.9g Atmosphere, Agenda 21)

Consider undertaking pilot projects that combine environmental protection and development functions with particular emphasis on some of the traditional environmental management practices or systems that have a good impact on the environment (13.21.a Fragile ecosystem, Agenda 21)

19.2. PROMOTING ENVIRONMENTALLY SOUND TECHNOLOGIES AND BEST PRACTICES

promoting education about, and training on, environmentally sound technologies, materials and products (Article 27 f quater, Habitat II, 1966)

Establish laws and regulations aimed at preventing discrimination and barriers and, where such laws and regulations already exist, ensure their enforcement (Article 73 *(b) Habitat II, 1966)

[Modification of principles from the ten elements of sustainability developed by the Institute for Sustainable Forestry.]

1. BEST practices will protect, maintain and/or restore fully functioning ecosystems at all scales in both the short-and long-terms

2. BEST practices will maintain and/or restore surface and groundwater quality, quantity, and timing of flow, including aquatic and riparian habitat

3. BEST practices will maintain and/or restore natural processes of soil fertility productivity and stability.

4. BEST practices will maintain and/or restore natural processes of soil fertility, productivity and stability.

5. BEST practices will encourage a natural regeneration of native species to protect valuable native gene pools.

6. BEST practices will not include the use of artificial chemical fertilizers or synthetic chemical pesticides

19.3 DEVELOPING ENVIRONMENTALLY SOUND LAND-USE STRATEGIES

Develop, with the participation of all interested parties, comprehensive and environmentally sound land-use strategies at the local level. (Article*85 (d) Habitat II, 1966)

19.4 STIMULATING ...ENVIRONMENTALLY SOUND USE OF LAND

Apply transparent, comprehensive and equitable fiscal incentive mechanisms, as appropriate, to stimulate the efficient, accessible and environmentally-sound use of land, and utilize land-based and other forms of taxation in mobilizing financial resources for service provision by local authorities (Article 56 (d) Habitat II, 1966)

Land is essential for the provision of food, water and energy for many living systems, and it is critical to human activity. In rapidly growing urban areas, access to land is rendered increasingly difficult by the potentially competing demands of housing, industry, commerce, infrastructure, transport, agriculture and the need for open spaces and green areas, and the protection of fragile ecosystems. The rising costs of urban land and other factors prevent persons living in poverty and members of other *vulnerable marginalized* and disadvantaged groups from gaining access to suitable land, the location of which does not pose economic, environmental or health risks to the residents because of such reasons as proximity to polluting industrial facilities in appropriate geographical conditions or susceptibility to natural disasters. Bringing the development of urban areas into harmony with the natural environment,

especially within the carrying capacity of the ecosystem

and the overall system of settlements is one of the basic tasks to be undertaken in achieving a

socially equitable and environmentally sound

sustainable

urbanized world. The

tools

means to

for

achiev

e

ing

a physically more balanced development include not only specific urban and regional policies and legal, economic, financial, cultural and other measures, but also innovative methods of urban planning and design and of urban development,

and

revitalization

and management

. National, subnational and local policies and problems need to be integrated.

[The precautionary principle

/approach

and the use of environmental and social impact assessment are essential].

(Article [82 Habitat II, 1966)

19.4. PROTECTING WATER RESOURCES FROM HARMFUL EFFECTS OF HUMAN SETTLEMENTS

Land-use is closely related to water resource management because of the critical need to protect aquifers and other fresh-water resources from the harmful effects of human settlements. Special attention should be paid to guiding potentially hazardous activities away from the fragile areas. Oceans and coastal areas should be protected from land-based sources of pollution.(Article * 82 bis Habitat II, 1966)

19.5 ENCOURAGING AND PROMOTING THE APPLICATION OF LOW-ENERGY

ENVIRONMENTALLY SOUND AND SAFE TECHNOLOGIES

ENCOURAGING AND PROMOTING TECHNOLOGY WITH REGULATORY MEASURES

Encourage and promote the application of low-energy, environmentally sound and safe manufacturing technologies backed by appropriate norms and effective regulatory measures (Article 71 * (b) Habitat II, 1996)

19.6 PROMOTING ENVIRONMENTALLY SOUND TRANSPORTATION

Environmentally sound transportation systems (27 d Habitat II, 1996))

19.7. REDUCING TRANSPORT DEMAND THROUGH PROMOTING OF SPATIAL DEVELOPMENT

promotion of spatial development patterns and communications policies that reduce transport demand (27 d) Habitat II, 1996)

Transport and communication systems are the key to the movement of goods, people, information and ideas, and to access to markets, employment, schools and other facilities and land use, both within cities and between cities, and in rural and other remote areas. The transportation sector is a major consumer of non-renewable energy and of land and is a major contributor to pollution, congestion and accidents. Integrated transport and land-use policy and planning can reduce the ill effects of current transport systems. People living in poverty, women, children, youth, older persons, people with disabilities are particularly disadvantaged by the lack of accessible, affordable, safe and efficient public transport systems (Article *102 Habitat II, 1996)

19.8. ENCOURAGING AND RESEARCHING DEVELOPMENT AND USE OF NON-MOTORIZED OR LOW-ENERGY TRANSPORT SYSTEMS

Promote through regulations use of renewable sources of energy and *Encourage and* research, development and use of non-motorized or low-energy transport systems and the use of renewable energy sources and technologies, such as solar, wind and biomass energy; **developed states shall not transfer non-renewable, obsolete, or unsafe sources of energy to developing states**

(Article 101 (d) Habitat II, 1996)

19.9. EXCHANGING KNOWLEDGE ON ENVIRONMENTALLY SOUND SUBSTITUTE FOR LEAD GASOLINE

Encourage countries, in particular developing countries, to cooperate in exchanging knowledge, experience and know-how in the phasing out of lead gasoline, including the use of biomass ethanol as an environmentally sound substitute (Article 101 (e) Habitat II, 1996);

19.10. EDUCING NEGATIVE EFFECTS OF TRANSPORT ON THE ENVIRONMENT

REDUCING UNNECESSARY TRAVEL

DEVELOPING ALTERNATIVES OTHER THAN THE AUTOMOBILE

DEVELOPING ALTERNATIVE FUELS

Managing transport in human settlements should be done in a way that promotes good access for all to places of work, social interaction and leisure and facilitates important economic activities, including obtaining food and other necessities of life. This should be done while reducing the negative effects of transport on the environment. Transport-system priorities should be given to reducing unnecessary travel through appropriate land-use and communication policies, developing transport policies that emphasize mobility alternatives other than the automobile, developing alternative fuels and alternative fuel vehicles, improving the environmental performance of existing modes of transport, and adopting appropriate pricing and other policies and regulations (Article 102 * Habitat II, 1996).

19.11. PROMOTING AFFORDABLE, EFFICIENT AND ENERGY-SAVING MODES OF TRANSPORT

Non-motorized transport is a major mode of mobility, particularly for low-income, vulnerable and disadvantaged groups. One structural measure to counteract the socio-economic marginalization of these groups is to foster their mobility by promoting affordable, efficient and energy-saving modes of transport (Article *103 bis. Habitat II, 1996).

19.12. REDUCING THE NEED TO TRAVEL

Coordinate land-use and transport planning in order to encourage spatial settlement patterns that facilitate access to such basic necessities as workplaces, schools, health care, places of worship, goods and services, and leisure, thereby reducing the need to travel (Article 104 * (b) Habitat II, 1996).

19.13. PROMOTING COMMUNICATIONS AND TRANSPORT PLANNING TO REDUCE DEMAND FOR TRANSPORT

Promote the integration of land-use, communications and transport planning to encourage development patterns that reduce the demand for transport (Article *84(g) Habitat II, 1996).

Develop and implement integrated coastal zone management plans to ensure the proper development and conservation of coastal resources (Article *84 (g) bis Habitat II, 1996).

19.14. ENCOURAGING THE USE OF AN OPTIMAL COMBINATION OF MODES OF TRANSPORT

(Article 104 * (c) Encourage the use of an optimal combination of modes of transport, including walking, cycling and private and public means of transportation, through appropriate pricing, spatial settlement policies and regulatory measures Habitat II, 1996).

19.15. PROMOTING AND IMPLEMENTING DISINCENTIVE MEASURES THAT DISCOURAGE THE INCREASING GROWTH OF PRIVATE MOTORIZED TRAFFIC

ACKNOWLEDGING THAT CONGESTION IS DAMAGING ENVIRONMENTALLY

ENCOURAGING ALTERNATIVE TRANSPORT METHODS

Promote and implement disincentive measures that discourage the increasing growth of private motorized traffic and reduce congestion, which is damaging environmentally, economically and socially, and to human health and safety, through pricing, traffic regulations, parking and land-use planning and traffic abatement methods, and by providing or encouraging effective alternative transport methods, particularly to the most congested areas (Article 104 * (d) Habitat II, 1996).;

19.16. GIVING PRIORITY TO COLLECTIVE MEANS OF TRANSPORT WITH ADEQUATE CARRYING CAPACITY AND FREQUENCY

Provide or promote an effective, affordable, physically accessible and environmentally sound public transport and communication system, giving priority to collective means of transport with adequate carrying capacity and frequency that support basic needs and the main traffic flows (Article 104 * e Habitat II, 1996).;

19.17. PROMOTING , REGULATING AND ENFORCING QUIET USE EFFICIENT AND LOW-POLLUTING TECHNOLOGIES

Promote, regulate, and enforce BEST—Best Ecologically Sound Traditions— practices, and , during conversion , promote, regulate, and enforce

quiet, use-efficient and low-polluting technologies, including fuel-efficient engine and emissions controls and fuel with a low level of polluting emissions and impact on the atmosphere and **actively fund and promote** other alternative forms of energy (Article 104 (f)Habitat II, 1996).;

19.18. PROMOTING PRACTICES AND CONSUMPTION THAT WILL CONSERVE...

Promote practices and consumption patterns that will conserve and protect freshwater and saltwater resources and top soil, as well as air and soil quality; (Article 98(a))

* brackets removed

Reduce significantly the degradation of the marine environment emanating from land-based activities, including municipal, industrial and agricultural wastes and run-off, which have a pernicious impact on the productive areas of the marine environment and coastal areas (Article *98 bis (c)Habitat II, 1996).

19.19. PROMOTING ENVIRONMENTALLY SOUND RENEWABLE ENERGY

Access to sustainable sources of energy (Article 66* (f) Habitat II)

Reducing energy consumption

Provide incentives for engineers, architects, planners and contractors and their clients to design and build accessible energy-efficient structures and facilities by using locally available resources and to reduce energy consumption in buildings in use (Article *69 (h) Habitat II, 1996).

Intensify and support research efforts to find substitutes for or optimize the use of non-renewable resources, and to reduce their polluting effects and paying special attention to recycling, re-use of waste materials and increased reforestation;] (Article * 71 [(a) Habitat II, 1996).

Encourage and promote the application of low-energy, environmentally sound and safe manufacturing technologies backed by appropriate norms and effective regulatory measures (Article 71 * (b) Habitat II, 1996).

19.20. INTENSIFYING AND SUPPORT RESEARCH INTO SUBSTITUTES

Intensify and support research efforts to find substitutes for *or optimize the use of* non-renewable resources, particularly fossil fuels, and to reduce their polluting effects

and paying special attention to recycling, re-use of waste materials and increased reforestation;]

Reaffirm the obligation undertaken in 1981 through the General Assembly Resolution at the UN Conference on New and renewable Sources of Energy to move through “the transition from the present international economy based primarily on hydrocarbons to one based increasingly on new and renewable sources of energy. In addition establish a time-table for the phasing out of the use of fossil fuel and of civil nuclear energy as proposed in the 1992 Nobel Laureate Declaration □ (Article 71 [(a) Habitat II, 1996)..

19.21. PROVIDING ENVIRONMENTALLY SOUND SHELTER

adequate shelter for all ...through the development and improvement of shelter that is environmentally sound (2 bis)

integrating a gender perspective in the design and implementation of environmentally sound and sustainable resource management mechanisms, production techniques and infrastructure development in rural and urban areas (27 d)

19.22. ADVOCATING INTERTRANSFER OF BEST PRACTICES RATHER THAN NORTH-SOUTH TECHNOLOGY TRANSFER

Through mandatory international normative standards (MINS) states shall compile innovative BEST local practices that is not damaging to the environment in the way that the current overconsumptive model of consumption is. Industrialized states shall seriously explore the innovative technological developments of traditional local practices, and thus not presume that the industrialized technological fixes are the most appropriate even in industrialized state context.

(20)

TRADITIONAL PRACTICES PRINCIPLE

20.1. PROMOTING TRADITIONAL AND INDIGENOUS PRACTICES

Through international standards states shall refrain from imposing external devised technologies and encourage the development of BEST local and indigenous technologies:

Throughout the UNCED documents there is a call for the respect of indigenous practices, and local technologies:

"Promote development in accordance with indigenous practices and adopt technologies appropriate to local conditions (7.42 c)

the promotion of sustainable production systems such as traditional methods of agriculture, agroforestry, forestry, range and wildlife management, which use, maintain or increase biodiversity (15.5 Biodiversity)

" consider undertaking pilot projects that combine environmental protection and development functions with particular emphasis on some of the traditional environmental management practices or systems that have a good impact on the environment (13.21.a Fragile ecosystem)

" Collect and record information on indigenous conservation and rehabilitation practices and farming systems as a basis for research and extension programmes. (14.47 c, Agriculture)

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" Governmentsshould ... Recognize and foster the traditional methods and the knowledge of indigenous people and their communities, emphasizing the particular role of women, relevant to the conservation of biological diversity and the sustainable use of biological resources, and ensure the opportunity for the participation of those groups in the economic and commercial benefits derived from the use of such traditional methods and knowledge (15.4, g Biodiversity)

" Take effective economic, social and other appropriate incentive measures to encourage the conservation of biological diversity and the sustainable use of biological resources, including the promotion of sustainable production systems, such as traditional methods of agriculture, agroforestry, forestry, range and wildlife management, which use, maintain or increase biodiversity (15.5 d Biodiversity)

" Take effective economic, social and other appropriate incentive measures to encourage the conservation of biological diversity and the sustainable use of biological resources, including the promotion of sustainable production systems, such as traditional methods of agriculture, agroforestry, forestry, range and wildlife management, which use, maintain or increase biodiversity (15.5 d Biodiversity)

" Take action where necessary for the conservation of biological diversity through the in situ conservation of ecosystems and natural habitats, as well as primitive cultivars and their wild relatives, and the maintenance and recover of viable populations of species in their natural surrounding ...(15.6 g. Biodiversity)

Governments... consistent with the requirements of international law should, as appropriate collect, assess and make available relevant and reliable information in a timely manner and in a form suitable for decision-making at all levels, with the full support and participation of local and indigenous people and their communities.

(15.6 f Biodiversity)

"promotion of collaborative research programmes... fostering of traditional methods and knowledge of such groups (local and indigenous) in connection with these activities. (16.7 b Biotechnology)

States shall cooperate with a view to the conservation of marine mammals and, in the case of cetaceans, shall in particular work through the appropriate international organizations for their conservation, management and study (17.50 Marine)

20.2. PROMOTING INDIGENOUS PLANNING AND DESIGN TECHNIQUES

Encourage and support research and studies to promote and develop indigenous planning and design techniques, norms and standards to match with the actual needs of local communities, **and as agreed in the “Establishment of a New Economic Order, to support**

the use of natural material, and as agreed in Habitat I to support the use of endogenous technology (Article 69(a) Habitat II, 1996);

20.3. ENCOURAGING AND SUPPORTING THE USE OF ...LOCAL BUILDING MATERIALS

Encouraging and supporting the use of appropriate building technology and the production of local building materials, as well as supporting the development of international, subregional and regional networks of institutions involved in research, production, dissemination and commercialization of locally produced building materials (Article 152 * c bis merged with d bis) Habitat II, 1996);

20.4. STRENGTHENING THE INDIGENOUS BUILDING MATERIALS INDUSTRY

strengthening the indigenous building materials industry, based as far as possible on locally available resources. (51 d Habitat II, 1996))

Provide data base on adverse environmental effects of building materials (51d Habitat II, 1996))

(21)

COUPLING-AVOIDANCE PRINCIPLE

The coupling-avoidance principle involves the avoidance of coupling of a “clean-up environment” industry with a toxic, hazardous or atomic waste producer in order to justify the continuation of the production of toxic hazardous or atomic wastes.

Through mandatory international normative standards (MINS) states shall not accept the “environment-industry” being coupled with the toxic hazardous, and atomic waste production industry as a means of justifying the continuation of the toxic, hazardous and atomic waste producing activity.

(22)

SOLUTION-WORSE-THAN-PROBLEM-AVOIDANCE PRINCIPLE

This principle involves the avoidance of the advocating of a “solution” that is

potentially worse than the problem to be addressed. For example, the civil nuclear power industry is promoting nuclear energy as the solution to climate change.

Through mandatory international normative standards (MINS), states shall not accept a solution that is worse than the problem

(23)

ENVIRONMENTAL AUDITS AND ECOLOGICAL CONSEQUENCES PRINCIPLE

States shall ensure environmental audits and the taking into account of all ecological consequences

23.1. INCLUDING OF ECOLOGICAL CONSEQUENCES IN ANALYSIS OF COSTS

In international documents there is the recognition of the importance of environmental audits, and of the taking into consideration of ecological consequences:

Governments,...should develop procedures for monitoring the application of the cradle to grave approach, including environmental audits (Agenda 21, 20.20 e)

Ensure that relevant decisions are preceded by environmental impact assessments and also take into account the costs of any ecological consequences (Agenda 21, 7.42)

23.2. INCORPORATING ECOLOGICAL CONSEQUENCES AND ENVIRONMENTAL AUDITS WITHIN FULL COST METHODS.

The costs to the environment of continuing with ecologically unsound practices rather than the cost to industry of introducing ecologically sound practices shall be considered.

□□□□□□□□□□ It is equally important to ensure that, in carrying out an environmental assessment on a particular substance or activity that could have potential adverse environmental effects, other ecologically sound alternative practices shall also be assessed. If the precautionary principle is to be applied in the assessment of costs, the full environmental costs have to be taken into consideration, as well as the full economic costs of monitoring and enforcement of legislation to regulate ecologically unsound practices, and the projected economic costs and environmental costs of accidents, and

restoration if accidents occur. If the “ecological costs are horrendous” , no economic benefits will justify the costs.

23. 3. ASSESSING FULL ECONOMIC COSTS OF ECOLOGICALLY UNSOUND PRACTICES AND OF FULL ECONOMIC BENEFITS OF PREVENTION:

The introduction of ecologically unsound practices have inordinate, extensive, unexpected short-term and long term economic costs, including□ the following:

-the cost of monitoring, investigation, enforcement, and conviction.;

-the costs of□ subsidies—taking research dollars from developing ecologically sound alternatives;

-the costs of inappropriate funding for attempts to rectify previous errors;

-the costs to displaced disenfranchised indigenous peoples;

-the costs of rehabilitation of ecologically devastated sites;

-the costs of loss of biodiversity; costs of loss of resources— destruction of fish habitat;

-the costs of health impacts on□ employees.□

• Financial benefits associated with toxics use reduction can include reduced raw material costs, reduced effluent and emissions monitoring and control costs, reduced energy use, reduced water use, reduced liability ... (from submission to Department of Ecology by Carol Dansereau, Director, Industrial Toxics Project, Washington Toxics Coalition, May 4, 1994)

• Companies may be unaware of the benefits or may opt to limit short-term investments despite longer term savings. Thus, in the absence of regulations, they might continue to avoid very reasonable available technologies that protect the environment better by preventing pollution (from submission to Department of Ecology by Carol Dansereau, Director, Industrial Toxics Project, Washington Toxics Coalition, May 4, 1994)

• It is incumbent upon society and government to strive towards high standards so that the segment of industry (prevention-technology or techniques industry—BEST industry) dedicated to developing ecologically sound alternatives will be at an economic advantage

• The technique of assessing the complexity of the multiple costs must be used. This technique could be extended to reevaluate the totality of spending including the excessive costs of maintaining the global military (800 billion), when the money from the military could be transferred to assist in the conversion to an ecologically sound and equitable society.

• A full life-cycle analysis of the economic and environmental costs through time and space of each substance and activity shall be carried out.

• The independent assessment of full economic costs shall be carried out by the

Auditor General's office

- **The establishment of the highest possible mandatory standards, legal enforcement mechanism, and support structures for ensuring that prevention techniques are economically feasible.**

23.4. ASSESSING OF FULL ENVIRONMENTAL AND HUMAN HEALTH IMPACT COSTS OF INACTION OR NON-PREVENTION

Ecological and equitable “backcasting” — “going to the future though the present” — moving from vision to measures to implement the vision — must be supported. If the vision is to adopt a prevention and precautionary approach to interventions into the ecosystem, anything that detracts or deters from that vision should be seriously questioned, and the justification of the continuing the questionable practices should come under serious scrutiny. In other words if unacceptable present and future ecological consequences are likely to occur, the activity shall not proceed and the substance shall not be used.

- **the enunciation of an “ecological imperative” as part of a long-term complex solution**

• “The difficulty of assessing environmental impacts cannot be used as an excuse for ignoring them. (from submission to Department of Ecology by Carol Dansereau, Director, Industrial Toxics Project, Washington Toxics Coalition, May 4, 1994)

- **The presence of ecological irreversible consequences shall be deemed to be beyond an acceptable risk, and thus not subject to the usual means of quantification. In this**

event, the anticipatory, precautionary, and reverse onus principle shall apply, and the activity or substance shall be banned or phased out

- **Ecological, and equitable consequences, and health impact consequences must be examined in full complexity through time and space**

- **in the event that the activity or substance has been proven to have caused environmental degradation, or to be able to cause long term ecological consequences, the activity shall cease or the use of the substance shall be banned or phased out.**

- **No economic benefit shall be used to justify the violation of ecological rights— right to a safe environment and the right to an ecological heritage, and the integrity of the ecosystem. Economic benefits must be seen in the context of ecosystem primacy; otherwise long term future ecological and humanitarian rights— right to food, safe water, health care and shelter will be compromised**

- In determining whether the [technology] emission limitation is sufficient to protect health, welfare and the environment, [governments] must consider all known and suspected impacts, including but not limited to mutagenicity, teratogenicity, neurological damage, development damage, immune suppression, organ damage, reproductive impairment, and hormone mimicry.

- **Procedures to ensure that an environmental assessment review of any practices or substances that could contribute to the loss or reduction of Biodiversity shall be in place**

- **Assessment of full costs of violating the rights of the disenfranchised shall be carried out. The groups bearing the greatest impact from ecologically unsound practices and disposal of toxic, hazardous, and atomic wastes are often the disenfranchised in society.**

24

□□□□□□ **ENVIRONMENTAL ASSESSMENT REVIEW PRINCIPLE**

24.1.

24.2 COMPLYING WITH THE ENVIRONMENTAL ASSESSMENT REVIEW PRINCIPLE

The essence of this principle can also be traced through the 1972 Stockholm Convention, and the UN Resolution 37/7, as well as in the UNCED documents, where it is enunciated in the following way:

ASSERTION OF THE AVOIDANCE OF ACTIVITIES PRINCIPLE

Activities which are likely to cause irreversible damage to nature shall be avoided (UN Resolution 37/7 1982)

Introduce appropriate procedures requiring environmental impact assessment of its proposed

projects that are likely to have significant adverse effects on Biological diversity with a view to avoiding or minimizing such effects, and where appropriate, allow for public participation in such procedures (Article 14, 1A, Convention on Biological Diversity)

24.3 REQUIRING A LEGITIMATE ENVIRONMENTAL IMPACT ASSESSMENT

Through mandatory international normative standards, states shall require a legitimate environmental assessment review of any practice, activity or substance that could have significant adverse environmental effects. An actual assessment of the short and long term potentially adverse environmental effects of existing and proposed projects and activities shall be carried out. It is understood that a review of a project or activity to assess the "environmental, economic, social, cultural, heritage, health effects of the reviewable projects" is not a legitimate environmental impact assessment.

23.7. REQUIRING COST RECOVERY FOR ENVIRONMENTAL IMPACT ASSESSMENT AND FOR MONITORING AND ENFORCING REGULATIONS

Industries that are permitted to engage in environmentally unsound practices that require regulations and enforcement shall bear the full cost of the additional charges incurring as a result of governments having to ensure compliance with regulations. In addition, for all proposals, projects, activities that intervene in an environmentally unsound way in the ecosystem, and that are deemed to require an environmental assessment review governments shall recover the full costs of the review.

(25)

COST RECOVERY PRINCIPLE

23 bis 1. REQUIRING COST RECOVERY FOR ENVIRONMENTAL IMPACT ASSESSMENT AND FOR MONITORING AND ENFORCING REGULATIONS

Industries that are permitted to engage in environmentally unsound practices that require regulations and enforcement shall bear the full cost of the additional charges incurring as a result of governments having to ensure compliance with regulations. In addition, for all proposals, projects, activities that intervene in an environmentally unsound way in the ecosystem, and that are deemed to require an environmental assessment review governments shall recover the full costs of the review.

(26)

ENVIRONMENTALLY RESPONSIBLE INVESTMENT PRINCIPLE

24.1. ENCOURAGING SOCIALLY AND ENVIRONMENTALLY RESPONSIBLE COMMUNITY INVESTMENT

(Article * 157 e bis Encourage public-private partnerships in socially and environmentally responsible community investment and reinvestment in shelter and sustainable human settlements programmes and make publicly available and accessible the data and best practices developed through them Habitat II, 1996) ;

24.2.PROMOTING SOCIALLY AND ENVIRONMENTALLY RESPONSIBLE CORPORATE INVESTMENT (31 D)

Strengthening regulatory and legal frameworks to enable markets to work, overcome market failure and facilitate independent initiative and creativity, as well as to promote socially and environmentally responsible corporate investment....(31 d Habitat II)

(27)

POLLUTER PAY PRINCIPLE

States shall enforce the Polluter Pay Principle to ensure that those who may release polluting substances into the environment pay the full-cost of environmentally safe handling, treatment, disposal, and remediation; in addition, permits shall be suspended and canceled, if the polluter has caused serious irreversible ecological damage, and criminal charges laid. Mens rea shall not have to be proved, executives and directors of the company shall be subject to potential criminal charges, and the excuse of due diligence is no longer acceptable.

25.1.TAKING INTO ACCOUNT THE POLLUTER-PAY PRINCIPLE

In different section of Agenda 21, the polluter Pay principle is advocated:

' Governments should include in national planning and legislation an integrated approach to environmental protection, driven by prevention and source reduction criteria, taking into account the 'polluter pays' principle, and adopt programmes for hazardous waste reduction, including targets and adequate environmental control(20.20 b Hazardous Wastes, Agenda 21)

" Governments should ...(b) apply the 'polluter pays' principle, where appropriate, by setting waste management charges at rates that reflect the costs of providing the service and ensure that those who generate the wastes pay the full cost of disposal in an environmentally safe way (21.42 b Solid wastes, Agenda 21)

25.2. DEVISING ...NEW FISCAL INSTRUMENTS THAT PENALIZE ENVIRONMENTAL DAMAGE FROM BOTH PRODUCTION AND CONSUMPTION ACTIVITIES

Develop efficient, equitable and buoyant sources of national and local revenues, including taxation, user charges, tariffs and betterment fees **levies** to promote national and local capacity for capital investment in housing, infrastructure and basic services; and devise, as appropriate, new financial instruments **which are**

conditional on mandatory international normative standards (MINS) including the penalizing

penalize

of

environmental damage

arising

f

rom both production and consumption

of environmentally unsound

activities (NGO Composite)

;

* (c) Develop efficient, fair, equitable and buoyant sources of national and local revenue, including taxation, user charges, tariffs and betterment levies, to promote national and local capacity for capital investment in housing, infrastructure and basic services, and devise, as appropriate, new fiscal instruments that penalize environmental damage from both production and consumption activities (140 (c) Habitat II, 1996).

(28)

COMPENSATION PRINCIPLE

Through mandatory international normative standards (MINS) , states shall require corporations including transnationals to pay compensation for environmental degradation, and for human rights violations.

Given that corporate-sympathetic government regimes have failed in the past both to ensure corporate compliance with international obligations, and to enforce their own statutory legislation, and given that there has been resultant environmental degradation

and human rights violations, states shall now seek environmental compensation from companies that can be shown to have contributed to environmental degradation or human rights violations. The funds from environmental compensation shall be put into a restoration fund, into developing BEST (Best Ecologically Sound techniques) and into addressing human rights violations.

Often industries that have contributed to environmental degradation seek compensation from states when areas are taken out of production for environmental reasons. Any potential compensation shall be assessed against the estimate of previous ecological consequences.

States shall ensure that the cost of potential compensation is not used as justification for not fulfilling the duty to preserve, protect, and conserve the environment

(29)

REHABILITATION PRINCIPLE

27.1. ENSURING PREVENTIVE MEASURES

A preventive approach, where appropriate, is crucial to the avoiding of costly subsequent measures to rehabilitate, treat and develop new water supplies. (18.45 Fresh water, Agenda 21)

There exists a notion that environmental degradation is reversible; it can be restored,

and rehabilitated. This notion shall never be used as a justification for the causing of environmental degradation

27.2. PROTECTING THE LIVING ENVIRONMENT AND RESTORING CONTAMINATED LAND

In cooperation with the international community, promote the protection of the living environment and strive to restore contaminated land, air and water to levels acceptable for **socially equitable and environmentally sound sustainable** human settlements (Habitat 97 (j) .

(30)

CHANGE THROUGH AWARENESS AND EDUCATION PRINCIPLE

Through international standards an educational program called principle-based education could be expanded. Principle-based education is based on a conceptual framework of international principles.

In chapter 36 of Agenda 21, a very important distinction is made between promoting "education," promoting "public awareness," and promoting "training." It appears to be

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clear in Agenda 21 that non-governmental organizations, community-based groups, women's groups and aboriginal groups are called upon to assist educational authorities in reorienting education. The role of industry is ascertained to be limited to specific areas of business and industrial and training programs.

Educational authorities, with appropriate assistance of non-governmental organizations, including women's and indigenous peoples' organizations should promote all kinds of adult education programmes for continuing education in environment and development, basing activities around elementary/secondary schools and local problems. The authorities and industry should encourage business, industrial and agricultural schools to include such topics in their curricula. The corporate sector could include sustainable development in their education and training programmes. Agenda 21, Chapter 36.5 I

In the section of Agenda 21 that addresses the " promoting of public awareness " industry is included not as the dispenser of "education" but as the recipient of needed education.

" Countries and regional organizations should be encouraged, as appropriate, to provide public environmental and development information services for raising the awareness of all groups, the private sector and particularly decision makers. (Agenda 21, section 36.10 c)

In the section of Agenda 21, that addresses the "promoting of training, an important role for industry is envisioned.

To strengthen national capacities,... in training, to enable governments, employers and workers to meet their environmental and development objectives and to facilitate the transfer and assimilation of new environmentally sound, socially acceptable and appropriate technology and know-how (Agenda 21, 36.13 c)

(31)

ARMS LENGTH RESEARCH PRINCIPLE

This principle holds that most of the current research that has been used to support the continuation of the current model of development has arisen from non-arms length research by vested interests, and that if the urgency of the global situation is to be addressed arms-length non-vested interest research has to be relied on.

(32)

CULTURAL APPROPRIATENESS PRINCIPLE

Through mandatory international standards, states shall ensure that the rights of Indigenous peoples are guaranteed:

30.1. AFFIRMING OF POSITIVE-DUTY-TO PROTECT-INDIGENOUS-LANDS

the lands of indigenous people and their communities should be protected from activities that are environmentally unsound or that the indigenous people concerned consider to be socially and culturally inappropriate (16.3. ii, Agenda 21)

30.2. ACKNOWLEDGING THAT RURAL AND INDIGENOUS PEOPLES ENSURE THE...SUSTAINING SOCIAL AND ECOLOGICAL BALANCE

Rural populations, including indigenous people, play an important role in **demonstrating to urban populations practices of living within the carrying capacity of the ecosystem**

in providing evidence of BEST practices,

in ensuring food security and in sustaining the social and ecological balance over large tracts of land in many nations and thus contribute significantly to the task of protecting biodiversity and fragile ecosystems and to the sustainable use of biological resources. (Art 118 Habitat II)

30.3. DEVELOPING OF POLICIES AND PROGRAMMES TO PREVENT ENVIRONMENTAL DEGRADATION OF LAND THROUGH INTEGRATING INDIGENOUS WOMEN...

Integrate indigenous women, their perspectives and knowledge on an equal basis with men, in decision-making regarding human settlements, including sustainable resources management and the development of policies and programmes for sustainable development, including , in particular, those designed to address and prevent environmental degradation of land (Art 90, quart c Habitat II)

(33)

INTERGENERATIONAL EQUITY PRINCIPLE

31.1. RESPECTING THE RIGHTS OF FUTURE GENERATIONS

Through mandatory international standards, states shall respect intergenerational equity.

The obligation to future generation has been enunciated as a principle for over twenty years, and should be incorporated as a principle in the establishment of the international standards. This obligation to future generation can be traced in the following way:

In the United Nations Convention for the Protection of Cultural and Natural Heritage:

Each State Party to this Convention recognizes that the duty of ensuring the identification, protection, conservation, presentation and transmission to future generations of the cultural and natural heritage referred to in articles 1 and 2 and situated on its territory, belongs primarily to that State. (United Nations Convention for the Protection of Cultural and Natural Heritage, 1972)

In the Stockholm Convention of 1972, the requirement to preserve our environmental heritage and the requirement to save a representative sample of natural ecosystems for future generations were being recognized:

The natural resources of the earth including the air, water, land, flora and fauna and especially representative samples of natural ecosystems must be safeguarded for the benefit of present and future generations (Principle 2)

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Man has a special responsibility to safeguard and wisely manage the heritage of wild life and its habitat which are now gravely imperiled by a combination of adverse factors (Principle 4),

In UN Resolution 37/7, 1982

Reaffirming that man [humans] must acquire the knowledge to maintain and enhance his ability to use natural resources in a manner which ensures the preservation of the species and ecosystems for the benefit of present and future generations,(UN Resolution 37/7, 1982)

In the Convention of Biological Diversity

"to conserve and sustainably use biological diversity for the benefit of present and future generations (Biodiversity Convention, UNCED, 1992)

and in the Framework Convention on Climate Change:

" to protect the climate system for present and future generations"

The principle of considering the need to preserve ecological heritage for future generations, because of its continued inclusion in international documents, has become a principle of international customary law.

Continued depletion of resources upon which future generations depend are being depleted

Around the world many of the basic resources on which future generations will depend for their survival and well-being are being depleted and environmental degradation is intensifying, driven by unsustainable patterns of production and consumption, unprecedented growth in population, widespread and persistent poverty, and social and economic inequality (Preamble, 1.2. International Conference on Population and Development, 1994)

(34)

COMMON GOOD PRINCIPLE

32.1. CONTRIBUTING TO COMMON GOOD

All people have rights and must also accept their responsibility to respect and protect the rights of others- including future generations and to contribute actively to the common good....
(Article 79 Habitat II)

(35)

EQUALITY and EQUITY PRINCIPLE

33.1. AFFIRMING FUNDAMENTAL HUMAN RIGHTS

... faith in fundamental human rights, in the dignity and worth of human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in large freedom (Preamble, Universal Declaration of Human Rights, 1948)

(36)

COMMUNITY INVOLVEMENT WITHIN A FRAMEWORK OF INTERNATIONAL PRINCIPLES

While decentralized, participatory planning are important features of a decision making process, the planning should be grounded in fundamental principles related to the enshrining and guaranteeing of human rights, the ensuring of social justice, the preserving, protecting and conserving of the environment, and the promoting of peace. It should be acknowledged that although there has been some increased participation by individuals and groups of civil society in bringing about the necessary global changes for the establishment of socially equitable and environmentally sound development of communities, there is a long way to go to achieve the necessary access to and meaningful participation and involvement of civil society.

(37)

DOCTRINE OF LEGITIMATE EXPECTATIONS

The obligations undertaken by governments in

ratifying these instruments are the standards against which they should be held accountable, both by their own citizenry and by actors in the international arena (International Human Rights Safeguards, Document for the Summit of the Americas, 1994).

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The above statement alludes to two key questions that the Charter of Obligations has been devised to address. One is “what constitutes obligations?” and “what constitutes ‘civil society’?” The use of the term “Obligations” in this Charter is based on a key doctrine called the Doctrine of Legitimate Expectation. This doctrine could be enunciated as follows, and contains the following elements:

- **Not breaking and undertaking as one pleases**
- **Compatibility with public duty**
- **Public interest may be better served by honouring their undertaking than by breaking it**

But that principle does not mean that a corporation can give an undertaking and break it as they please. So long as the performance of the undertaking is compatible with their public duty, they must honour it. And I should have thought that this undertaking was so compatible....The public interest may be better served; by honouring their undertaking than by breaking it.(Lord Denning, Central London Property Trust Ltd. v High Trees House Ltd. [1947] KB 130, 594

- **Fulfilling the expectation must assist in performing rather than inhibit the performance of its statutory duties**

If I thought that the effect of granting to the applicants the relief sought was to prevent the council validly using those powers which Parliament has conferred on it, I would refuse relief. But that is not the present case. It seems to me the relief claimed will in the end, as counsel for the corporation ultimately conceded assist the council to perform rather than inhibit the

performance of its statutory duties” (Lord Roskill Central London Property Trust Ltd. v High Trees House Ltd. [1947] KB 130, 596)

- **Expectation must be based upon statements or undertaking on behalf of the public authority which has the duty of making the decision**

The expectation may be based upon statement or undertaking by or on behalf of the public authority which has the duty of making the decision, if the authority has through its officers, acted in a way that would make it unfair or inconsistent with good administration for him to be denied such an inquiry (Lord Fraser, [1983] 2 All. ER 350)

- **Expectation is based on an assurance given by a Minister of the Crown as to the way in which discretionary power.. would be exercised.**

- **Assurance was given so as to induce this very expectation**

....it is upon an express assurance that the expectation is based: an assurance given by a Minister of the Crown as to the way in which the discretionary power conferred upon him by statute would be exercised. any fair reading... leads to the inference that assurance was given so as to induce this very expectation in the minds of...such as the Plaintiff, so that they might come forward and reveal to the authorities...(Stephen j.

[1977]14 A.I.R., 1, p 34), cited in Young, R. (1986). ‘Legitimate Expectations’. The Advocate. 44 (6): 803-815)

• **Unfettered discretion is wholly inappropriate to a public authority which possess powers solely in order that it may use them for the public good**

The powers of public authorities are...essentially different from those of private persons.... But a public authority may do neither [examples of 'unfettered discretion'] unless it acts reasonably and in good faith and upon lawful and relevant grounds of public interest. Unfettered discretion is wholly inappropriate to a public authority which possess powers solely in order that it may use them for the public good ((H.W. R. Wade's Administrative Law, referred to by Mr. Justice Cook in (1983) 1 NZL R 646 cited in Young, R. (1986). 'Legitimate Expectations'. The Advocate. 44 (6): 803-815)

• **Expectation arising from Government holding itself out to do something**

• **Legitimate expectation that Government will discharge this obligation**

If a government holds itself out to do something even if not legally required to do so, the government will be expected to act carefully and without negligence, and the citizens have a legitimate expectation that the government will discharge this obligation

• **Expectation that when public authorities establish procedures and publish policies they are bound to follow them**

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Where public authorities establish procedures and publish policies, they are bound to follow them. The concept of legitimate expectations has extended the requirements of natural justice to situations where citizens may legitimately be expected to be treated fairly (Ombudsman office, personal communication)

There does not have to be a specific legal right or interest affected for the concept to apply. "Legitimate expectation" means 'reasonable expectation' and it can be invoked where fairness and good administration justify a right to be heard or some other substantial procedural right (ombudsman office, personal communication)

• **When an expectation is created there must be the ability to fulfill the promise it implies**

To create an expectation is an empty gesture without a promise to fulfill it. Before creating an expectation, an organization must assure itself of its ability to fulfill the promise it implies" (Introduction, Ombudsman Annual Report, British Columbia, Canada, 1991)

Under this doctrine, it could be argued that the statements enunciated in international instruments — legally binding documents (conventions, Treaties, Covenants); globally adopted Convention Platforms of Action, and Action plans, and majority-passed General Assembly Resolutions and Declarations — could all reflect "promises" that create an "expectation" that citizens can demand to be fulfilled (see further section and diagram on international customary law in Chapter 4).

(38)

DOCTRINE OF DIRECT EFFECT (TO BE FURTHER CLARIFIED)

Common interest in the European Court of Justice. Court can impose a fine for non-compliance with Pan European environmental law. A way to use transnational rules to enforce state law. Also citizens have limited access Citizen's/citizens', transnational's/transnationals' or corporation's/corporations' failure to comply with transnational rules, regulations, and standards.

(39)

PRINCIPLE OF SUBSIDIARITY (TO BE EXAMINED)

(40)

SOCIALLY EQUITABLE AND ENVIRONMENTALLY SOUND PRINCIPLE

After a preliminary analysis of several key Chapters of Agenda 21, the Rio Declaration and the two Conventions a series of components of socially equitable and environmentally sound development have been discerned:

Component 1 (i). invoking of the precautionary principle and its associated measures:

The precautionary principle has been one of the key principles of sustainable development, and has been enunciated in the Convention on Biological Diversity in the following way

Where there is a threat of significant reduction or loss of biological diversity, lack of full scientific certainty should not be used as a reason for postponing measures to avoid or minimize such a threat (Preamble, Convention on Biological Diversity, UNCED, 1992).

The precautionary principle has been associated with various key measures and elements of the anticipatory principle such as “Ensuring preventive measures”(18.45); Embodying

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environmental care (6.1); Taking into account cradle to grave approach (20.21); Taking account of “live cycles of products” (19.15e); “Promoting a culture of safety” (7.60); “Developing responsible care” (19.51,b) etc.

Component 1 (ii) Including prevention programmes rather than relying ...on remediation

Particularly relevant is the inclusion of prevention programmes rather than relying solely on remediation and treatment. Countries ought to develop plans for priority actions, drawing on the programme areas in this chapter, which are based on cooperative planning by the various levels of government, non-governmental organizations and local communities. An appropriate international organization, such as WHO, should coordinate these activities. (Article 32, Chapter 6. Promoting Human Health Conditions, Agenda 21, UNCED)

Component 2: Respecting of the rights of future generations.

Undertaking to respect the rights of future generations has been evident in previous documents such as the UN Convention for the Protection of Cultural and Natural Heritage (1972), the UN Conventions on Humans and the Environment (1972), and in the General Assembly Resolution the World Charter for Nature (37/7 1982) where it appeared in the following form:

Reaffirming that man [humans] must acquire the knowledge to maintain and enhance his ability to use natural resources in a manner which ensures the preservation of the species and ecosystems for the benefit of present and future generations,(UN Resolution 37/7, 1982)

The rights of future generations is affirmed in the following way in Agenda 21 in Chapter 8

...Its goals [sustainable development strategy] should be to ensure socially responsible economic development while protecting the resource base and the environment for the benefit of future generations. It should be developed through the widest possible participation. It should be based on a thorough assessment of the current situation and initiatives (Article 7, Chapter 8. Integrating of Environment and Development, Agenda 21)

Component 3. Reducing inequalities

Contain a long-term strategy aimed at establishing the best possible conditions for sustainable local, regional and national development that would eliminate poverty and reduce the inequalities between various population groups. It should assist the most disadvantaged groups - in particular, women, children and youth within those groups - and refugees. The groups will include poor smallholders, pastoralists, artisans, fishing communities, landless people, indigenous communities, migrants and the urban informal sector (Article 5, Chapter 3. Combating Poverty, Agenda 21 UNCED)

Component 4. Pursuing development that is socially equitable and responsible and environmentally sound

The primary need is to integrate environmental and developmental decision-making processes. To do this, Governments should conduct a national review and, where appropriate, improve the processes of decision-making so as to achieve the progressive integration of economic, social and environmental issues in the pursuit of development that is economically efficient, socially equitable and responsible and environmentally sound.(Article 4, Chapter 8. Integrating Environment and Development, Agenda 21, UNCED)

Component 5. Linking of environment and health: (Environmental health and environmental health activities).

This component is linked with shelter in Article 32 of Chapter 6, The Promotion of Human Health :

Health and development are intimately interconnected. Both insufficient development leading to poverty and inappropriate development resulting in overconsumption, coupled with an expanding world population, can result in severe environmental health problems in both developing and developed nations. (Article 32, Chapter 6. Promoting Human Health Conditions, Agenda 21, UNCED)

Component: 6. Emphasizing multiple objectives

Special emphasis should be placed on those programmes that achieve multiple objectives ...Food security, access to secure tenure, basic shelter, and essential infrastructure, education, family welfare, women's reproductive health, family credit schemes, reforestation programmes, primary environmental care, women's employment should, as appropriate, be included among other factors. (Article 46, Chapter 5 Demographic Dynamic and Sustainability. , Agenda 21, UNCED)

Component 7. Supporting community-driven approach to sustainability:

Sustainable development must be achieved at every level of society. Peoples' organizations, women's groups and non-governmental organizations are important sources of innovation and action at the local level and have a strong interest and proven ability to promote sustainable livelihoods. Governments, in cooperation with appropriate international and non-governmental organizations, should support a community-driven approach to sustainability... (Article 7, Chapter 3..Combating Poverty, , Agenda 21, UNCED).

Component 8. Establishing an effective consultative process and implements process with concerned groups of society

An effective consultative process should be established and implemented with concerned groups of society where the formulation and decision-making of all components of the programmes are based on a nationwide consultative process drawing on community meetings, regional workshops and national seminars, as appropriate. This process should ensure The poor and underprivileged should be priority groups in this process. (Article 45, Chapter 5. Demographic Dynamic and Sustainability, Agenda 21, UNCED)

Component 9. Adopting appropriate legal and regulatory instruments :

Adopting appropriate legal and regulatory instruments, including cross-subsidy arrangements, to extend the benefits of adequate and affordable environmental infrastructure to unserved population groups, especially the poor (Article 45, Chapter 7. Promoting Sustainable Human Settlements Development, ,Agenda 21 d, UNCED) .

Component 10. Developing and integrating enforceable and effective laws and regulations

While there is continuous need for law improvement in all countries, many developing

countries have been affected by shortcomings of laws and regulations. To effectively integrate environment and development in the policies and practices of each country, it is essential to develop and implement integrated, enforceable and effective laws and regulations that are based upon sound social, ecological, economic and scientific principles. It is equally critical to develop workable programmes to review and enforce compliance with the laws, regulations and standards that are adopted. (Article 14, Chapter 8 Integration Environment and Development in Decision Making, Agenda 21, UNCED)

Component 11. Basing laws, regulation and standards on sound principles:

(enforceable, effective laws, regulations and standards that are based on sound economic, social and environmental principles and appropriate risk assessment, incorporating sanctions designed to punish violations, obtain redress and deter future violations (Article 21 a, Chapter 8 Integration Environment and Development in Decision Making. Agenda 21, UNCED).

Compound 12. Ensuring environmental soundness :

Throughout Agenda 21 the term "environmentally sound" means "environmentally safe and sound", in particular when applied to the terms "energy sources", "energy supplies", "energy systems", or "technology/technologies". (Article .7., Chapter 1, Preamble, Agenda 21, UNCED)

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ADDITIONAL COMPONENTS OF SUSTAINABLE HUMAN SETTLEMENTS DEVELOPMENT DERIVED FROM THE HABITAT II AGENDA

(The references in this section are from the June 12 and 13 versions of the Habitat II Agenda, along with changes made on the last night of the negotiation; it was brought to my attention today, September 26, that many of the sections agreed upon during the last days have been placed in different sections.

Component 1. Ensuring compliance of corporations, transnationals and private sector to national law and codes and to international law

At the United Nations Conference on Women, and the Habitat II Conference, members states have undertaken “to ensure that corporations including transnationals, comply with national laws and codes... applicable international agreements and conventions, including those related to the environment and other relevant laws” (Art 167). In Habitat II this undertaking was reaffirmed and then extended to include the “private sector” (Article 148). Underlying this undertaking is the assumption that each state government would itself comply with its own national codes and would discharge its own international obligations.

Component 2. Promoting “sustainable human settlements development” through the use of BEST Practices.

In Habitat II the promotion of BEST Practices has been advocated “through exchanging of regional and international experience of best practices and facilitate[ing] the transfer of planning, design and construction techniques (69c); Through setting up structures for the selection of the best practices with participation by non-governmental organizations active in the urban development field (142b); Through promoting best practices for community-based land management in human settlements (84(j)); Through cooperating in south-south,

north-south and south-north exchanges of best practices (145); Through exchanging experiences particularly on best practices, foster the development of technology and technical skills and to increase the efficiency of shelter and human settlements policies and management, with backing of coordinated and complimentary support from multilateral and bilateral arrangements; (152c). The component of BEST Practices was most clearly articulated in Article 153

To face the challenges of the rapidly urbanizing world, there is need to ensure that international and regional networks facilitate more effectively the exchange and transfer of knowledge and experience on institutional, legal and regulatory framework, and to disseminate best practices on sustainable human settlements in rural and urban areas including inter alia, those reflected in the outcome of the Dubai International Conference on Best Practices for Improving the Living Environment, held in November 1995. the United Nations Centre for Human Settlements (Habitat) should , within its mandate, act as a catalyst in the mobilization of technical cooperation. Opportunities for improved dissemination and exchange of ideas on technical cooperation at national and regional levels could be explored.]

Component: 3. Qualifying Best practices as a component of “sustainable human settlements:

Employment opportunities and social progress in harmony with the environment (Article 16, Habitat II Agenda); Establishing policies laws and regulation for both public and private activities (Article 19, Habitat II Agenda); Encouraging responsible private activities in all fields (Article 19, Habitat II Agenda); Promoting and attaining the goals of universal and equal access to education highest attainable standards of physical , mental and environmental health (Article 22 ter, Habitat II Agenda, June 12); Making efforts to rectify inequalities (Article 22 ter, Habitat II Agenda, June 12) human health and quality of life are at the center of the effort to develop sustainable human settlements (Article 22 ter, Habitat II Agenda, June 12); Creating safe place to work and live, and to protect the environment (Article 22 ter, Habitat II Agenda, June 12); Accessing appropriate technology (Article 25 b, Habitat II Agenda); Providing sustainable livelihoods (Article 27 b, Habitat II Agenda); Promoting education in environmentally sound technologies (Article 27 f quart), Habitat II Agenda; Adopting...performance based mechanisms (Article 1 f, Habitat II Agenda); Promoting socially and environmentally responsible corporate

investment (Article 31 d.,Habitat II Agenda).

Component 4. Promoting environmental measures

In the Habitat II Agenda new environmental measures associated with sustainable human settlements development were endorsed: Preserving of peri urban and urban biodiversity (Article 98 bis a, Habitat II Agenda); Providing “green spaces (Article 27 f, Habitat II Agenda); ” Protecting Fragile ecosystems and environmentally vulnerable areas (Article 27e, Habitat II Agenda); Reducing the ecological footprint (Article 27b, Habitat II Agenda); Ensuring Green spaces (Article 83 bis, Habitat II Agenda); Knowing ecocycles (Article 134h, Habitat II Agenda) preventing environmental damage (Article 135, Habitat II Agenda); Preventing anthropogenic disasters (Article 27 i.,Habitat II Agenda).

Component: 5. Moving away from car-dependency, by instituting appropriate regulations and the adopting of environmentally sound transportation such as bicycle paths

Encourage the use of an optimal combination of modes of transport, including walking, cycling and private and public means of transportation, through appropriate pricing, spatial settlement policies and regulatory measures (Article 104 c, Habitat II Agenda)

Managing transport in human settlements should be done in a way that promotes good access for all to places of work, social interaction and leisure and facilitates important economic activities, including obtaining food and other necessities of life. This should be done while reducing the negative effects of transport on the environment. Transport-system priorities should be given to reducing unnecessary travel through appropriate land-use and communication policies, developing transport policies that emphasize mobility alternatives other than the automobile, developing alternative fuels and alternative fuel vehicles, improving the environmental performance of existing modes of transport, and adopting appropriate pricing

Component 6. Contributing to the common good

all people have rights and must accept their responsibility to respect and protect the rights of others including future generations and contribute actively to the common good (Article 19, Habitat II Agenda).

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TRANSFER OF MILITARY BUDGET TO SOCIALLY EQUITABLE AND ENVIRONMENTALLY SOUND DEVELOPMENT PRINCIPLE

REDUCTION AND TRANSFER OF THE MILITARY BUDGET

Concerned that currently (1996) the Global Community spends \$800 billion on the military budget at a time when the right to housing, the right to food, the right to health care, the right to equality of all , the right to education, the right to safe drinking water, and the right to a safe environment have not been fulfilled.

Noting that the commitment was made to transfer a substantial proportion of the military budget to social programs (as undertaken through expectations created in general Assembly resolutions from 1981)

Noting also that in 1981, in general assembly resolution entitled the reduction of the military budget, the majority of the member states did the following:

(i) reaffirmed the urgent need to reduce the military budget, and agreed to freeze and reduce the military budget.

(ii) Recognised that the military budget constituted a heavy burden for the economies of all nations, and have extremely harmful consequences on international peace and security.

(iii) undertook to make a collective effort aimed at strengthening peace and international common security by eliminating the threat of war.

(iv) Reiterated the appeal to all States, in particular the most heavily armed States, pending the conclusion of agreements on the reduction of military expenditures, to exercise self-restraint in their military expenditures with a view to reallocating the funds thus saved to economic and social development, particularly for the benefit of developing countries

Reminded that this request for transfer of the funds from the military budget was further reinforced in a 1983 General Resolution on the Relationship between disarmament and development, that curbing the arms build-up would make it possible to release additional resources for use in economic and social development, particularly for the benefit of the developing countries. Also in this resolution state considered that the magnitude of military expenditures is now such that their various implications can no longer be ignored in the efforts pursued in the international community to secure the recovery of the world economy and the establishment of a new international economic order.

We call upon the member states of the United Nations

- to immediately reduce the military budget to 50% of what it currently is and to transfer these funds into socially equitable and environmentally sound development

- to embark on plans for military conversion with the remaining 50%, and with the setting up of alternative structures for preventing conflict and war through an international regime that respects the rule of international law, and through establishing an international court of compliance where citizens could take evidence of state non-compliance with international law

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- REQUIRING SCIENTISTS TO ABIDE BY THE “DECLARATION ON THE USE OF SCIENTIFIC AND TECHNOLOGICAL PROGRESS IN THE INTERESTS OF PEACE AND FOR THE BENEFIT OF HUMANITY”

Concurring with the assessment in the Declaration on the Use of Scientific and Technological Progress in the Interests of Peace and for the Benefit of humanity, that “while scientific and technological developments provide ever-increasing opportunities to better the conditions of life of peoples and nations, in a number of instances they can give rise to social problems, as well as threaten the human rights and fundamental freedoms of the individuals (Preamble, Declaration on the Use of Scientific and Technological Progress in the Interests of Peace and for the Benefit of humanity, 1975)

Concurring with the concern expressed in Declaration on the Use of Scientific and Technological Progress in the Interests of Peace and for the Benefit of humanity about scientific and **technological achievements can be used to intensify the arms** **race producti**

on:

“Noting with concern that scientific and technological achievements can be used to intensify the arms race, suppress national liberation movements and deprive individuals and peoples of their human rights and fundamental freedoms (Preamble, Declaration on the Use of Scientific and Technological Progress in the Interests of Peace and for the Benefit of humanity”, 1975)

Also noting with concern that scientific and technological achievements can entail dangers for the civil and political rights of the individual or of the group and for human dignity (Preamble, Declaration on the Use of Scientific and Technological Progress in the Interests of Peace and for the Benefit of humanity, 1975)

Noting the urgent need to make full use of scientific and technological developments for the welfare of *man* **humanity** and to neutralize the present and possible future harmful consequences of certain scientific and technological achievements (Declaration on the Use of Scientific and Technological Progress in the Interests of Peace and for the Benefit of humanity, 1975)

POST- 50

1996 GLOBAL COMPLIANCE RESOLUTION

We prepared the following draft resolution for the “We the Peoples Conference: the Role of Civil Society in the History and Future of the United Nations”. This resolution called upon states, at the June 26, 1995 UN Affirmation Ceremony, to pledge to discharge fifty years of obligations.

This resolution was adopted by the plenary at the Conference, and the assembly agreed that the resolution should be passed on to Dr. Boutros Boutros Ghali who subsequently addressed the plenary. We recently received a letter of support from Dr. Boutros Boutros Ghali:

Thank you for sharing with me the “Global Compliance Resolution” whose spirit reaffirms the commitment of people the world over to the principles enshrined in the Charter of the United Nations (*signed, Boutros Boutros-Ghali July 5, 1995*)

Since then on September 13, a version of the Global Compliance resolution was officially distributed to all delegations of the member states at the United Nations at the United Nations Conference on Women: Equality, Development and Peace. The Global Compliance resolution was distributed again to all delegations of the member states of the United Nations on September 15, on the final day of the conference.

A proposed resolution for October 24 was sent to all the UN 50th Anniversary representatives. A response was received from Dr. Sohreh Tabatabai, the Coordinator, Fiftieth Anniversary Secretariat:

I regret that it is not possible for us to arrange for presentation of the Global compliance Resolution to the General Assembly. As resolutions may be introduced only by Member States

...

You may be interested to learn that the special commemorative session of the General Assembly planned for 22-24 October is expected to endorse a Declaration rededicating Member States to achieving the goals of the United Nations Charter.

STATES HAVE CONTINUALLY BEEN PREPARED TO DEDICATE THEMSELVES TO ACHIEVING THE GOALS OF THE UNITED NATIONS CHARTER. THEY ARE, HOWEVER, NOT PREPARED TO DISCHARGE YEARS OF OBLIGATIONS AND EXPECTATIONS. THE GLOBAL COMPLIANCE RESOLUTION CALLS UPON STATES TO DISCHARGE YEARS OF OBLIGATIONS AND FULFILL YEARS OF EXPECTATIONS WHICH IF DISCHARGED AND FULFILLED WOULD DEMONSTRATE THE DEDICATION OF STATES TO ACHIEVING THE

GOALS OF THE UNITED NATIONS.

52/1 Proclamation of the International Year of Global Compliance

The General Assembly

Whereas 1999 is the culmination of the decade devoted to the furtherance of International law

Whereas the General Assembly has decided unanimously to proclaim solemnly, on the Fifty-second Anniversary of the United Nations, 1999 to be the International Year of Global Compliance

Whereas since the formation of the United Nations, member states of the United Nations have undertaken in UN system governing bodies obligations reflected in Charters, Covenants, Conventions, Declarations; and have created expectations through General Assembly Resolutions, declarations and Conference action statements. ,

Whereas, if these years of obligations had been honored and acted upon, respect for human rights could have been guaranteed, preservation and protection of the environment could have been ensured, threats to peace prevented and removed, disarmament achieved, and socially equitable and environmentally sound development could have been enabled,

Whereas fulfillment of the purpose of the United Nations would require the discharging of these year of obligations related to guaranteeing respect for human rights, preserving and protecting the environment, promoting peace, and ensuring socially equitable and environmentally sound development;

Whereas, the freeing up of money through the peace dividend would assist in the discharging of these obligations, and the fulfilling of these expectations

□□□□□□□□□□ *Whereas* the Fifty-second Anniversary of the United Nations provides a unique opportunity to reaffirm the support for and commitment to the purposes and principles of the Charter of the United nations, and to undertake to discharge previous obligations incurred through the Charter, Covenants, Conventions, and to fulfill previous expectations created through Declarations, General Assembly Resolutions, and Conference Action statements.

Now, therefore,

The General Assembly, and its member states

Solemnly proclaim 1999 the International Year of Global Compliance

and solemnly pledge to do the following:

- to establish conditions under which justice and respect for the obligations arising from treaties and international law can be maintained;
- to discharge obligations undertaken through the Charter, Conventions, Treaties, and Covenants, and to fulfill expectations created through Declarations, General Assembly Resolutions and conference Action statements;
- to sign and ratify what they have not yet signed and ratified, to enact the necessary legislation and enforcement measures to ensure the discharging of these obligations
- to fulfill additional expectations created through globally adopted UN Conference action plans, and programs of action.

52nd plenary meeting 24, October, 1997

PETITION FOR THE ESTABLISHMENT OF AN INTERNATIONAL COURT OF COMPLIANCE

RECOGNIZING that for fifty years since the formation of the United Nations, member states have undertaken obligations reflected in the Charter, treaties, conventions, and covenants; and have created expectations reflected in declarations, conference commitments and resolutions.

REMINDING of the General Assembly resolution establishing a decade of International Law from 1990 –1999.

MINDFUL of the obligation to establish conditions under which justice and respect for the obligations arising from treaties and international law can be maintained (Charter of the United Nations, 1945)

AFFIRMING that it has become a principle of international customary law that state parties to treaties and Conventions undertake to enact the necessary legislation to ensure compliance

PRINCIPLES OF COMPLIANCE: MANDATORY INTERNATIONAL NORMATIVE STANDARDS (MINS)

Written by Joan Russow

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with their obligations (Art. III Convention on the Prevention and Punishment of the Crime of Genocide, 1948); International Convention on the Elimination of all Forms of Racial Discrimination (1965); International Covenant of Civil and Political Rights (1966); Convention on the Elimination of All Forms of Discrimination Against Women (1979); Convention on the Control of Transboundary Movements of Hazardous Wastes (1992) etc.

CONVINCED of the applicability of the Doctrine of Legitimate Expectations whereby if a government holds itself out to do something even if not legal required to do so, the government will be expected to act carefully and without negligence,, and the citizens have a legitimate expectation that the government will discharge this obligations. Convinced also of the applicability of the Doctrine of Legitimate Expectations to declarations, conference commitments and General Assembly resolutions.

BE IT RESOLVED THAT IN 1996, STATES SIGN WHAT THEY HAVE NOT YET SIGNED, RATIFY WHAT THEY HAVE NOT YET RATIFIED, ENACT THE NECESSARY LEGISLATION TO ENSURE COMPLIANCE, AND UNDERTAKE TO ENFORCE THE ACCRUED OBLIGATIONS AND EXPECTATIONS

BE IT FURTHER RESOLVED THAT IN 1996, A COURT OF GLOBAL COMPLIANCE BE INSTITUTED. THIS COURT WILL GIVE CITIZENS AN OPPORTUNITY TO PRESENT EVIDENCE OF NON-COMPLIANCE WITH INTERNATIONAL OBLIGATIONS AND EXPECTATIONS. STATES WILL BE REQUIRED TO APPEAR AND TO ACT UPON THE JUDGMENT OF THE COURT.

• ADDITIONAL INTERNATIONAL PRINCIPLES

ACKNOWLEDGMENT OF URGENCY OF CONSERVING NATURE

Humans can alter nature and exhaust natural resources by their actions or the consequences and, therefore, must fully recognize the urgency of maintaining the stability and quality of nature and of conserving natural resources. (World Charter of nature)

ENSURING THE INHERENT WORTH OF NATURE

ensuring that every form of life is unique, warranting respect regardless of its worth to man [human], and to accord other organisms such recognition's (World Charter of Nature)

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

ensuring that every form of life is unique, warranting respect regardless of its worth to man [humans] , and to accord other organisms such recognition's, man [human] must be guided by a moral code of action (UN Resolution 37/7) World Charter of Nature)

RECOGNITION OF INTERCONNECTEDNESS WITH NATURE

Humankind is a part of nature and life depends on the uninterrupted functioning of natural systems which ensure the supply of energy and nutrients (World Charter of Nature).

COMMITMENT TO NON-TRANSFERENCE OF HARMFUL SUBSTANCES AND ACTIVITIES

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

AFFIRMATION OF POSITIVE-DUTY-TO PROTECT-INDIGENOUS-LANDS PRINCIPLE.

recognition that the lands of indigenous people and their communities should be protected from activities that are environmentally unsound or that the indigenous people concerned consider to be socially and culturally inappropriate (16.3. ii, Agenda 21)

ADDITIONAL PRINCIPLES THAT SHOULD BE INCORPORATED INTO INTERNATIONAL STANDARDS

ENUNCIATION OF THE PRIMACY OF THE ECOSYSTEM PRINCIPLE

Ensuring that in all decisions made about the environment that the ecosystem be given primacy

RECOGNITION OF LIMITS TO GROWTH PRINCIPLE

There are real limits to consumption, population and pollution. Although their precise quantification is uncertain, there are implications of their imminent approach

PRINCIPLE OF COOPERATION WITH AND NON-DOMINATION OVER NATURE

Humanity's role is to understand and work with the rest of nature, not control, manage, dominate or conquer it

NON-QUANTIFIABILITY OF ECOLOGICAL VALUES

Ecological values are of a class not readily quantified particularly in economic units but must be taken as a given, in that all life is dependent on sustaining the biosphere, the exclusive life-support system (Knelman)

No pecuniary payment of costs for environmental destruction can ever fully redress the loss to the environment, the prevention of pollution and environmental destruction should be reaffirmed by using "prevention technologies"

ENUNCIATION OF THE "CAUTIONARY" PRINCIPLE (REVERSE - ONUS)

Every proponent of an intervention in the ecosystem must demonstrate that the intervention will not cause harm to the environment or will not create ecologically unsound wastes

[NOTE THAT THE HONORABLE SHEILA COPPS, THE MINISTER OF ENVIRONMENT OF CANADA HAS CALLED FOR THE IMPLEMENTATION OF THE REVERSE ONUS.]

NON INTRODUCTION OF HAZARDOUS PRODUCTS IN THE ENVIRONMENT PRINCIPLE

the onus of proving the non-hazardous nature of the product will be on the proponent of this new type of product [after a full life cycle analysis of all the potential environmental harm has been done by non-vested interest (i.e. financial interest) parties]

INCLUSION LEGISLATIVE PRINCIPLE

ensuring that every activity or substance that could prevent the protection, conservation and sustainability of the environment will be included under this Act, regardless of whether the activity or substance is presumed to be covered under another Act

NON-PROSECUTION FOR ADVOCATING PURPOSES OF THIS FRAMEWORK OF MANDATORY STANDARDS AND TECHNICAL REGULATIONS PRINCIPLE

ensuring that no citizen will be prosecuted for advocating or acting to promote the purposes of the framework

COMPENSATION NOT JUSTIFICATION FOR NON FULFILLING OF DUTY PRINCIPLE

ensuring that compensation can never be used as reason for not exercising the duty to protect, conserve and sustain the environment

COUPLING-AVOIDANCE PRINCIPLE

ON-ACCEPTANCE-OF-"ENVIRONMENT-INDUSTRY"-BEING-COUPLED-WITH-THE-TOXIC-WASTE-PRODUCTION-INDUSTRY-PRINCIPLE

The coupling of a "clean-up environment" industry with a toxic waste producer shall not be used to justify the continuation of the production of toxic waste

SOLUTION-WORSE-THAN-PROBLEM-AVOIDANCE PRINCIPLE

The advocating of a "solution" that is potentially worse than the problem to be addressed shall be avoided. For example, the civil nuclear power industry is promoting nuclear energy as the solution to climate change

1. 3. COMPLYING WITH PREVENTION PRINCIPLES IN NAFTA

NON-RELAXATION OF STANDARDS TO ATTRACT INVESTMENT

The Parties recognize that it is inappropriate to encourage investment by relaxing domestic health, safety or environmental measures. Accordingly, a Party should not waive or otherwise derogate from, or offer to waive or otherwise derogate from such measures as an encouragement for the establishment, acquisition, expansion or retention in its territory of an investment of an investor. IF a Party considers that another Party has offered such an encouragement, it may requires consultations with the other Party and the two Parties shall consult with a view to avoiding any such encouragement. (NAFTA Article 1114 ss 2)

1.4. COMPLYING WITH SIGNIFICANT FEDERAL PRINCIPLES

CAUTIONARY OR “REVERSE ONUS” PRINCIPLE

The proponent of an intervention into the ecosystem shall demonstrate the safety of the intervention rather than the opponent of an intervention, being required to demonstrate, harm (Proposed by The Federal Minister of Environment

judy ofarrell 811-2828

1.1. [This principle holds that] a treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose (Art.1.Convention on the Law of Treaties, 1968)

1.2. [This principle also holds that]...that the rules of customary international law will continue to govern questions not regulated by the provisions of the present Convention have agreed as follows (Article 29 territorial scope of treaties, Convention on the Law of Treaties)

(2)

OBLIGATION PRINCIPLES

2.2. [This principle holds that there is an] Obligation not to defeat the object and purpose of a treaty prior to its entry into force

A state is obliged to refrain from acts which would defeat the object and purpose of a treaty when:

(i) it has signed the treaty or has exchanged instruments constituting the treaty subject to ratification, acceptance or approval, until it shall have made its intention clear not to become a party to the treaty a); or

(ii) it has expressed its consent to be bound by the treaty, pending the entry into force of the treaty and provided that such entry into force is not unduly delayed b)

(Art. 18, Convention on the Law of Treaties, 1968)

2.3. [This principle affirms the Doctrine of Legitimate Expectations which holds that]

(i) "To create an expectation is an empty gesture without a promise to fulfill it. Before creating an expectation, an organization must assure itself of its ability to fulfill the promise it implies" (Introduction, B.C. Ombudsman Annual Report, 1991)

and that

(ii) If a government holds itself out to do something even if not legally required to do so, it will be expected to act carefully and appropriately without negligence, and the citizens have the legitimate expectation that the government will discharge its obligations (Ombudsman Office, Personal Communication).

2.4.□□□□ This principle also entails commitment to the Public Trust Doctrine

This doctrine provides that submerged and submersible lands are preserved for public use in navigations, fishing and recreation and state, as trustee for the people, bears responsibility of preserving and protecting the right of the public to the use of the waters for those purposes.

(3)

EQUITY PRINCIPLES

[This principle holds that] equity imputes an intention to fulfill an obligation and that equity

looks to the intent rather than to the form (Maxims of Equity)

3.1. Equity will not suffer a wrong without a remedy

3.2. Equity follows the law

3.3. Where there is equal equity, the law shall prevail

3.4. Where the equities are equal, the first in time shall prevail

3.5. He/she who seeks equity must do equity

3.6. He/she who comes into equity must come with clean hands

3.7. Delay defeats equity

3.8. Equality is equity

3.9. Equity looks to the intent rather than to the form

3.10. Equity looks on that as done which ought to be done

3.11. Equity imputes an intention to fulfill an obligation

3.12. Equity acts in personam

(Roscoe Pound in Cambridge Legal Essays (1926), pp259 et seq., cited from P.V. Baker and P. St Langar (1990). *Snell's Equity* London Sweet and Maxwell)

(4)

POSSIBILITY OR REVERSIBLE PRINCIPLE

4.1. [This principle holds that] impossibility of performance may not be invoked by a party as a ground for terminating, withdrawing from or suspending the operation of a treaty if the impossibility is the result of a breach by that party either of an obligations under the treaty or of any other international obligation owed to any other party to the treaty (Art. 61. 2 Convention on the Law of Treaties, 1968).

SYSTEMIC CONSTRAINT:

OFTEN IT IS THOSE WHO ATTEMPT TO PREVENT IRREVERSIBILITY RATHER THAN THOSE WHO CAUSE IRREVERSIBILITY ARE THAT ARE PROSECUTED. INJUNCTIONS WHICH ARE SUPPOSED TO PREVENT IRREPARABLE HARM ARE USED AGAINST THOSE WHO ATTEMPT TO PREVENT IRREPARABLE HARM

(5)

HIGHEST TENABILITY PRINCIPLE

□ INTERNATIONAL OBLIGATIONS AS A MINIMUM PRINCIPLE

5.1.□□□□ This principle affirms that the need to avoid the lowest common denominator as the solution

Nothing in this Convention shall affect any provisions that are more conducive to the achievement of equality between men and women which may be contained in the legislation of a State Party or

in any other international convention, treaty or agreement in force for that State. (Paraphrase of Article 23, Convention on the Elimination of all forms of Discrimination Against Women, 1979)

(6)

INTERDEPENDENCE PRINCIPLE

6.1.□□□□ The interdependence principle affirms the interdependence of□ respect for human rights, of fulfillment of social justice and equity, of achieving environmental protection, preservation and conservation, and of attainment of peace. These issues will be perceived to be interdependent facets of a potentially viable solution. It is no longer possible to consider in isolation: threats and impacts of war; the use of ecologically unsafe and unsound energy; the loss of ecological integrity; the disposal of toxic and hazardous wastes, including nuclear waste, the disregard for intergenerational and gender equality/equity; the ignoring of health issues related to population and environmental degradation; the perpetuation of the current model of development; the inequitable distribution of resources; the disenfranchised and the enfranchised gap

6.2.□□□□ This Interdependence principle reflects[ing] the growing awareness that population, poverty, patterns of production and consumption and other threats to the environment are so closely interconnected that none of them can be considered in isolation. (Preamble, 1.5., International Conference on Population and Development, 1994)

6.3.□□□□ [This principle holds that] Research *should shall* be undertaken on the linkages among population, consumption and production, the environment and natural resources and human health as a guide to effective [socially equitable and environmentally-sound] *sustainable development* policies (3.31., International Conference on Population and Development, 1994)

6.4.□□□□ This principle holds that *mankind humankind* is a part of nature and life depends on the uninterrupted functioning of natural systems which ensure the supply of energy and nutrients (Preamble (a)UN Resolution, 37/7, World Charter of Nature, 1982)

Reducing environmental health hazards

* 89 a ter Improve policies that **prevent**, reduce environmental health hazards and provide the informal sector and all workers with accessible information on how to enhance occupational safety and reduce health risks;

(7)

PRINCIPLE OF SOCIALLY EQUITABLE AND ENVIRONMENTALLY SOUND DEVELOPMENT

7.1.□□ This principle affirms the need for “socially equitable and environmentally-sound development” (Preamble, 1.2., International Conference on Population and Development, 1994)

7.2.□□□□ This principle affirms that to achieve *sustainable development* [socially equitable and environmentally-sound] and a higher quality of life for all people, Governments *should reduce and shall* eliminate unsustainable patterns of production and consumption and promote [appropriate ~] demographic policies (3.9., International Conference on Population and Development, 1994)

(8)

PRINCIPLE OF SELF-SUFFICIENCY

8.1.□□□□ This principle entails the supporting of bioregions in the development of self-sufficiency through the development of indigenous technology using ecologically sound means and only exporting when there is a surplus. Adoption of this principle would discourage export-dominant economies and the furthering of many of the aspects of the “green revolution” — which fostered the dependence on external technology.

8.2.□□□□ This principle is aimed at the promotion of food security and, *where appropriate*, food self-sufficiency within the context of sustainable agriculture (3.7.I., Combating Poverty, Agenda 21, UNCED, 1992)

(9)

PRINCIPLE OF EXTRA-TERRITORIALITY

9.1.□□□□ This principle entails the ensuring that states, individuals, institutions and the market shall not abuse the concept of extra-territoriality —the application of standards from exporter state- to justify the transfer of banned, restricted, obsolete or rejected technology to other states whose standards are not as high

SYSTEMIC CONSTRAINT: THE SAME STATE OR INDUSTRY THAT CONTINUES TO IMPOSE THE TRADITIONAL MODEL OF CONSUMPTION USES THE RELUCTANCE TO IMPOSE EXTERNAL REGULATIONS AS A MEANS TO JUSTIFY RELAXING REGULATIONS

(10)

HUMANITARIAN PRINCIPLE

10.1.□□ This principle affirms the fundamental right of all peoples to respect, equity and equality; to food, health, shelter, and social security; to safe drinking water, clean air, safe environment; freedom from conflict and war

(11)

EQUALITY PRINCIPLE

11.1.□□ [This principle entails] reaffirming of the... faith in fundamental human rights, in the dignity and worth of human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in large freedom (Preamble, Universal Declaration of Human Rights, 1948)

(12)

PRINCIPLE OF NON-PRESUMPTION

12.1.□□ This principle entails the affirming that no presumption shall be made about capabilities or abilities on the basis of race, tribe, religion, disabilities, country of origin, sex, sexual orientation, language, family structure, or other status

(13)

LIMITS-TO GROWTH PRINCIPLE

LIVING WITHIN THE CARRYING CAPACITY OF THE ECOSYSTEM

13.1.□□ There are real limits to consumption, population and pollution. Although their precise quantification is uncertain, there are serious indications that these limits have long since passed.

* [Find: Quote from Club of Rome]

(14)

INHERENT WORTH PRINCIPLE

14.1. Every form of life is unique, warranting respect regardless of its worth to man [Humanity], and to accord other organisms such recognition's, man [humans] must be guided by a moral code of action (Preamble, UN Resolution, 37/7, World Charter of Nature, 1982)

14.2. Nature shall be respected and its essential processes shall not be impaired (Principle 1, UN Resolution, 37/7, World Charter of Nature, 1982) World Charter of Nature, 1982)

(15)

PRECAUTIONARY PRINCIPLE

15.1. This principle holds that...where there is a threat of significant reduction or loss of

biological diversity, lack of full scientific certainty should not be used as a reason for postponing measures to avoid or minimize such a threat (Convention on Biological Diversity)

15.2. *PREVENTION PRINCIPLE And ANTICIPATORY PRINCIPLE (See, Global compliance Research project's submission on the environment, 22.3)*

15.4. Reverse onus principle

(i) The onus of proof shall shift from the opponent of an intervention having to demonstrate harm, to the proponent of an intervention into the Ecosystem, having to demonstrate safety. Every proponent of an intervention into the ecosystem must demonstrate that the intervention will not cause harm to the environment or will not create ecologically unsound wastes, and be prepared to submit data for a full scale life cycle analysis, and environmental cost analysis of the product and activities.

(16)

PRINCIPLE OF NON-DISPLACEMENT

16.1.□□ This principle acknowledges that solutions do not lie in transferring the problem to another area, or another time

(17)

PRINCIPLE OF SOLUTION BEING BETTER THAN THE PROBLEM PRINCIPLE

17.1.Ensuring that the solution offered is not worse or potentially worse than the original problem that it was intended to solve

(18)

TRANSBOUNDARY PRINCIPLE

This principle holds that States shall take all measures necessary to ensure that activities under their jurisdiction or control are so conducted as not to cause damage by pollution to other States and their environment, and that pollution arising from incidents or activities under their jurisdiction or control does not spread beyond the areas where they exercise sovereign rights in accordance with this Convention. (Art. 194. 2., Law of the Seas, 1982)

(19)

PRINCIPLE OF JUSTIFIABLE INTERVENTION

This principle holds that no religious, state, or cultural justification of practice that violates fundamental human rights, can be used to prevent international condemnation through peaceful intervention.

(20)

PRINCIPLE OF MORAL IMPERATIVE

PRINCIPLE OF WARRANTED INTERVENTION

This principle holds that individuals, institutions and states have a responsibility to act to prevent any actions and practices that cause crimes against humanity and nature

(21)

PRINCIPLE OF RIGHT TO OBJECT

This principle holds that no state shall refrain from objecting to a practice which violates human rights on the grounds that the practice belongs to a religious or cultural group predominantly beyond the state's jurisdiction. This principle is particularly important in multicultural states where refugees, landed immigrants and citizens from former states have left their country of origin because of the violation of human rights.

(22)

ARMS LENGTH RESEARCH PRINCIPLE

This principle holds that most of the current research that has been used to support the continuation of the current model of development has arisen from non-arms length research by vested interests, and that if the urgency of the global situation is to be

addressed arms-length non-vested interest research has to be relied on.

(23)

REGULATOR MUST NOT PROMOTE BE PRINCIPLE

This principle holds that regulators must not promote the continuance of the object or activity over which they regulate

(24)

PRINCIPLE OF PROPORTIONAL RESPONSE

This principle holds that the response in conflict must be proportional in kind, extent, nature to that of the original attack [Check wording in the Geneva Convention]

(25)

PRINCIPLE OF DISCRIMINATION

This principle requires the discrimination between military and not military competence and non competence [Check wording in the Geneva Convention]

PRINCIPLES OF ENVIRONMENTAL COMPLIANCE

This was prepared for submission to the B.C. Government's Working Committee on Criteria for Discharge Emissions by the ERA Ecological Rights Association. It is proposed as a set of principles appropriate for bioregionalism

PRINCIPLE 1. ENDORSING THE INTERDEPENDENCE PRINCIPLE

The interdependence principle affirms the interdependence of respect for human rights, fulfillment of social justice and equity, achievement of environmental protection and preservation, and the attainment of peace. These components are interdependent facets of a potentially viable solutions. It no longer seems possible to consider "problems" in isolation (such as threats and impacts of war; the exponential growth of population; continued urbanization; the use of ecologically unsafe and unsound energy; the loss of ecological integrity; the disposal of toxic and hazardous wastes (including nuclear waste); the disregard for intergenerational and gender equality/equity; the ignoring of health issues related to population and environmental degradation; the perpetuation of the current model of development; the inequitable distribution of resources; the disenfranchised and the enfranchised gap, etc.)

PRINCIPLE 2 ENDORSING THE PRIMACY OF THE ECOSYSTEM

In all decisions made affecting the environment, the integrity of the ecosystem must be given primacy in conjunction with socially equitable and environmentally-sound development. NOTE: The “Ecosystem” includes both the biological and physical and chemical components (the biotic and abiotic)

PRINCIPLE 3; ENSURING CONSISTENT PROTECTION OF AMBIENT AIR AND WATER AND SOIL QUALITY

Ensuring consistent protection means ensuring both the variation in air, water, and soil conditions across a bioregion and the variation in effects of different substances emitted. All discharges, no matter where they are located in a region, will be equally affected by the criteria. Ensuring consistent protection also means that governments will not transfer its pollution problems onto other jurisdictions or bioregions, nor should governments relax standards in order to attract industry. Criteria must ensure acceptable ambient environmental conditions all across states and bioregions.

PRINCIPLE 4: [ENABLING] SOCIALLY EQUITABLE AND ENVIRONMENTALLY-SOUND DEVELOPMENT

“socially equitable and environmentally-sound development” is a basis of bioregional planning.

(Preamble, 1.2., International Conference on Population and Development, 1994)

PRINCIPLE 5: ENSURING THAT POLLUTING SUBSTANCES ARE NOT TRANSFERRED FROM ONE MEDIA TO ANOTHER

Pollution prevention is complete prevention instead of displacement of problem and not the transferring pollution from one medium to another (for example from water to air).

PRINCIPLE 6: AFFIRMING THE LIMITS OF GROWTH

There are real limits to consumption, population and pollution. Although their precise quantification is uncertain, there are serious indications that these limits have long since passed.

PRINCIPLE 7: ENDORSING THE ANTICIPATORY PRINCIPLE

The anticipatory principle is a pro-active measure to ensure that substances, processes and activities which are harmful to the environment are prevented from entering the environment, and to ensure that costly subsequent means of restoration are avoided, and that irreversible environmental degradation are avoided. Adverse effects include, but are not limited to: toxicity, bioaccumulation, bioconcentration, persistence, depletion of the stratospheric ozone layer, reduction of carbon sinks, increased greenhouse gases, increased human-induced climate

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change, reduction or loss of biodiversity, as well as heat, light and electro-magnetic radiation, atomic radiation, and hormone mimicry

PRINCIPLE 8: AFFIRMING THE "CAUTIONARY" PRINCIPLE

Every proponent of an intervention in the ecosystem must demonstrate that the intervention will not cause harm to the environment or will not create ecologically unsound wastes

PRINCIPLE 9: REQUIRING OF A SHIFT IN THE ONUS OF PROOF

the proponents of an intervention shall demonstrate the safety of the intervention rather than the opponent having to demonstrate the harm of the intervention. "Reverse-onus principle" recommended by the Canadian Minister of Environment, Sheila Copps (1994) Proof of the non-hazardous or toxic nature of the product introduced into the environment will be on the proponent of this new type of product [after a full life cycle analysis of all the potential environmental harm by non-vested interest parties]

PRINCIPLE 10: ADOPTING OF "PREVENTION" TECHNOLOGIES

Prevention technologies — technologies that emphasize "protecting, conserving and sustaining the environment from the beginning, and thus avoiding the cycle of rectification of error — will contribute to socially equitable and environmentally-sound development

PRINCIPLE 11: ENFORCING THE POLLUTION PREVENTION PRINCIPLE

Mandatory standards and technical regulations will be developed to prevent adverse effects of substances or activities on the ecosystem including the adverse effects on the health of human and non-human species within and throughout bioregions.

PRINCIPLE 12: REQUIRING THE USE OF BEST ECOLOGICALLY SOUND TECHNIQUES (BEST)

It is important to support and promote the development of and the use of BEST (Best Ecologically Sound Techniques) . In the event that there is no BEST technology which can prevent the release of persistent or biaccumulative toxics then the extractive or productive activities which produce the product or substance process should be changed; the activities and product phased out/outlawed, or the demand for the product reduced through public education. In this case, the industry involved shall be assisted in the conversion to alternative processes or products.

PRINCIPLE 13 CREATING INDIGENOUS PLANT RESERVES AND HOME AND COMMUNITY MARKET GARDENS

Maintaining lawns requires a drain on local water supplies. Governments should pass regulations which encourage the replacement of grass lawns with indigenous plant reserves

consistent with the fauna of the bioregion and home/community market gardens

PRINCIPLE 14: GENERATING BY-PRODUCTS AS A RESOURCE NOT AS WASTE

The generation of waste shall be prevented, and the emphasis shall be on the generation of byproducts that can become an ecologically safe and sound resource. If waste is already in existence, waste shall be disposed of at its source in an ecologically safe and sound manner ensuring that nothing is being stored that could, if an accident occurred, cause harm to the environment. If no assurance can be given that waste will not cause potentially significant adverse effects, then the activity that is generating the wastes shall cease, or permission to undertake the project will not be granted.

PRINCIPLE: 15 GLOBAL COMPLIANCE

The most stringent environmental provisions shall be adopted complying with all international, national, bilateral and bioregional agreements, protocols and conventions as a minimum. If there is a conflict between international, national, bilateral and regional agreements, the most stringent environmental provisions shall prevail.

PRINCIPLE 16: ENSURING INCLUSIVENESS OF ACTIVITIES AND SUBSTANCES

Every activity or substance that could prevent the protection and conservation of the

environment will be included in environmental legislation, regardless of whether the activity or substance is, or is presumed to be covered under another Act

PRINCIPLE 17: UNDERTAKING TO NOT RELAX STANDARDS RELATED TO SOCIALLY EQUITABLE AND ENVIRONMENTAL SOUND DEVELOPMENT

Governments shall undertake to not relax environmental standards and technical regulations, or human rights protection, or social justice and equality/equity provisions to attract short-term economic benefit.

PRINCIPLE 18: ENSURING THAT RELAXATION OF STANDARDS AND REGULATIONS SHALL NOT BE USED TO ATTRACT POLLUTING INDUSTRY

No proposal to relax standards or technical regulations shall be used to attract industry into a specific bioregion [see principle enunciated in NAFTA. (re: relaxation of standards to attract industry)]

PRINCIPLE 19: ESTABLISHING AND ENFORCING REDUCTION AND ELIMINATION TARGETS

"Ambient criteria", or "environmental quality criteria" refers to levels of contaminants in the environment that must be zero use, production, and release in all cases where a toxic

substance is persistent or bioaccumulative (e.g. chlorine). It also applies when a substance will generate persistent or bioaccumulative toxic byproducts or breakdown products during its productions, use or disposal (Zero Toxics Alliance Statement of Principles)

PRINCIPLE 20: ENSURING ENVIRONMENTAL AUDITS AND TAKING INTO ACCOUNT ALL ECOLOGICAL CONSEQUENCES PRINCIPLE

The environmental audit and ecological consequences principle is the following: to assess both the environmental costs of not converting to ecologically sound practices and the environmental costs of permitting ecologically unsound practices (including the costs to future generations of irreversible environmental degradation) and the environmental costs of potential mitigation, and restoration.

PRINCIPLE 23: ASSESSING THE FULL COSTS OF VIOLATING THE RIGHTS TO THE DISENFRANCHISED THROUGH ECOLOGICALLY UNSOUND PRACTICES

In addition assessment of the full costs of violating the rights of the disenfranchised shall be carried out. The groups bearing the greatest impact from ecologically unsound practices are usually the disenfranchised in society—the poor and the members of minority groups

PRINCIPLE 25: REQUIRING A LEGITIMATE ENVIRONMENTAL IMPACT ASSESSMENT

An actual assessment of the short and long term potentially adverse environmental effects of existing and proposed projects and activities shall be carried out. So-called "Environmental Assessments" which review "environmental, economic, social, cultural, heritage, health effects of the reviewable projects" are not legitimate environmental impact assessments (Principle 25, "Environmental Compliance" Global Compliance Research Project)

PRINCIPLE 26: ENSURING AND ENFORCING THE POLLUTER PAY PRINCIPLE

The Polluter Pay Principle ensures that those who may release polluting substances into the environment pay the full-cost of environmentally safe handling, treatment, disposal, and remediation; in addition, permits shall be suspended and canceled, if the polluter has caused serious irreversible ecological damage

PRINCIPLE 27: ENFORCING ENVIRONMENTAL COMPENSATION PRINCIPLE

Given that throughout history sympathetic government regimes have failed to enforce their own statutory legislation, and given that there has been resultant environmental degradation, current governments shall seek environmental compensation from companies that can be shown to have consistently contributed to environmental degradation. The funds from environmental compensation shall be put into developing BEST (Best Ecologically Sound techniques)

PRINCIPLE 28: ENSURING THAT COMPENSATION IS NOT USED AS JUSTIFICATION FOR NON FULFILLING OF DUTY

Compensation shall never be used as reason for not exercising the duty to preserve, protect, conserve the environment

PRINCIPLE 29: REJECTING THE NOTION THAT THE RESTORABILITY OF NATURE JUSTIFIES THE ABUSE OF NATURE

There exists a notion that environmental degradation is reversible; it can be restored, and rehabilitated. This notion shall never be used as a justification for the causing of environmental degradation

PRINCIPLE 30: EXTENDING CONCEPT OF DISASTER REDUCTION TO COVER NATURAL AND OTHER DISASTER SITUATIONS INCLUDING ENVIRONMENTAL AND TECHNOLOGICAL DISASTERS (NA-TECHS)

Experience has demonstrated that, although not a part

of the mandate of the Decade, the concept of the disaster

reduction should be enlarged to cover natural and other

disaster situations including environmental and technological

disasters (Na-Techs) and their interrelationship which can

have a significant impact on social, economic, cultural and

environmental systems, in particular in developing countries. (B i Convention on Natural Disaster, 1994)

PRINCIPLE 18: ENSURING THAT STANDARDS AND TECHNICAL REGULATION WILL NOT BE RELAXED TO ATTRACT INVESTMENT

The argument that in a pristine environment that has not yet been polluted by industrial activity shall be able to have emission standards relaxed is inherently invalid and should be discounted. In other words a licence to pollute could be given to industry in an pristine area because the area is not yet officially been designated as being polluted

PRINCIPLE 18: ENSURING THAT REDEFINITION OF PRACTICES WILL NOT ENABLE INDUSTRY TO BYPASS REGULATIONS

Polluting industries that have been regulated under statutory law, shall not through redefinition of practice be excluded from the previous regulations [where a plant with “industrial” air emissions is redefined as a recycling plant and thus the regulations related to “industrial....] is deemed inapplicable

13.

ADMINISTRATIVE NOTES

GAIA-L has 3 simple rules:

1) All posts to the list should be prefaced by "Gaia-L:" in the Subject

line; i.e. "Subject: Gaia-L: Gaian Practice" etc.

2) All posts should try to have 'intelligent' titles. If the title of the

post you are responding to does not fit your topic, change the title. If

Written by Joan Russow

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your topic is a flow from a previous topic that it seems that others would

want to know that your topic is related, add "(WAS: old post name here)" at

the end of the title.

3) All new subscribers should post an introductory message with a brief

biography to the list ASAP. The subject line should read "Gaia-L: Intro

(Your Name)"

To post a message to the list, address mail to GAIA-L@LISTSERV.AOL.COM

To send a message to all the people currently subscribed to the list,

just send mail to GAIA-L@LISTSERV.AOL.COM. This is called "sending mail

to the list", because you send mail to a single address and LISTSERV

makes copies for all the people who have subscribed. This address

(GAIA-L@LISTSERV.AOL.COM) is also called the "list address". You must

never try to send any command to that address, as it would be distributed

to all the people who have subscribed. All commands must be sent to the

"LISTSERV address", LISTSERV@LISTSERV.AOL.COM. It is very important to

understand the difference between the two, but fortunately it is not

complicated. The LISTSERV address is like a FAX number, and the list

address is like a normal phone line. If you make your FAX call someone's

regular phone number by mistake, it will be an unpleasant experience for

him but you will probably be excused the first time. If you do it

regularly, however, he will probably get upset and send you a nasty

complaint. It is the same with mailing lists, with the difference that

you are calling hundreds or thousands of people at the same time, so a

lot more people get annoyed if you use the wrong number.

You may leave the list at any time by sending a "SIGNOFF GAIA-L" command

to LISTSERV@LISTSERV.AOL.COM. You can also tell LISTSERV how you want it

to confirm the receipt of messages you send to the list. If you do not

trust the system, send a "SET GAIA-L REPRO" command and LISTSERV will

send you a copy of your own messages, so that you can see that the

message was distributed and did not get damaged on the way. After a while

you may find that this is getting annoying, especially if your mail

program does not tell you that the message is from you when it informs

you that new mail has arrived from GAIA-L. If you send a "SET GAIA-L ACK

NOREPRO" command, LISTSERV will mail you a short acknowledgement instead,

which will look different in your mailbox directory. With most mail

programs you will know immediately that this is an acknowledgement you

can read later. Finally, you can turn off acknowledgements completely

with "SET GAIA-L NOACK NOREPRO".

Following instructions from the list owner, your subscription options

have been set to "NOACK REPRO NOCONCEAL" rather than the usual LISTSERV

defaults. For more information about subscription options, send a "QUERY

GAIA-L" command to LISTSERV@LISTSERV.AOL.COM.

Contributions sent to this list are automatically archived. You can get a

list of the available archive files by sending an "INDEX GAIA-L" command

to LISTSERV@LISTSERV.AOL.COM. You can then order these files with a "GET

GAIA-L LOGxxxx" command, or using LISTSERV's database search facilities.

Send an "INFO DATABASE" command for more information on the latter.

Please note that it is presently possible for other people to determine

that you are signed up to the list through the use of the "REVIEW"

command, which returns the e-mail address and name of all the

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subscribers. If you do not want your name to be visible, just issue a

"SET GAIA-L CONCEAL" command.

From: Vsevolod Shakin

To: "David White"

Cc: "Multiple recipients of list GAIA-L"

Bcc:

Subject: RE: Principles for Action & SUPERMODEL

Written by Joan Russow

Thursday, 12 February 2015 13:06 - Last Updated Tuesday, 24 March 2015 07:49

Date: Sat, 24 Feb 1996 17:24:02 +-300

MIME-Version: 1.0

X-MailDaemon:

On Saturday, Ôââ`àëü 24, 1996 09:20, David White[SMTP:era@PINC.COM] wrote:

> PRINCIPLES OF ENVIRONMENTAL COMPLIANCE

...

>PRINCIPLE 1. ENDORSING THE INTERDEPENDENCE PRINCIPLE

...

>PRINCIPLE 30:EXTENDING CONCEPT OF DISASTER REDUCTION TO COVER
NATURAL AND

>OTHER DISASTER SITUATIONS INCLUDING ENVIRONMENTAL AND
TECHNOLOGICAL

>DISASTERS (NA-TECHS)

...

>PRINCIPLE 18: ENSURING THAT STANDARDS AND TECHNICAL REGULATION WILL
NOT BE

>RELAXED TO ATTRACT INVESTMENT

...

>PRINCIPLE 18: ENSURING THAT REDEFINITION OF PRACTICES WILL NOT ENABLE

>INDUSTRY TO BYPASS REGULATIONS

...

Written by Joan Russow

Thursday, 12 February 2015 13:06 - Last Updated Tuesday, 24 March 2015 07:49

Dear Dave,

I like your principles, all 32 of them. I do not stress, but check their numbers, please, with attention to the No. 18 used three times. But really I like this MULTI- criteria approach -- life is no easy, and more than 32-dimensional. Compare them with Rio Set, for instance, what took more pages to be published some years ago.

Will you let the Gaians know if you realized contradictory nature of these principles (goals, aims, restrictions), please? What could put them into a Harmony? What penalties you'd suggest to execute these principles, to make them work in our souls, our minds, our hands, please? What about foreseeing possible consequences? Did you ever try to model them in any way? I believe a predictive supermodel (math, not a girl, though she is welcome, of course:) might help it.

Cheers,

Seva

Written by Joan Russow

Thursday, 12 February 2015 13:06 - Last Updated Tuesday, 24 March 2015 07:49

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Written by Joan Russow

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David and I worked on these principle. He has gone away for a week so I thought I would respond to your input into the principles. We incorporated these principles into “A Charter of Obligations”. This Charter has 350 pages of obligations that states had incurred in areas of peace, environment and human rights during the 50 years of the functioning of the United Nations. I took this Charter to the New York PrepCom and to the Conference in Beijing. This Charter was officially distributed to the state delegations at the Beijing conference to remind states that they should agree to nothing less than they were already obliged to do.

We would appreciate any refinements, changes etc. you would suggest.

As a result of being at the New York Prepcom for Beijing and in Beijing. I have set up, as part of the Global Compliance Research Project a network with representatives from over 60 countries including some contacts from Russia. The purpose of this project is to monitor compliance with international obligations—Often by publicly reminding states of what has been

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agreed to previously.

I worked on the alternative NGO Earth Charter when I was in Rio, and I found that the NGOs were often even asking for less than the governments were obliged to do in previous agreements.

I believe that it is only when citizens are aware of previously undertaken obligations; when they are willing to remind states of these obligations publicly, and when are able to present cases of non-compliance at an International Court of Environmental Law will some change occur.

I think that it would be interesting to see an innovative mathematical portrayal of a set of principles. I often draft large diagrams to communicate the complexity and interdependence of issues.

Thanks for your interest in the principles

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- Increased loss and degradation of mountain ecosystems

Mountain ecosystems are, however, rapidly changing. They are susceptible to accelerated soil erosion, landslides and rapid loss of habitat and genetic diversity. On the human side, there is widespread poverty among mountain inhabitants and loss of indigenous knowledge. As a result, most global mountain areas are experiencing environmental degradation. (13.1. Fragile ecosystems)

7.2.4. MANDATE TO CHANGE CONSUMPTIVE PATTERNS OF DEVELOPMENT AND TO ADDRESS INEQUALITY

" Programs should: Contain a long-term strategy aimed at establishing the best possible conditions for sustainable local, regional and national development that would eliminate poverty and reduce the inequalities between various population groups. It should assist the most disadvantaged groups -- in particular, women, children and youth within those groups - refugees and people under occupation. The groups will include poor smallholders, pastoralists, artisans, fishing communities, landless people, indigenous communities,

" Establishing, expanding and managing, as appropriate to each national context, protected area systems, which includes systems of conservation units for their environmental, social and spiritual functions and values, including conservation of forests in representative ecological systems and landscapes, primary old-growth forests, conservation and management of wildlife, nomination of world Heritage Sites under the World Heritage Conventions, as appropriate, conservation of genetic resources, involving in situ and ex situ measures and undertaking supportive measures to ensure sustainable utilization of biological resources and conservation of biological diversity and the traditional forest habitats of indigenous people, forest dwellers and local communities; (11.15 b., Deforestation)

" to promote income-generating activities, such as sustainable tourism,... in particular to protect the livelihood of local communities and indigenous people(13.15. b, fragile ecosystems)

" consider undertaking pilot projects that combine environmental protection and development functions with particular emphasis on some of the traditional environmental management practices or systems that have a good impact on the environment (13.21.a Fragile ecosystem)

" Long-term research into the importance of biodiversity for the functioning of ecosystems and the role of ecosystems in producing good, environmental services and other values supporting sustainable development with particular reference to the biology and reproductive capacities of key terrestrial and aquatic species, including native, cultivated and cultured species; ? observation and inventory techniques; ecological conditions necessary for biodiversity conservation and continued evolution; and social behaviour and nutrition habits dependent on natural ecosystems, where women play key roles. The work should be undertaken with the widest possible participation, especially of indigenous people and their communities, including women. (15.5 f, Biological diversity)

In chapter 36 of Agenda 21, a very important distinction is made between promoting "education," promoting "public awareness," and promoting "training." It appears to be clear in Agenda 21 that non-governmental organizations, community-based groups, women's groups and aboriginal groups are called upon to assist educational authorities in reorienting education. The role of industry is ascertained to be limited to specific areas of business and industrial and training programs.

" Educational authorities, with appropriate assistance of non-governmental organizations, including women's and indigenous peoples' organizations should promote all kinds of adult education programmes for continuing education in environment and development, basing activities around elementary/secondary schools and local problems. The authorities and industry should encourage business, industrial and agricultural schools to include such topics in their curricula. The corporate sector could include sustainable development in their education and training programmes. Agenda 21, Chapter 36.5 I

In the section of Agenda 21 that addresses the " promoting of public awareness " industry is included not as the dispenser of "education" but as the recipient of needed education.

" Countries and regional organizations should be encouraged, as appropriate, to provide public environmental and development information services for raising the awareness of all groups, the private sector and particularly decision makers. (Agenda 21, section 36.10 c)

In the section of Agenda 21, that addresses the "promoting of training, an important role for industry is envisioned.

To strengthen national capacities,... in training, to enable governments, employers and workers to meet their environmental and development objectives and to facilitate the transfer and assimilation of new environmentally sound, socially acceptable and appropriate technology and know-how (Agenda 21, 36.13 c)

13. RIGHTS OF INDIGENOUS PEOPLES

UNCED Documents Sections from Agenda 21

Indigenous people and their communities have an historical relationship with their lands and are generally descendants of the original inhabitants of such lands. In the context of this chapter the term "lands" is understood to include the environment of the areas which the people concerned traditionally occupy. Indigenous people and their communities represent a significant percentage of the global population. They have developed over many generations a holistic traditional scientific knowledge of their lands, natural resources and environment. Indigenous people and their communities shall enjoy the full measure of human rights and fundamental freedoms without hindrance or discrimination. Their ability to participate fully in sustainable development practices on their lands has tended to be limited as a result of factors of an economic, social and historical nature. In view of the interrelationship between the natural environment and its sustainable development and the cultural, social, economic and physical well-being of indigenous people, national and international efforts to implement environmentally sound and sustainable development should recognize, accommodate, promote and strengthen

the role of indigenous people and their communities. (Agenda 21, 16.1)

In full partnership with indigenous people and their communities, Governments and, where appropriate, intergovernmental organizations should aim at fulfilling the following objectives: (Agenda 21, 16.3)

(a) Establishment of a process to empower indigenous people and their communities through measures that include:

(i) Adoption or strengthening of appropriate policies and/or legal instruments at the national level;

(ii) Recognition that the lands of indigenous people and their communities should be protected from activities that are environmentally unsound or that the indigenous people concerned consider to be socially and culturally inappropriate;

(iii) Recognition of their values, traditional knowledge and resource management practices with a view to promoting environmentally sound and sustainable development;

UNCED Documents: Rio Declaration

Indigenous people and their communities, and other local communities, have a vital role in environmental management and development because of their knowledge and traditional practices. States should recognize and duly support their identity, culture and interests and enable their effective participation in the achievement of sustainable development. (Rio Declaration, Principle 22)

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

In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation. (Rio Declaration, Principle 15)

National authorities should endeavour to promote the internalization of environmental costs and the use of economic instruments, taking into account the approach that the polluter should, in principle, bear the cost of pollution, with due regard to the public interest and without distorting international trade and investment.(Rio Declaration, Principle 16)

14.RESPECT FOR CULTURAL INTEGRITY AND INDIGENOUS PRACTICES

13.1. RESPECT FOR CULTURAL INTEGRITY AND RIGHTS OF INDIGENOUS PEOPLE

" respecting the cultural integrity and the rights of indigenous people [PEOPLES, EDITORIAL ADDITION] and their communities (3.7. b)

14.2. RESPECTS FOR TRADITIONAL AND INDIGENOUS PRACTICES

"Promote development in accordance with indigenous practices and adopt technologies appropriate to local conditions (7.42 c)

the promotion of sustainable production systems such as traditional methods of agriculture, agroforestry, forestry, range and wildlife management, which use, maintain or increase biodiversity (15.5 Biodiversity)

" consider undertaking pilot projects that combine environmental protection and development functions with particular emphasis on some of the traditional environmental management practices or systems that have a good impact on the environment (13.21.a Fragile ecosystem)

" Collect and record information on indigenous conservation and rehabilitation practices and farming systems as a basis for research and extension programmes. (14.47 c, Agriculture)

" Governmentsshould ... Recognize and foster the traditional methods and the knowledge of indigenous people and their communities, emphasizing the particular role of women, relevant to the conservation of biological diversity and the sustainable use of biological resources, and ensure the opportunity for the participation of those groups in the economic and commercial benefits derived from the use of such traditional methods and knowledge (15.4, g Biodiversity)

" Take effective economic, social and other appropriate incentive measures to encourage the conservation of biological diversity and the sustainable use of biological resources, including the promotion of sustainable production systems, such as traditional methods of agriculture, agroforestry, forestry, range and wildlife management, which use, maintain or increase biodiversity (15.5 d Biodiversity)

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" Take action where necessary for the conservation of biological diversity through the in situ conservation of ecosystems and natural habitats, as well as primitive cultivars and their wild relatives, and the maintenance and recover of viable populations of species in their natural surrounding ...(15.6 g. Biodiversity)

Governments... consistent with the requirements of international law should, as appropriate collect, assess and make available relevant and reliable information in a timely manner and in a form suitable for decision-making at all levels, with the full support and participation of local and indigenous people and their communities. (15.6 f Biodiversity)

"promotion of collaborative research programmes... fostering of traditional methods and knowledge of such groups (local and indigenous) in connection with these activities. (16.7 b Biotechnology)

States shall cooperate with a view to the conservation of marine mammals and, in the case of cetaceans, shall in particular work through the appropriate international organizations for their conservation, management and study (17.50 Marine)

“Environmentally preferable goods.

148 * e Encourage the adoption of policies for the creation and development of the private sector and promote strategies for substantial and well-directed public and private investments in construction and development of shelter, infrastructure, health, education and other basic services through, inter alia, the provision of appropriate technical and financial assistance; in addition encourage Governments to promote strategies to ensure that the private sector, including transnational corporations, comply with national laws and codes, social security regulations, applicable international agreements, instruments and conventions, including those related to the environment, and other relevant laws, and adopt policies and establish mechanisms to grant contracts on a non-discriminatory basis; recruit women for leadership, decision-making and management and provide training programmes, all on a equal basis with

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men; and observe national labour, environment, consumer, health and safety laws, particularly those that affect women and children

fundamental principles derived from the obligations incurred in the United Nation Conventions, Treaties, Covenants and from the expectations created in the United Nations Declarations, Conference action plans and General Assembly Resolutions shall establish the basis for socially equitable and environmentally sound development. The overall decline in official development assistance, however, is a serious cause for concern. This trend has also been accompanied by considerable increases in international flows of capital as well as increasing private sector involvement in infrastructure and services development and management.

This shift from aid to trade requires the establishment of mandatory international normative standards-and-technical regulations (MINS) that will drive the corporations, including transnationals, and funding agencies such as the development banks to ensure socially equitable and environmentally sound development. Currently the concept of sustainable development appears to justify the continuation of the currently over-consumptive model of development with a coupling “clean-up environmental technology” which is moving the global community away from adopting BEST (Best Environmentally Sound Traditions) practices from the outset. Only when there is the global political will to agree to high global mandatory regulations and standards, and only when these regulations and standards are in place to drive industry will there be the needed shift towards a real cooperation based on the highest tenable principles.

This shift from aid to trade clearly points to the need for

global mandatory regulations and standards to drive corporations including transnationals

private sector

to participate

in socially equitable and environmentally sound development.

participation in the shaping of international cooperation.

The international community, including multilateral financial institutions,

has an important role to play in providing funding that is conditional on the adherence to high mandatory international normative standards-and-technical -regulations (MINS) based on principles established over the past 50 years in international instruments.

In section 167 of the Platform of Action of the United Nations Conference on Women:

Equality, Development and Peace, states undertook to ensure that all corporations including transnational corporations, comply with national laws and codes, social security regulations, applicable international agreements, instruments and conventions, including those related to the environment, and other relevant laws.”. In addition the lending institutions shall not support the “clean-up environment industries” which thrive on the relaxing of regulations related to toxic, hazardous and atomic wastes, and which continue to perpetuate the old world order of over-consumption, inequity and environmental destruction, and intrastate and interstate conflict. It is only through promoting socially equitable and environmentally sound development through global mandatory standards and regulations with additional resources for Best environmentally

sound technology that

environmental to ensure that additional resources to reinforce

national efforts to foster

an enabling environment to

and

achieve the objectives of adequate shelter for all and the

socially equitable and environmentally sound

sustainable development

of human settlements.

of their international obligations concerning the protection of human health and protection and preservation of the environment, and are liable in accordance with international law (Preamble Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, 1992);

shall establish the basis for socially equitable and environmentally sound development.

fundamental principles derived from

... Art. 148 and establish mechanisms to grant contracts on a non-discriminatory basis; recruit women for leadership, decision-making and management and provide training programmes, all on an equal basis with men; and observe national labour, environment, consumer, health and safety laws, particularly those that affect women and children

The overall decline in official development assistance, however, is a serious cause for concern. This trend has also been accompanied by considerable increases in international flows of capital as well as increasing private sector involvement in infrastructure and services development and management. **This shift from aid to trade requires insuring of compliance of private sector**

148 * e Encourage the adoption of policies for the creation and development of the private sector and promote strategies for substantial and well-directed public and private investments in construction and development of shelter, infrastructure, health, education and other basic services through, inter alia, the provision of appropriate technical and financial assistance; in addition encourage Governments to promote strategies

HUMANITARIAN PRINCIPLE

10.1.□□ This principle affirms the fundamental right of all peoples to respect, equity and equality; to food, health, shelter, and social security; to safe drinking water, clean air, safe environment; freedom from conflict and war

(23)

PRINCIPLE OF JUSTIFIABLE INTERVENTION

This principle holds that no religious, state, or cultural justification of a practice that violates fundamental human rights, can be used to prevent international condemnation through peaceful intervention.

(24)

PRINCIPLE OF MORAL IMPERATIVE

PRINCIPLE OF WARRANTED INTERVENTION

This principle holds that individuals, institutions and states have a responsibility to act to prevent any actions and practices that cause crimes against humanity and nature

(27)

PRINCIPLE OF RIGHT TO OBJECT

This principle holds that no state shall refrain from objecting to a practice which violates human rights on the grounds that the practice belongs to a religious or cultural group predominantly beyond the state's jurisdiction. This principle is particularly important in multicultural states where refugees, landed immigrants and citizens from former states have left their country of origin because of the violation of human rights.

Reducing environmental health hazards

(Article * 89 a ter Improve policies that **prevent**, reduce environmental health hazards and provide the informal sector and all workers with accessible information on how to enhance occupational safety and reduce health risks;

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PRINCIPLE OF NON-PRESUMPTION

12.1.□□ This principle entails the affirming that no presumption shall be made about capabilities or abilities on the basis of race, tribe, religion, disabilities, country of origin, sex, sexual orientation, language, family structure, or other status

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national infrastructure program