

Conservation and Ecologically Sound Practices

From the archives

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Humanity stands at a defining moment in history. We are confronted with a perpetuation of disparities between and within nations, a worsening of poverty, hunger, ill health and illiteracy, and the continuing deterioration of the ecosystems on which we depend for our well-being. ... (1.1 Preamble, Agenda 21)

Statement of Obligation □

Conservation and Ecologically Sound Practices

"Maxim of Equity: Equity imputes an intention to fulfill an obligation." (Snell's *Equity* 1990)

Canada has made international commitments, and the public can impute an intention to fulfill these obligations (Vienna Convention on the Law of Treaties)

RECOGNITION OF URGENCY

- Biological diversity is being significantly reduced by certain human activities, (preamble, Convention of Biological Diversity)
- Importance of biological diversity for evolution and for maintaining life sustaining systems of the biosphere, (preamble, Convention of Biological Diversity)
- Conservation of biological diversity is a common concern of humankind, (preamble, Convention of Biological Diversity)
- This natural wealth is being eroded at an unprecedented rate, because of the rapid growth in human numbers, the uneven and often excessive consumption of natural resources, mistaken and socially harmful styles of development, global pollution and defective economic regimes, so that the future of humanity is now threatened (Caracas declaration)
- Many people must modify their styles of living and the world community must adopt new and equitable styles of development, based on the care and sustainable use of the environment, and the safeguarding of global life-supporting systems (Caracas declaration)

INTENTION: COMPLIANCE WITH INTERNATIONAL AGREEMENTS:

□ **From the following instrument, there has been the legitimate expectation that the ecology will be, respected, the biodiversity conserved and heritage designated.**

1. FROM CANADA'S NATIONAL REPORT,

Canada continually indicates its professed concern for the environment in a way that should entitled Canadians to expect actions that reflect this concern. For example, in the preface of Canada's National Report, which was submitted to the Earth Summit in Rio, the Canadian government gave the impression that Canadians were "stewards" observing their "environmental responsibility".

As stewards of a vast and beautiful land, and as a people intimately connected to the environment, Canadians are aware of their environmental responsibilities (Canada's National Report, Preface).

And further in the section on the "quality of life", the Canadian government stated

As a small population with a large land mass, Canadians have access to relatively unspoiled wilderness areas rich in wildlife ... Canada has an international reputation as a beautiful, safe and mostly unspoiled country (Canada's National Report, p.49).

If the government of Canada continues to give the impression to the global community that Canadians are concerned about being "stewards" of a "relatively unspoiled wilderness", then the citizens of Canada have the equitable right to expect that Canada will fulfill this expectation.

(Doctrine of legitimate expectation)

Citizens of Canada can justifiably expect that Canada will adhere to international principles that are part of international agreements signed by Canada, and citizens of Canada can justifiably expect that the courts of Canada will abide by international commitments made by Canada.

2. FROM BC OMBUDSMAN

Similarly at the Provincial level if the provincial government imputes that it intends to fulfill an obligation, the citizens should be justified in having the obligation fulfilled.

In a letter from the BC Ombudsman's office indicating the findings of the Ombudsman's office (1993) related to the Russow/Gage inquiry into the way the B.C. government will be fulfilling international commitments.

A Compliance with International Agreements.

Direct personal discussions were held with Mr. Cheston, Assistant Deputy Minister of Operations Division, Ministry of Forests, and Mr. Owen, Commissioner on Resources and Environment. Both Mr. Cheston's and Mr. Owen's responsibilities reflect the government's priority for those issues of concern to you...

From these meetings, as well as from additional discussions with senior staff from the Ministry of Forests and the Ministry of Environment, Lands and Parks, we have determined that BC intends to comply with the agreements signed at the UNCED in June 1992. (Gardiner, 1993)

3. FROM THE BC MINISTRY OF ENVIRONMENT

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- A letter from both the Provincial Ministry of Forests and the Provincial Ministry of Environment (March, 1992) in which the following intention is imputed:

As we, in BC Parks and BC Forest Service begin to work on implementing our components of B.C.'s protected areas under the aegis of the Commission on Resources and Environment, we will be mindful of this Declaration [the Caracas Declaration : Parks Protected Areas and the Human Future] and its implications. Our objective will be to have a system of protected areas which we are proud to present to the world.

In the Caracas Declaration; Parks Protected Areas and the Human future is the recognition of the following international documents:

a. *Caring for the Earth: A strategy for Sustainable Living, The Global Biodiversity Strategy*

Bearing in mind the message of *Caring for the Earth: A strategy for Sustainable Living, The Global Biodiversity Strategy*. Launched at this Congress, and the earlier messages of the World Conservation Strategy, the World Charter for Nature and the World Commission on Environment and Development, CD

4 FROM. CARACAS DELARATION

Principle of intrinsic worth of nature

- Nature has intrinsic worth and warrants respect regardless of its usefulness to humanity (Caracas Declaration).

1993 submitted to CORE Statement of Expectations and Obligations

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Through this intention to be "mindful of this Declaration" the Provincial government through its Ministry of Environment and Forests has recognized the CARACAS Declaration and the UN Resolution 37/7 (1982) World Charter for Nature. The government of Canada has imputed the intent to fulfill obligations under the UNCED documents, the CARACAS Declaration and the World Charter of Nature

The Fourth World Congress on National Parks and Protected Areas: Parks for Life (Caracas, Venezuela, 10-21 February 1992). The Caracas Declaration was adopted by over fifteen hundred leaders and participants, including from B.C, at the Fourth World Congress on national parks and Protected Areas. (Feb. 1992).

In a letter dated March, 1992, from both the Provincial Ministry of Forests and the Provincial Ministry of Environment (sent to members of the public presumably from a government mail-out list), the following intention was imputed:

As we, in BC Parks and BC Forest Service begin to work on implementing our components of B.C.'s protected areas under the aegis of the Commission on Resources and Environment, we will be mindful of this Declaration [Parks Protected Areas and the Human Future: the Caracas Declaration] and its implications. Our objective will be to have a system of protected areas which we are proud to present to the world.

Through this intention to be "mindful of this Declaration" the Provincial Government of B.C.

through its Ministries of Environment and Forests has made a move from logging old growth to second growth"[relocated **from primary to secondary forests** (Report on implementation requirements of the Caracas Declaration, Mar. 1992)

Through this declaration the Provincial government has agreed to the following recommendations:

3.2. Conserving Biodiversity and Harvesting should be relocated from primary to secondary forests

The congress urgently requested that all countries urgently undertake surveys to identify additional sites of critical importance for conservation of biological diversity, and wherever possible, accord total protection to them. Harvesting should be relocated **from primary to secondary forests** and tree plantations in previously deforested areas; or - where this is not possible - sustainable forest harvesting systems which favour natural species diversity should be developed and introduced.

3.3. Conservation on a regional scale

Protected areas have sometimes been seen as islands of nature and tranquillity, surrounded by incompatible land uses. But the congress made it clear that such an "island mentality" is fatal in the long run. The congress recognized that it is unlikely that protected areas will be able to conserve biodiversity if they are surrounded by degraded habitats that limit gene-flow alter nutrient and water cycles and produce regional and global climate change that may lead to the final disappearance of these "island parks". Protected areas therefore need to be part of broader regional approaches to land management. The term bioregion was used to describe extensive areas of land and water which include protected areas and surrounding lands, preferably including complete watersheds, where all agencies and interested parties have agreed to collaborative management.

Recommendation 3 Global efforts to conserve biological diversity.

"the loss of biodiversity has reached crisis proportion and if present trends continue up to 25 % of the world's species may be sentenced to extinction or suffer sever genetic depletion in the next several decades, accompanied by equally significant and alarming degradation of habitats and ecosystems. This loss of biological diversity is impoverishing the world of its genetic resources, its species, habitats and ecosystems.

All species deserve respect, regardless of their usefulness to humanity. This Principle was

endorsed by the UN Assembly when it adopted the World Charter for nature in 1982. The loss of the living richness of the planet is dangerous, because of the environmental systems of the world support all life, and we do not know which are the key components in maintaining their essential functions.

The IVth World Congress on national Parks and Protected Areas recommends that:

a) governments make the protection of biological diversity, including species and habitat richness, representativeness and scarcity, a fundamental principle for the identification, establishment, management and public enjoyment of national parks and other protected areas;

b) all countries urgently undertake surveys to identify additional sites of critical importance for conservation of biological diversity and wherever possible, accord total protection to them. Harvesting should be relocated from primary to secondary forests and tree plantations in previously deforested areas; or — where this is not possible — sustainable forest harvesting systems which favour natural species diversity should be developed and introduced:

Recommendation 4: ensure legal regimes for protected areas.

Protected areas require a mutually reinforcing system of international and national

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environmental law for their establishment, maintenance and management. International treaties establish a harmonized set of obligations with regard to areas within national jurisdictions and activities having effect beyond national jurisdictional boundaries. These obligations must be reflected in national legislation; otherwise, the treaties cannot be implemented. In turn, innovative national legislation provides a basis and impetus for further international law. The dynamic interaction between the two levels is thus conducive to further progress. p. 31

From the Commitment in the Caracas Declaration, it would appear that the Provincial government has also reaffirmed Canada's commitment to UN Resolution 37/7 (1982), the World Charter of Nature, which states that the following:

The principles set forth in the present Charter shall be reflected in the law and practice of each State, as well as at that international level.

5. FROM THE WORLD CHARTER OF NATURE

WORLD CHARTER OF NATURE

That international law shall be reflected in the law and practice of the state

The principles set forth in the present Charter shall be reflected in the law and practice of each State, as well as at that international level (14, World Charter of Nature).

Of moral code of action regarding every form of life

- Every form of life is unique, warranting respect regardless of its worth to man, and to accord other organisms such recognition's, man must be guided by a moral code of action (Preamble, World Charter of Nature)

Principle of intrinsic value of biological diversity

- Recognition of the intrinsic value of biological diversity ... (Preamble Biodiversity Convention)

Principle of maintenance of essential ecological processes

-Lasting benefits from nature depend upon the maintenance of essential ecological processes and life support systems, and upon the diversity of life forms, which are jeopardized through excessive exploitation and habitat destruction by man (Preamble, World Charter of Nature)

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Principle of limit of natural capacity for regeneration

Living resources shall not be utilized in excess of their natural capacity for regeneration (3 a World Charter of Nature).

Principle of burden of proof of benefit being placed on the proponent of intervention

into the ecosystem

Activities which are likely to pose a significant risk to nature shall be preceded by an exhaustive examination; their proponents shall demonstrate that expected benefits outweigh potential damage to nature, and where potential adverse effect are not fully understood, the activities should not proceed (11 (b) World Charter of Nature).

Principle of rehabilitation of areas degraded by human activity

Areas degraded by human activities shall be rehabilitated for purposes in accord with their natural potential and compatible with the well-being of affected populations 16. All planning shall include, among its essential elements, the formulation of strategies for the conservation of nature, the establishment of inventories of ecosystems and assessments of the effects on nature of proposed policies and activities; all of these elements shall be disclosed to the public by appropriate means in time to permit effective consultation and participation (11 e World Charter of Nature).

Principle of early intervention and monitoring to protect ecosystems

- The status of natural processes, ecosystems and species shall be closely monitored to enable early detection of degradation or threat, ensure timely intervention and facilitate the evaluation of conservation policies and methods (19, World Charter of Nature).

Through this statement the Provincial government has demonstrated the intention to adhere to principles from Agenda 21, the Rio Declaration and the Biodiversity Convention.

6. FROM CONVENTION ON BIOLOGICAL DIVERSITY

The legally binding Convention on Biological Diversity was signed by Canada at UNCED IN 1992 and ratified in 1993. BC Cabinet endorsed the Convention in 1992. Canada and BC are obliged to discharge their obligations under this convention including fulfilling these principles

Principle of informed action

- There is general lack of information and knowledge regarding biological diversity and of the urgent need to develop scientific, technical and institutional capacities to provide the basic understanding upon which to plan and implement appropriate measures (Preamble, Convention of Biological Diversity).

Principle of anticipation and reduction at source

- It is vital to anticipate, prevent and attack the causes of significant reduction or loss of biological diversity at source (preamble, Convention of Biological Diversity).

Precautionary principle

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

Principle of in-situ conservation

- The fundamental requirement for the conservation of biological diversity is the *in-situ* conservation of ecosystems and natural habitats and the maintenance and recovery of viable populations of species in their natural surroundings (Preamble, Convention of Biological Diversity).

Principle of intergenerational equity:

- To conserve and sustainably use biological diversity for the benefit of present and future generations (Preamble, Convention of Biological Diversity).

Principle of sustainable use and intergenerational equity

- The use of components of biological diversity in a way and at a rate that does not lead to the long-term decline of biological diversity, thereby maintaining its potential to meet the needs and aspirations of present and future generations (Definition, Convention of Biological Diversity).

Principle of ecological diversity

- Means the variability among living organisms from all sources including, *inter alia*, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part; this includes diversity within species, between species and of ecosystems (Definition. Convention of Biological Diversity).

Principle of ecosystem as a dynamic complex

- "*Ecosystem*" means a dynamic complex of plant, animal and micro-organism communities and their non-living environment interacting as a functional unit (Definition. Convention of Biological Diversity).

Principle of in-situ conservation

- *In-situ conservation*" means the conservation of ecosystems and natural habitats and the maintenance and recovery of viable populations of species in their natural surroundings and, in the case of domesticated or cultivated species, in the surroundings where they have developed their distinctive properties (Definition. Convention of Biological Diversity).

Principle of identification of activities likely to have significant adverse impacts on the conservation

- Identify processes and categories of activities which have or are likely to have significant adverse impacts on the conservation and sustainable use of biological diversity, and monitor their effects through sampling and other techniques (7 c Convention for Biological Diversity).

Principle of establishing system of protected areas

- Establish a system of protected areas or areas where special measures need to be taken to conserve biological diversity (8 a, Convention for Biological Diversity).

Principle of sustainable use of biological diversity

- Regulate or manage biological resources important for the conservation of biological diversity whether within or outside protected areas, with a view to ensuring their conservation and sustainable use (8 c, Convention for Biological Diversity).

Principle of protection of ecosystems

- Promote the protection of ecosystems, natural habitats and the maintenance of viable populations of species in natural surroundings (8 d, Convention for Biological Diversity).

Principle of environmentally sound development adjacent to protected areas

- Promote environmentally sound and sustainable development in areas adjacent to protected areas with a view to furthering protection of these areas (8 e, Convention for Biological Diversity).

Principle of rehabilitation and restoration of degraded ecosystem

- Rehabilitate and restore degraded ecosystems and promote the recovery of threatened species, *inter alia*, through the development and implementation of plans or other management strategies (8 f, Convention for Biological Diversity).

Principle of protecting and encouraging traditional cultural use (10c, Convention for Biological Diversity)

- Protect and encourage customary use of biological resources in accordance with traditional cultural practices that are compatible with conservation or sustainable use requirements (10 c Convention for Biological Diversity).

Principle of remedial action

- Support local populations to develop and implement remedial action in degraded areas where biological diversity has been reduced (10d Convention for Biological Diversity).

Principle of promoting understanding of importance and measures required for conservation of biological diversity and sustainable use

- Promote and encourage understanding of the importance of, and the measures required for, the conservation of biological diversity, as well as its propagation through media, and the inclusion of these topics in educational programmes (13, a. Convention of Biological diversity)
- Cooperate, as appropriate, with other States and international organizations in developing educational and public awareness programmes, with respect to conservation and sustainable use of biological diversity (13, b. Convention of Biological diversity).

Principle of environmental impact assessment of projects likely to have significant adverse effects on biodiversity

- Introduce appropriate procedures requiring environmental impact assessment of its proposed projects that are likely to have significant adverse effects on biological diversity with a view to avoiding or minimizing such effects and, where appropriate, allow for public participation in such procedures (14 a Convention of Biological Diversity).

Principle of taking into account environmental consequences

- Introduce appropriate arrangements to ensure that the environmental consequences of its programmes and policies that are likely to have significant adverse impacts on biological diversity are duly taken into account (14 a Convention of Biological Diversity).

8 FROM .AGENDA 21 UNCED

Canada along with all other states adopted Agenda 21 and created the expectations

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on the potentially significant impact of current forest practices, such as clear-cut logging, on biodiversity. Even though, as admitted by Dale Lovick, the Chair of public hearings on the B.C. Environmental Assessment Act, the public was demanding for forest practices to be included on the list of projects and activities which should require an environmental assessment; forest practices appear to be excluded from this Act.

9. FROM CONVENTION FOR THE PRESERVATION OF CULTURAL AND NATURAL HERITAGE.

This principle is a reaffirmation of the principle established and endorsed by Canada in 1972 in the legally binding Convention for the Preservation of Cultural and Natural Heritage.

- Noting that the cultural heritage and the natural heritage are increasingly threatened with destruction not only by the traditional causes of decay, but also by changing social and economic conditions which aggravate the situation with even more formidable phenomena of damage or destruction"
 - Considering that deterioration or disappearance of any item of the cultural or natural heritage constitutes a harmful impoverishment of the heritage of all the nations of the world."
 - Considering that the existing international conventions, recommendations and resolutions concerning cultural and natural property demonstrate the importance, for all the peoples of the world, of safeguarding this unique and irreplaceable property, to whatever people it may belong"
- "Considering that parts of the cultural or natural heritage are of outstanding interest and therefore need to be preserved as part of the world heritage of [humankind] as a whole"
- "Considering that,, in view of the magnitude and gravity of the new dangers threatening them, it is incumbent on the international community as a whole to participate in the protection of the cultural and natural heritage of outstanding universal value, by the granting of collective assistance which, although not taking the place of action by the State concerned, will serve as an effective complement thereto,"

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Canada has not lived up to its international commitment to preserve a significant area of international worth: a network of intact old growth watershed, conservation corridors including Clayoquot sound (this type of extensive preservation has currently been carried out in Australia, and Australia has applied to have this network of temperate rainforests designated as an international heritage site at the recent meeting in 1993 of the World Heritage Committee at UNESCO)

4. The positive-duty-to protect-indigenous-lands principle. This principle reads as follows:

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

A fifth principle that came out of UNCED and was agreed to by Canada is the recognition of non-damaging-use value principle. This principle reads as follows:

The implications of the harvesting of forest resources for other values of the forest should be taken fully into consideration in the development of forest policies. It is also possible to increase the value of forest through non-damaging uses such as eco-tourism ... (Agenda 21, 11.22)

Principle of full life cycle analysis of activities that could have significantly adverse effects.

This principle if complied with in the forest industry would entail an examination of the environmental impacts of each stage of current forest practices. At UNCED there was also a call for "environmental audits", and "full environmental accounting of aspects related to life cycles of ...resources", and "for taking into account the costs of any ecological consequences".

- Governments, in collaboration with industry and appropriate international organizations, should develop procedures for monitoring the application of the cradle to grave approach,

including environmental audits (20.20 e)

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

A full environmental audit of current forest practices has not been undertaken in B.C. the Auditor general has not been requested by government to carry out a full scale audit of the true costs of the current logging practices, and to compare these costs to those incurred by alternative forestry practices such as ecoforestry.

Principle related to positive mandate-to conserve

- Establishing, expanding and managing, as appropriate to each national context, protected area systems, which includes systems of conservation units for their environmental, social and spiritual functions and values, including conservation of forests in representative ecological systems and landscapes, primary old-growth forests, conservation and management of wildlife, nomination of world Heritage Sites under the World Heritage ... and conservation of biological diversity and the traditional forest habitats of indigenous people, forest dwellers and local communities; (Agenda 21, 11.15 b)

10. FROM INTERNATIONAL SPECIALIST

In jurisdictions where an environmental impact assessment has been carried out, practices, typical of those carried out currently in BC forests, have been assessed as being destructive of biodiversity. For example, a German biologist specializing in biodiversity indicated that:

The practice of clear-cutting, followed by artificial reforestation has undoubtedly many technical and organizational advantages. In the course of time, however, soil scientists and ecologists found out that the practice of clear-cutting automatically leads to considerable drawbacks:

-wounding of the soil surface through logging operations.

- Risk of erosion

-High irradiation and higher climatic extremes alter the microclimate, the flora and the micro flora and deteriorate the growing conditions for a number of valuable tree species. - -Soil compression and a reduction of species richness

-An accelerated decomposition of organic matter occurs, combined with a wash out of nutrients, and the eutrophication of ground water, rivers and lakes occur

(Dr Schutt, Biological Department, University of Munich, Environmental Ethics Conference, 1992, Vancouver)