IMPACT

A QUARTERLY NEWSLETTER ON ENVIRONMENTAL LAW July 1991.

Environmental Defender's Office Ltd

8th Floor, 280 Pitt St., Sydney 2000 DX 722 Sydney Phone (02) 261 3599 Editor: Peter Comans.

YOUR RIGHTS AND DESIGNATED DEVELOPMENT

by **Jenifer Kohout** (J.D., M.P.P.) a recently admitted attorney of the State Bar of Michigan who has been assisting the EDO under a Bates fellowship granted by the University of Michigan and **David Robinson**, Solicitor, Environmental Defender's Office.

This is the second in a series of occasional articles to be published in IMPACT on "how to" approach the legal aspects of an environmental campaign

Legal Aspects of Environmental Campaigning Workshop 10-11 August 1991 – see p.14 for details.

Please Note: The deadline for contributions for the next issue of IMPACT is 30 August 1991.

The last issue of IMPACT addressed the issue of how to get information on development issues in general. This instalment in the series discusses your rights in opposing undesirable designated developments.

WHAT IS DEVELOPMENT AND WHEN IS DEVELOPMENT CONSENT REQUIRED?

Before starting your campaign efforts, you must first determine whether the proposed activity you find offensive qualifies as "development." Legally, the definition of development is very broad. It includes erection of a building; subdivision (though some subdivisions come only under the requirements of the Local Government Act, 1919); and "the carrying out of a work," (Environmental Planning and Assessment Act 1979, s.4(1)). According to the EPA Act, "the carrying out of a work" involves some sort of departure from ordinary land use. Examples include rebuilding, alterations, enlargement, or extension, (EPA Act s.4(2)).

Once you determine that the proposed activity is "development," you should consider whether development consent is required. This information is revealed by looking at the zoning table in the local environmental plan which is available for inspection and purchase from your local council. The environmental planning system in NSW relies primarily on two techniques: zoning and development standards. Zoning is important because it allows planners to arrange human use of land in a way that recognises the expectations of land owners. If land use was not regulated through zoning or some other system, market forces would determine land use based solely on profit motive.

Each local area should have a colour coded map which indicates different zones of land use. Written zoning tables set out the possible land uses within each of the coloured zones. These tables also indicate whether development consent is required or whether a specific type of development is prohibited altogether. Only development permitted by the relevant zoning can proceed. If the development is not permitted, council would have to obtain the Planning Minister's consent to a "spot-rezoning" before any development application could be considered.

HOW DESIGNATED DEVELOPMENT FITS INTO THE SCHEME

Some environmentally sensitive developments require extra planning attention. These are called designated developments and they are identified in Schedule 3 of the Environmental Planning and Assessment Regulations 1980. Examples of designated developments include:

Contents:

- chemical factories or storage areas;
- coal industry works;
- electricity generating stations;
- marinas designed to provide moorings or dry storage for 30 or more vessels;
- mining; and
- extractive industries.

How the developer characterises the development in the application is not definitive. The Land and Environment Court will consider the primary purpose of the development along with its nature and scale when determining what the development is. A recent example which shows how courts characterise development arose with the proposal to establish a vast cut-and-fill tip for commercial and domestic waste at Londonderry in Sydney's outer west. The Waste Management Authority argued that the tip was not "extractive industry" and therefore did not require an EIS because its principal purpose was to dump waste, not to extract soil. Penrith Council, however, successfully argued in the Court of Appeal that the nature and scale of excavation necessary to provide the "moving hole" into which rubbish would be dumped was sufficient to properly characterise the proposal as extractive industry.

In addition to the designated developments set out in Schedule 3, environmental planning instruments can also nominate activities as "designated development." For example, Hawkesbury City Council is currently considering making the mushroom composting industry "designated development" under its LEP as a result of many years of residents' complaints of offensive odours. If this is done, mushroom composters would be required to submit an EIS with any development application to establish composting operations on appropriately zoned land.

Anyone applying for development consent for a designated development must prepare and submit an environmental impact statement to the consent authority to accompany the normal development application (DA). According to EPA Regulations s.57(2), the environmental impact statement should include the following information:

(a) a full description of the proposed activity;
(b) a statement of the objectives of the proposed activity;
(c) a full description of the existing environment likely to be affected by the proposed activity;
(d) identification and analysis of the likely environment interactions between the proposed activity and the environment;
(e) analysis of the likely environmental impacts or consequences of carrying out the proposed activity;
(f) justification of the proposed activity in terms of environmental, economic and social consideration;
(g) measures to be taken in conjunction with the proposed activity to protect the environment and an assessment of the likely effectiveness of those measures;
(h) any feasible alternatives to the carrying out of the proposed activity and the reasons for choosing the latter;
(i) consequences of not carrying out the proposed activity.

The environmental impact assessment is designed to be part of the development process by ensuring that environmental factors are considered from the start.

MAKING SUBMISSIONS

Once the DA and the EIS have been lodged, anyone may make written submissions to the consent authority regarding the proposed activity. That right is not restricted to neighbouring property owners.

To facilitate citizen comments, the local council or any other consent authority must advertise the proposed development in three ways. First, written notice must be given to those who appear to be owners and occupiers of adjoining land. Where practicable, personal notice must also be given to any other land holders whose use and enjoyment of land may be detrimentally affected. The council has considerable discretion in determining whether personal notice will be given. Second, notice must be posted on the land proposed for development. Finally, notice must also be published on two or more occasions in a local newspaper. Notices must contain the details of where and when both the development application and the environmental impact statement can be inspected and what the legal rights of the objectors are. (EPA Regulations s.37)

Following the newspaper notice, there must be an exhibition of the development proposal for at least 30 days. During that period, members of the public can make written submissions supporting or opposing the proposal.

Any submission against a proposal must set out the reasons for the objection. The quantity of objections may influence council, though what ultimately matters is their quality. For example, hundreds of signatures on a petition or "form" type of objection may influence council members as to the political expediency of granting approval, but detailed analysis and additional evidence on the environmental problems of the development is likely to influence the s.90 technical appraisal by Council.

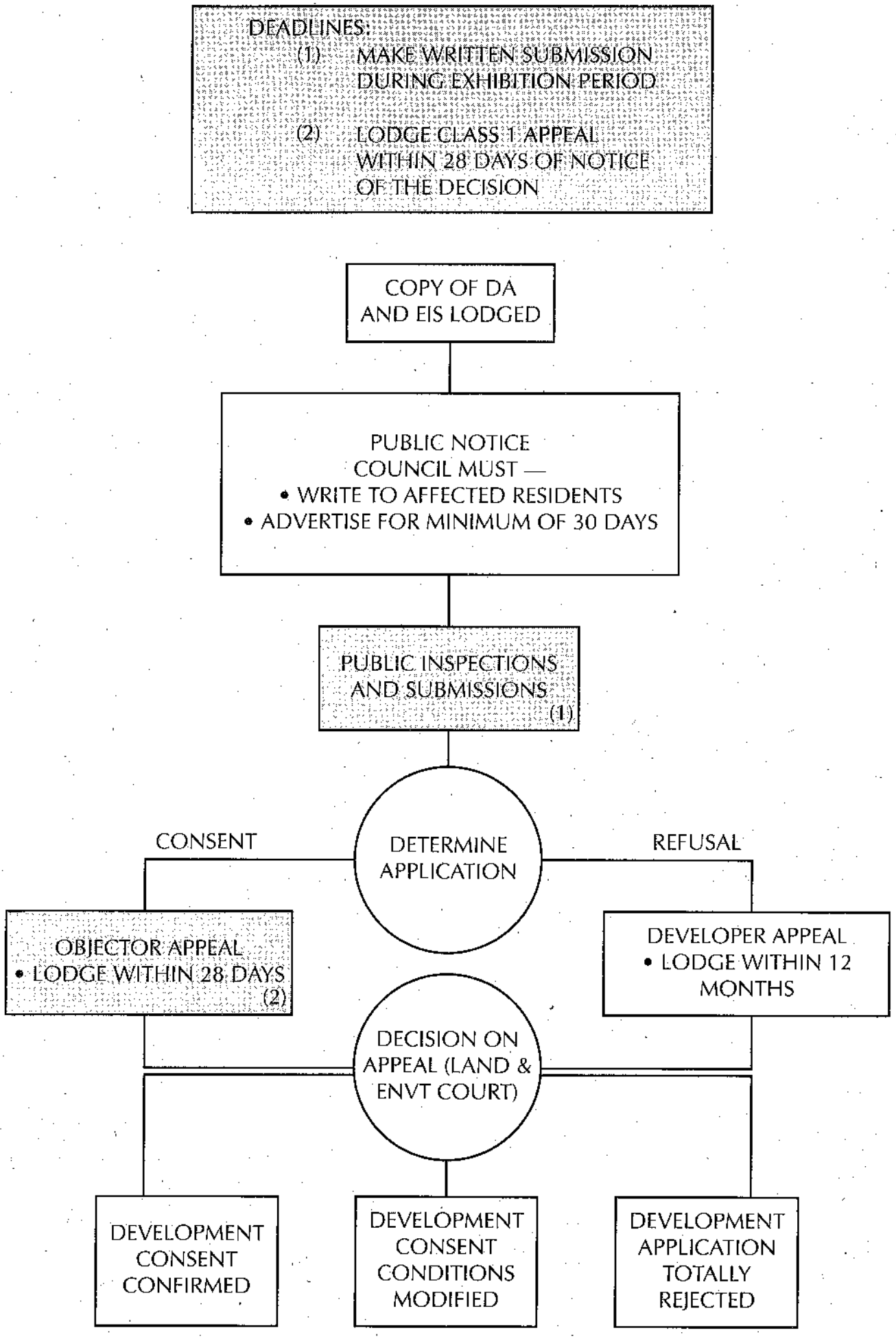
APPEALING AN UNDESIRABLE CONSENT DECISION

In determining whether to grant development consent, the relevant authority must consider the factors listed in s.90 of the EPA Act. Some of these include the following:

- the impact of the development on the environment;
- the social and economic effect of the development in the locality; and
- the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of the development.

Nothing in the legislation indicates what weight should be accorded to any of the factors set out in the EPA Act. If the consent authority approves a development that you oppose you may have a right to appeal that decision. Anyone who makes a written submission objecting to the proposed development during the exhibition period may appeal the council's eventual decision to the Land & Environment Court. The appeal, classified as Class 1, must be filed within 28 days of when the objector is notified of the decision. The developer who submitted the application has 12 months to appeal development conditions or an outright denial of consent.

Class 1 or "third party objector" appeals involve challenging the merits of the council's decision. You are arguing that the council's decision was bad on factual grounds. The question is not whether the EIS was legally adequate, but whether the development as described in the DA and EIS should proceed on its merits. "Merits" include the planning, environmental, social, economic, and other grounds listed in s.90 EPA Act.


DEADLINES:
(1) MAKE WRITTEN SUBMISSION DURING EXHIBITION PERIOD
(2) LODGE CLASS 1 APPEAL WITHIN 28 DAYS OF NOTICE OF THE DECISION
COPY OF DA AND EIS LODGED
PUBLIC NOTICE
COUNCIL MUST —
• WRITE TO AFFECTED RESIDENTS
• ADVERTISE FOR MINIMUM OF 30 DAYS
PUBLIC INSPECTIONS AND SUBMISSIONS (1)
DETERMINE APPLICATION
CONSENT
REFUSAL
OBJECTOR APPEAL
• LODGE WITHIN 28 DAYS (2)
DEVELOPER APPEAL
• LODGE WITHIN 12 MONTHS
DECISION ON APPEAL (LAND & ENVT COURT)
DEVELOPMENT CONSENT CONFIRMED
DEVELOPMENT CONSENT CONDITIONS MODIFIED
DEVELOPMENT APPLICATION TOTALLY REJECTED

If you believe that the council or the developer failed to follow the correct procedures, a different kind of appeal is appropriate. A legal challenge which claims an error in legal process is called a Class 4 appeal. Anyone can bring this type of appeal which requests the Land and Environment Court to correct or alter a breach of the EPA Act. Unlike a Class 1 appeal, in Class 4 appeals the loser pays the legal costs of the winner.

If you disagree with the **conclusions** of an EIS, you make a Class 1 merits challenge. Alternatively, if you disagree with the **content** of an EIS, in that it fails to consider the matters required of an EIS under the EPA Act and Regulations, you make a Class 4 legal challenge.

Lodging a Class 1 appeal with the Land and Environment Court involves filling out an application and paying a filing fee, currently $110. The form which must be lodged may be obtained at the Office of the Court or from the local court house. An appeal may incur substantial financial costs. These costs may relate to obtaining the reports of relevant experts (for example consultant planners, traffic engineers or pollution specialists) and briefing lawyers. You can withdraw from proceedings at any time by notifying the Land and Environment Court. There is no risk of being ordered to pay the legal costs of the developer if you lose a standard designated development appeal.

There is no need for you to be represented by a lawyer in a designated development appeal. No rules of evidence apply. The judge simply hears what the parties and experts have to say, reads the reports from experts and makes his or her decision on the merits of the case. If you are unfamiliar with the law and the jurisdiction of the Court, however, you should obtain legal advice so that you maximise your chances of success. A good adviser can help you to isolate the relevant issues. Often cases are decided on one or two issues. By attacking all aspects of a designated development consent, you may obscure your good points on the key issues.

The Environmental Defender's Office offers free initial legal advice to all inquirers. You may wish to telephone us regarding the designated development which concerns you.

The Legal Aid Commission funds public interest environmental litigation where the means of the applicant to litigate are inadequate, where significant areas of the environment are at stake, and where important legal issues would not be raised without a grant of aid. In general, the Commission will not fund disputes where private interests or property questions are raised. The Commission is often unwilling to grant aid where another party (for example the local council, or a commercial competitor of the developer) objects to the development, has the resources to fight the case and is likely to express the views of the applicant for aid. The EDO can assist in preparing applications for grants of legal aid.

REPORT by NICOLA PAIN
on
THE CENTRE FOR INTERNATIONAL ENVIRONMENTAL LAW

to the EDO Board Members

The activities undertaken by me in my six months absence are detailed below.

I spent September to December 1990 in Washington DC at the newly established office of the Centre for International Environmental Law. A major activity in that period was assisting Durwood Zaelke, the director, with teaching at the American University in the subject International Environmental Law. This involved preparation of course material and giving lectures on some aspects of the course. I also helped in drafting class exercises, arranging guest speakers and joint teaching with Durwood. The other main activities I was involved in included:-

- advising a Japanese anti-nuclear group about possible actions under US law based on the concept of extra-territorial application of the National Environmental Policy Act. When I attended Japan for the COLAP II preparatory conference I was invited to in November last year I also visited the group who was opposed to a US Air Force Base to the south of Tokyo.
- I assisted in the preparation for a conference held on Freedom for the Seas held in Hawaii. This conference looked at the whole area of international law in relation to freedom of the seas with a view to proposing a new model. Greenpeace US hosted the conference and will prepare a book of the papers.
- I also started to work on a legal opinion for Greenpeace International about various aspects of legal aspects relating to international law and the transport of nuclear material through the Carribean region. This advice became a reasonably major piece of work involving research into freedom of the seas, international and nuclear and regional environmental law. The advice took most of the six months.

January 1991 I spent at the CIEL office in London. I worked on projects relating to "access to justice" in the EEC. The EEC is proposing some interesting developments in the environmental area. For example, in May 1990, it was proposed that a European Environment Protection Agency be established. This will initially have a monitoring role only but it is expected that in a couple of years there will be some enforcement powers given to that body. Allied to this is a perception by some of the staff in the European Commission that there is a need for greater access by citizens of EEC countries to EEC tribunals. This is already provided for to some extent under EEC laws whereby citizens of member countries can take petitions to EEC tribunals. Access to justice includes issues such as standing and resourcing of citizens to take action at the European court level on environmental issues.

I was also invited to attend a task force of the European Science Foundation which is looking at legal and institutional policy instruments in the environmental field in the European community. As well as being held in Berlin (a fascinating city) the task force itself was (and is) interesting as it consists largely of policy and social analysts. I have now been asked to prepare one paper

which will become part of a book the European Science Foundation will publish.

In February I returned to CIEL in Washington partly to observe the international negotiating committee on the Global Convention for Climate Change holding its first drafting session in Washington in February. This was a most interesting and sobering exercise as the bulk of the two weeks was spent in exclusively procedural issues rather than any substantive matters. CIEL was involved in two ways in the conference. CIEL London was assisting small island states to participate in the process and did this by holding a conference for two days prior to the negotiating session to assist small island state delegates understand the legal and scientific issues involved in the climate change issue and providing the delegates with legal issue papers to assist them in understanding and promoting better convention provisions. CIEL Washington was working with the NGO community to assist them in participating in the process.

I worked on three research papers while away.

(1) The first was on the United Nations Conference for Environment and Development to be held in Brazil in 1992. This paper has now been finalised jointly with Tony Simpson who has also become involved in the process because of his interest in human and indigenous people's rights.

(2) There is increasing discussion of the connections between international human rights law and environmental law. I started preparing a paper on this topic which was presented by me at Ecopolitics at the University of New South Wales in April 1991. I am also coauthoring a paper on this topic with Robert McCorquodale, lecturer in human rights law at the University of Cambridge.

(3) In addition, the whole question of the difficulty of enforcing international environmental law has interested me and other environmental lawyers (traditionally international law is enforceable only by states and that is often done reluctantly). I have therefore been researching a discussion paper on the different options for enforcement of international environmental law and hope to work with some overseas lawyers on this issue.

In late February I went to the University of Oregon. While in Oregon I participated in meetings relating to the establishment of the Environmental Law Alliance Worldwide (ELAW). At the Public Interest Law Conference held 7-10 March 1991 at the University of Oregon I convened a round table discussion on the 1992 United Nations Conference which was attended by about 40 people. A follow up on that conference will be a brief discussion paper on enforcement issues. I also spoke generally on development of international environmental law at the conference.

One of the main lessons learned in Oregon this year was the potential of electronic mail. EDO staff need to become trained in this medium as it appears a quick and wide-ranging method of receiving and sending information internationally.

April 4th, 1991

ENVIRONMENTAL LAW ALLIANCE WORLDWIDE

by Nicola Pain and James Johnson

Introduction

Environmental law has emerged as a new field in many nations. It will have significant national and international impacts. Public interest lawyers representing grassroots citizen groups on environmental issues are a major force for positive change in many countries and internationally, but such lawyers and lay advocates face formidable problems.

An important way of overcoming these problems is through exchange of information, ideas, precedents, strategies and litigation support across national boundaries. When public interest lawyers working in one country are able to capitalise on the efforts and knowledge of public interest lawyers and experts in another country, their efforts stand a significantly higher chance of success.

To facilitate this exchange, a system of regional public interest law centres in various countries, has been establised, linked together as an alliance of public interest advocates. Each partner in the alliance is independently raising funds and all centres will be equal partners in the alliance.

Background

Legal systems in most countries traditionally address business and economic disputes. In recent years, however, a number of pioneering lawyers have filed "public interest" cases to press the complaints of ordinary citizens who are affected by environmental degradation. Those include villagers injured by toxic wastes, people who make a living by fishing in pollution-threatened waters, and indigenous peoples seeking to validate rights to historic homelands.

Issues of concern include proposed pulp mills that would release large amounts of toxic substances and cause extensive deforestation, mining projects that fail to consider sensitive environments, and massive pesticide spraying that poisons humans and the environment. Many of these problems have both national and international dimensions.

Of course, changing or enforcing laws are only part of the solution to environmental problems. Grassroots organising by citizens seeking to promote policy changes is fundamental. Law and lawsuits can play a critical role in assisting political campaigns aimed at policy changes by holding institutions and governments to their stated commitments. Furthermore, environmental law actions clarify issues that must be addressed by policy makers.

Finally, environmental law lends added weight to other citizen efforts. Non-government organisations and individual citizens in country after country are turning to environmental law to focus necessary attention on environmental problems.

Public interest environmental lawyers also work on law reform and policy issues. Obtaining information on overseas environmental law models, institutes and experience is essential. For example there are current proposals to establish an Environmental Protection Authority in New South Wales and at the Commonwealth level. Information on the US EPA has been useful in formulating responses to current proposals in Australia.

The odds that environmental lawyers face in litigation are daunting. The companies and institutions involved are often multinational in scope, and have access to significant international resources. By contrast, grassroots environmental lawyers are often isolated and must work largely on their own. They have few means of identifying colleagues in other countries who have dealt with similar problems or who have access to pertinent scientific and legal information. Issues that may have been addressed in other legal cases, in regulations of governments, or in scientific studies elsewhere may go unnoticed. The public interest lawyer in each country often must "reinvent the wheel."

Creation of ELAW

The ideas which have led to the establishment of ELAW emerged during discussions between many public interest lawyers attending the annual Public Law Conference held at the University of Oregon in 1989. The initial group of lawyers included several from Australia such as Professor Ben Boer from Macquarie University, Brian Preston of the Sydney bar and solicitors from the EDO. The proposal was developed by Professors John Bonine and Mike Axline, Co-directors of the Western Environmental Law Clinic, and submitted successfully to the W. Alton Jones Foundation in 1990. The Foundation has agreed to pay $US500,000 over three years to assist in the establishment of an ELAW-USA office and overseas offices. The ELAW-US office has started in Eugene and has four staff, a lawyer, scientist, administrator and development director. The first round of funding applications have been received from overseas offices including the Australian office of ELAW.

E-LAW Offices

An essential aim of ELAW is to develop a network of independent E-LAW offices in various parts of the world. Each independent centre will:

- maintain worldwide communications (via FAX machines, computers with access to electronic mail, and so forth);
- provide a central clearinghouse within its region or sub-region;
- maintain files on and contacts with experts on various scientific and technical issues;
- disseminate useful precedents; and
- help train and "mentor" advocates willing to work on behalf of public interest concerns.

Each centre will also maintain directories of public interest lawyers and local experts willing to lend assistance on environmental matters. The ultimate objective is to establish a centre in each country or sub-region of every region of the world. Each centre will have staff skilled in obtaining information (directly or through other centres) from public interest groups in the U.S. and Europe, from legal databases (Westlaw and Lexis), from scientific databases (such as Medline and Toxline), and from the conservation movement.

In addition to direct litigation support, each centre will also sponsor exchange visits among public interest lawyers, seminars and training, a system of reverse-charges or limited calling-card privileges to the U.S. and Europe for developing country public interest advocates and travel funds for expert witnesses.

A regional E-LAW office has been established in the United States pursuant to a grant from the W. Alton Jones Foundation. This office has employed a full time staff attorney and a staff scientist and is already providing valuable support to less well resourced offices.

A regional E-LAW office in Australia is being established to compliment the regional and sub-regional centres in various parts of the world. Initially, the E-LAW office is based at the Environmental Defender's Office in Sydney. The framework for such a centre has been implemented with the incorporation of E-LAW Australia Inc. and electronic mail and conferences are read regularly on a voluntary basis.

A major benefit of such a centre in Australia is that it will have direct access to a great deal of helpful information that already exists in North America, with its 20-year tradition of public interest environmental law and immense legal and scientific resources. Similar resources exist in Europe and Japan.

International E-LAW Assistance

Some preliminary efforts at international alliances between public interest attorneys have already produced remarkable results. For example:

Australia - U.S.A. - Canada - Indonesia

Local citizen groups, attorneys and members of parliament in Australia challenged the adequacy of the environmental impact statement for the largest pulp mill project ever proposed in the world. The hard work of local citizen groups and international experts ultimately led to postponement of the project. An important component of that result was the cooperative effort of attorneys and experts (including drafters of this proposal) in Tasmania, the United States, and Canada, to provide regulatory and scientific information from North America and Europe with respect to pulp mills. Greenpeace scientist Renate Kroesa of Canada concluded that this international cooperation "shifted the tide."

The standards ultimately imposed by the Australian government were among the most stringent in the world. The Oregon clinic is now providing information to lawyers in Indonesia and the Soviet Union concerned with pulp mill pollution issues in those countries.

National Public Interest Offices

The E-LAW system of support centres will build upon successful efforts that have been undertaken at the regional or national level in countries in both the Northern and Southern Hemisphere. Some examples follow.

Malaysia

The first public interest environmental law firm in East Asia was established in 1983 under the auspices of the Consumer Association of Penang in Malaysia. In the years since then, the three lawyers in this firm (including co-proposer Meenakshi Raman) have engaged in numerous

pioneering lawsuits, training of law students, and publication of articles, studies, and books. The Third World Lawyers Network in Penang, Malaysia, is an outgrowth of these efforts.

Chile

Since 1983, three lawyers working from their personal offices and without any institutional support, have been using environmental provisions of their country's constitution to challenge environmentally harmful actions by government and industry. In very difficult conditions, due to the military dictatorship that ruled Chile from 1973 until 1990, they have succeeded in taking cases before the Supreme Court, representing community organisations. The cases ranged from opposing the draining of a lake inside a National Park (Lake Chungara) to asking for a stop to the discharge of hazardous wastes by the state-owned mining company (Chanaral).

Even though Chile follows the "Civil Law" system, the judicial decisions on these environmental cases have already had great national impact, promoting environmental awareness and the formation of many regional and local community groups around environment and development issues.

Sri Lanka

The Environmental Foundation Ltd. (EFL) was established in 1981 and became the first of its kind anywhere in the developing world. EFL was incorporated as a public corporation by concerned law students and scientists. Today EFL employs full time professional staff of two attorneys and two scientists. It is headed by Lalanath de Silva (a Duggan and Hubert Humphrey Fellow), and promotes policy change, brings lawsuits, and educates citizens and environmental groups. EFL works with public interest environmental lawyers in Pakistan, India, Nepal, and Bangladesh. EFL also operates an environmental legal aid clinic through which poor litigants are given access to justice.

Peru

In 1986 a group of lawyers and law students from La Catolica University formed the first public interest environmental law office in Peru. This office, the Peruvian Environmental Law Society (SPDA) has succeeded in several environmental law projects with mostly volunteer work. For example, the SPDA stopped the construction of a road that was to cut across the Huascaran National Park, compiled 2000 environmental laws and regulations following the methodology provided by the United Nations Environment Programme (UNEP), and is presently advising the Committee of Ecology and Natural Resources of the Peruvian Government.

SPDA is serving as a mediator in the conflict between the U.S. company Southern Peru Copper Corporation and the people of the city of Ilo. Litigation, lobbying, research and training in the area of environmental law are currently the main activities of SPDA.

Ecuador

CORDAVI (Corporacion de Defensa de la Vida) is the first public interest law firm in Ecuador. Blazing new trails in environmental law in that country the two staff lawyers at CORDAVI have filed a legal petition in the Constitutional Court of Ecuador, asking that destructive oil exploration and development not be permitted inside the country's Amazonian national park (Yasuni), traditional homeland of the Huarani Indians. They are using provisions of the Ecuadorian Constitution that guarantee citizens environmental rights, as well as the country's Forestry Law.

CORDAVI, which was formed in 1988, is also working on World Bank issues with lawyers in the U.S. and other developing countries, in pollution-control issues in Ecuador, in analysis of the country's forestry and environmental laws and in organising seminars for other environmental lawyers in South America.

U.S.A.

For over a decade, the Western Natural Resources Law Clinic has advised less-experienced attorneys in the Western U.S. who want to initiate public interest environmental litigation. The Clinic provides information, names of experts, and advice, and generally acts as a sounding board and brain trust for such litigation. It publishes an annual Directory of Public Interest Lawyers (including over 200 participants) who are willing to help each other and serve citizen groups.

Australia

The major public interest environmental law offices in Australia are the Environmental Defender's Office (EDO) in Sydney and the expanding network of EDOs in Melbourne and Brisbane. EDOs were established in Sydney in 1984, in Brisbane (part-time) in 1989 and Melbourne in 1991. In Sydney the EDO is assisted by private lawyers volunteering substantial time to citizen environmental law efforts in Australia as well. In addition to litigating for clients on national, regional, and local issues in Australia itself EDO staff in Sydney are advising indigenous people in Papua New Guinea and the South Pacific whose environment is being degraded by mining and unsustainable forestry practices.

Summary of Proposal

The public interest lawyers and scientists engaged in the projects outlined have substantially and positively contributed to protection of environmental health and diversity. The "critical mass" for engaging in litigation support work, research, training, and assisting of public interest environmental lawyers is in place. The establishment of support centres in the United States, Asia, South America, Europe, Africa, and Australia, are the logical next steps.

The response from a wide variety of grassroots public interest environmental lawyers, in both Australia and abroad, has been overwhelmingly and uniformly enthusiastic. The common reactions have been:

(1) this is vitally important; and
(2) no one is filling this niche in the public interest movement at present

When fully developed the centre in Australia will have professional legal and scientific staff, office space and equipment, funding for telephone and computer database time, and travel funds. This centre will make it possible for public interest environmental law advocates in Australia to work with others around the world through personal contacts and to provide legal and scientific information, support, and training.

For further information about ELAW or offers of assistance in Australia please contact the EDO in Sydney.

THE EMERGENCE OF INTERNATIONAL ENVIRONMENTAL LAW

Nicola Pain, Solicitor, Environmental Defenders Office

The threat to the global environment has become a major issue of concern to the public and, consequently, governments in many countries over the last decade. At the international level the environmental problems caused are often transboundary. In addition areas of the globe such as the high seas and atmosphere are heavily polluted by many countries.

Poverty has been identified as one of the major causes of environmental degradation. Many indigenous peoples in developing countries are terribly aware of the impacts of environmental harm on their environment. Populations in developing countries living in heavily polluted environments are also aware of the harm being caused to their environment.

Transboudary Effects

International concern about the environment has led to a consideration of how international law is coping with environmental protection. Discussion about the need for international regulation of the environment has been prompted by transboundary impacts caused by disasters such as the nuclear accident at Chernobyl in 1987, the chemical accident at Bhopal in India and oil pollution by the Exxon Valdez. The problems presented by global warming, such as climate change, are also causing concern throughout the world and there is now interest in developing mechanisms to deal with this.

Protecting the Global Commons

The atmosphere, deep seas, space and Antarctica are described as global commons areas. These areas pose particular challenges for international law as no one nation can lay claim to them. Their use has been regulated by agreement amongst various nations in some cases. Because these areas cannot be claimed by one nation they are even more open to exploitation by any nation or nations. Driftnetting and pollution of the high seas is but one example of this problem.

Their regulation is even more problematic because no one nation has responsibility for these areas and the benefits are often claimed by many countries.

The Piecemeal Development of International Environmental Law

Legal measures to protect the environment have tended to develop in national legal systems rather than at the international level until recently. The field of international environmental law is growing in a piecemeal fashion. Books on public international law written ten or more years ago are unlikely to have any references to international environmental law. This field has, by and large, emerged or been identified as a separate area of international public law since the mid 1980s.

There were a few earlier instruments concerned with the environment, such as the 1940 Western Hemisphere Convention on the Protection of Nature. Environmental issues were not of major concern to the international community until this decade however. In the 1980s there has been on-going debate about economic development and its relationship to the environment. Initially the two were regarded as incompatible. There is now a greater acceptance of their compatability and indeed of the necessity to see them as inseparable. Linking environment and development objectives is particularly vexed for developing countries who see the need to pursue development objectives if they are ever to "catch-up" to the living standards of developed western countries.

There are a few global conventions in the environmental area. Global conventions are being considered now which aim to preserve bio-diversity, reduce de-forestation and deal with global warming. There is no global environmental protection convention. One has been proposed by the Legal Expert Group of the World Commission on Environment & Development but this is more likely to be used for discussion purposes than as a convention or treaty to be adopted in total by the United Nations. It is presently being used as the basis for a draft convention being prepared by the International Union for the Conservation of Nature on sustainable development.

The number of regional bi-lateral and multi-lateral instruments which could be described as environmental is considerable. The 1989 UNEP Bibliography of environmental law numbers these at over 140. Perusing these documents demonstrates their fragmented subject matter. The instruments address specific issues such as the preservation of areas or items of international importance or particular global environmental issues such as marine pollution.

The Stockholm Conference

The Stockholm Declaration of 1972 could be regarded as the starting point of modern international environmental law.

The first major international conference on the environment, the UN Conference on the Human Environment, was held in Stockholm in 1972. That conference gave rise to the Stockholm Declaration. Representatives from 113 States attended the Conference and adopted the Declaration and an Action Plan. The Plan contained 109 recommendations for environmental action at the international level. One of the major initiatives which followed the conference was the establishment of the United Nations Environment Programme (UNEP): the UN Agency charged with the responsibility for international environmental action. Principle 21 of the Stockholm Declaration provides that nations have the right to exploit their own natural resources provided that there is no harm caused to other states.

This is considered by some commentators to be the basis for a principle of international law that states owe a duty to other states not to cause damage because of their activities. This is the basis of an argument, for example, that states should not cause transboundary pollution which affects other states.

The Nairobi Conference and the World Charter for Nature

The next major international conference on the environment was convened in Nairobi in 1982. That conference reviewed the progress made on the Action Plan agreed at Stockholm and concluded that more action could have been implemented. To summarise, there had been lots of talk but not enough action. Also in that year

the UN General Assembly proclaimed the World Charter for Nature with 111 votes in favour and one against (US). The Charter reaffirmed important elements in the Stockholm Declaration. It is also based on certain fundamental principles laid down in the World Conservation Strategy published by International Union for the Conservation of Nature (IUCN) in 1980 in co-operation with UNEP, World Wildlife Fund (WWF), FAO and UNESCO. It was this document which introduced at the international level the concept of "sustainable development".

The Brundtland and UNEP Reports

The World Commission on Environment and Development (WCED) was established in 1983 with the Prime Minister of Norway, Gro Harlem Bruntland as Chairperson. The WCED published a report of its studies and findings in 1987, known as the "Brundtland Report".

The concept of sustainable development is one of the essential elements of the principles enunciated in the Brundtland Report . The Report "Our Common Future" was published in 1987 and has been the catalyst for much discussion and some action on the issue of achieving sustainable development throughout the world.

In 1987, the UNEP Governing Council adopted a report "Environmental Perspective to the Year 2000 and Beyond" which furthered international debate on ecologically sustainable development.

In General Assembly Resolutions in 1987 the main principles contained in the Brundtland and UNEP reports were endorsed by the UN General Assembly.

Brundtland and Beyond

In the recent publication by the Centre for Our Common Future "Signs of Hope" the steps taken by governments around the world towards some of the goals identified in the Brundtland report are reviewed. Several governments such as Australia, the Netherlands, Canada and Norway have produced reports or legislation aimed at reviewing and implementing the concept of sustainable development. The book identifies an example of international co-operation which has taken place in recent times as the measures taken to stop depletion of the ozone layer. It is widely concluded that these measures are insufficient. Other areas where initial steps are being taken to implement international measures include global warming, the transport of hazardous waste and the control of pollution..

There is no doubt that the Brundtland Report has been immensely valuable in providing a catalyst for discussion and some action. It is also clear that a great deal more positive action is required to reverse the global problems identified in the report. One of the key issues which has yet to be addressed in any significant way is the relationship between poverty, the international debt regime, the lack of economic growth in developing countries and degradation of the environment.

Of importance to Australia is the increasing development of regional environmental treaties. One example of this is the recently signed South Pacific Regional Environmental Protection Convention and the APIA Convention. There is now greater interest in dealing with regional environmental problems. One example of good co-operation in the region was the banning of drift-netting in the Tarawa Declaration which New Zealand and other countries were particularly anxious to have passed into international law in the region. These efforts have led in turn to a sharp decrease in drift-netting and a recent decision by Japan to phase it out entirely in the region.

Emerging Principles

With the development of international environmental law as a new field of public international law there are emerging principles which are appropriate for protection of the environment.

One of these principles is known as the precautionary principle. This is the approach being suggested by small island states and NGOs such as Greenpeace International in relation to the Climate Change Convention. The basis of the precautionary principle is that it is worthwhile taking precautions even where there is not absolute scientific certainty about a particular outcome on the basis that the risks of not taking precautionary action are so great as to justify them being taken. In relation to climate change issues, where there is not unanimity amongst scientists as to its scale and impact, there is a strong case to be made that a precautionary approach should be taken in the Convention process. If the usual approach is taken governments would not act until irreversible climate change trends were apparent.

Another principle which is increasingly referred to in multi-lateral and regional treaties and conventions is the "polluter pays" principle. This is obviously designed to ensure that at the international level those states which cause transboundary pollution and harmful impacts in other states are responsible for that effect.

Problems in Enforcing International Law

A crucial area in which public international law fails is in the area of enforcement of obligations imposed on governments under international law. If governments fail to act against a recalcitrant nation there are virtually no direct legal avenues open to non-governmental bodies or private citizens (whether individually or in groups) to seek enforcement of international law against a government. For example, Australia breaches daily the newly signed SPREP and Apia conventions by discharging mercury offshore.

Traditional international lawyers will say that public international law, while it continues as the law between nations rather than individuals, is enforceable by states alone. That is strictly correct in terms of present legal measures open to governments. Enforcement at the international level is often by way of coercion through economic sanctions, or ultimately the use of force, as much as by legal means. This clearly illustrates that political reality is an important component of international law and its enforcement. Some changes on the periphery have occurred with the increasing influence of NGOs such as Greenpeace but there are no international agencies devoted to environment protection. The European Parliament has proposed that an European Environmet Agency be established. The present proposal does not provide for any enforcement measures at this stage.

A further dimension which is providing major challenges to international legal development is the increasing complexity of the environmental problems faced on a global basis with not only transboundary pollution but also global warming leading to climate change.

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REFORMING THE FORESTRY ACT

David Mossop

Around one hundred people attended the EDO organised seminar entitled "Towards a New Forestry Act for New South Wales" which was held on March 16 at the Hallstrom Theatre of the Australian Museum in Sydney.

The subject of reforming the Forestry Act has been raised on several occasions, most notably in the papers by Peter Prineas [1] and by Ben Boer and Brian Preston [2]. More recently questions of reform were raised in the report of the Public Accounts Committee (PAC) of the New South Wales Parliament [3].

It was in the light of the proposals for reform outlined in the PAC's report that the seminar was organised. The issue of the legislative controls of forest resource use has become even more important with the announcement on 12 March by the Prime Minister that the government intends to introduce resource security legislation.

To give an overview of the seminar, rather than discuss in detail the points made by each of the speakers I will deal more generally with some of the important issues which emerged.

Objectives of Reform

Defining the overall objectives of reform is obviously an important process. The scope of this process is largely a result of the degree to which reform is to occur. If a new Forestry Act were to be introduced then it would be possible to ask fundamental questions at the design stage concerning the role of resource use and the relative roles that should be played by government, industry and citizens in the decision making process. If contemplating reforms to the existing Forestry Act it is possible to consider pushing the existing framework for resource management in one direction or another. It is this approach to forestry reform that the commentators mentioned above have adopted. Of the PAC reforms currently on the agenda, Phillip Smiles (Chairman of the PAC), assured those present that the Minister for Forests, Mr Gary West intends to implement 95% of the committees recommendations.

Given that detailed discussions of forestry reform to date have been limited to amending the current Act what are the forces that might lead to more wide ranging reform? Kevin Smith, (Conservation Director of the New Zealand Royal Forest and Bird Protection Society) provided details of the way it had occurred in New Zealand. The primary reforms that occurred in New Zealand occurred soon after the Lange government won office in 1985. The process of reform was only made possible because (1) the government had the political will for forestry reform and (2) reform was a relatively rapid process so that it did not get bogged down in what he referred to as "bureaucratic porridge".

Tensions between "wet" and "dry"

If forestry reform is to be limited to amending the existing Act then in the current environment tensions will arise between "wet" and "dry" elements in the reform proposals.

One of the most important issues to be addressed in any approach to the Forestry Act is the question of forestry on private land. From the point of view of the Forestry Commission the question of controls on private forestry is important. The Commissioner of the Forestry Commission, Hans Drielsma, argued that it was unreasonable to impose environmental constraints on the Commission when private foresters are not subject to them. In terms of the expectations placed on the Commission the goals that are set by, for example, the PAC aims to combine public sector environmental protections with private sector performance.

This is a point which was raised by Peter Prineas, (former Director of the National Parks Association and now private secretary to Ted Mack). He drew attention to the awkward mix of "wet" and "dry" economic proposals in the PAC report. One of the elements of the report was the thrust towards full corporatisation of the commercial activities of the commission.[4] and the removal of those sections of the Forestry Act that are not compatible with full corporatisation.[5] This would allow the Commission to become a state owned corporation under the State Owned Corporations Act 1989.Under this Act the primary goals of a state owned corporation are contained in section 8. This section reads

8. The principal objective of every State owned corporation is to be a successful business and, to this end:
(a) to operate at least as efficiently as any comparable businesses; and
(b) to maximise the net worth of the State's investment in the corporation; and
(c) to exhibit a sense of social responsibility by having regard to the interests of the community in which it operates and by *endeavouring to accommodate these when able to do so.*

With such objectives it is clear that environmental considerations will come (at best) a poor second if the Forestry Commission is brought within the scope of this Act. Another notable feature of the application of the Act to a body such as the Forestry Commission is the exclusion from the provisions of the Freedom of Information Act 1989 that applies to all State owned corporations [6]. The requirements for reporting to Parliament contained in sections 25 to 28 of the Act in no way compensate for this loss of the general right to information.

On the other hand many of the recommendations relate to the improvement of the environmental performance of the Commission.[7] It is difficult to see how these two directions of reform can sit together in a reformed Commission. To many people the directions of reform are mutually exclusive. One pressure for reform that the Committee recognised was the need to make the Commission more environmentally accountable. The other pressure was from those with a "fundamentalist economic rationalist agenda" which provided the thrust towards corporatisation. As Prineas pointed out, it may be difficult to be both "wet" and "dry" at the same time.

Land allocation or land management?

The distinction between land allocation and land management is not merely a question of semantics. The categorisation of forestry decisions as either land allocation or management decisions will have important implications in deciding what decision making structures are desirable within the Forestry Act.

Both Hans Drielsma (Commissioner, NSW Forestry Commission) and Colin Dorber (Manager, New South Wales Forest Product Association) contended that the

conflicts over forestry were questions of land allocation that should be resolved at the political level. They argued that forestry decisions over forestry were questions of values and that if the values of society had moved beyond those of foresters then it was at the governmental level rather than at the industry or Commission level that these should be addressed. The implication of this is that the Forestry Act should not contain "political" decision making structures. Rather, the Forestry Act should deal with the professional activities of the Commission which implement political decisions made elsewhere.

Although Geoff Angel (Assistant Director, Total Environment Centre) agreed with the point in so far as forestry decisions were land allocation decisions, he saw that in the decision making process the Commission as a power structure was a strong political player. He argued that it had become an organisation involved in a political struggle, driven by a siege mentality rather than being "generous in spirit and open to public participation".

In contrast to all these approaches Harry Recher (Associate Professor, Department of Ecosysytem Management, University of New England) took a broader view. He argued that the current debate was not over land use allocation because it was possible to harvest timber and protect the environment. From his point of view the questions are much broader. They are national or global and extend far beyond the scope of the Forestry Act. More than simply a question of land allocation within the current regime of resource use, a complete review of all land management legislation is required, including those that govern national parks. The aim of such a review would be to ensure that forests are managed as whole ecosystems and that the result of management is to maintain ecosystem and biological diversity. In response to this Hans Drielsma suggested that this approach would lead to "dividing the world in half", one to be preserved and the other to be exploited. The result would be that the resources to be exploited would suffer because that exploitation would be more intense.

While the forestry issue is clearly a land allocation argument, to restrict it to such is to define the problem too narrowly. To accept that it is a land allocation process only, as Hans Drielsma seemed to do, is to accept as given the current regime of resource use. According to this approach the question is then where to find that resource. This is then a question of land allocation. However, many of the difficulties of forestry are rooted in broader resource use and management questions. For example one of the most pressing forestry issues is that of the extraction of timber for export as woodchips or as wood pulp from Australia. Woodchip exports are currently at least 5.5 million tonnes per annum. The land management question is whether or not Australian old growth or regrowth forests should be subject to such large scale extraction of timber for export in such a form. The land allocation decision accepts that such large scale extraction will occur and restricts debate to what areas of forest should be excluded from harvesting. Clearly a more rational decision making process that reduces conflict over forestry issues will result only if reforms to the Forestry Act begin by providing a framework for decisions at the level of the broadest resource management questions.

Role of Government

Leading on from this, one might ask what the correct role for government is in this process. In the corporate model proposed by the PAC the government would play less of a role as market forces are more allowed to dominate the behaviour of the Commission. The case for government intervention, however, was argued by both Colin Dorber and Jeff Angel. Dorber stated that eucalypt plantation forestry would not be economically viable because financial institutions were not willing to invest in a product that will take decades to produce a return. Consequently he proposed that the government should provide the funding for the development of eucalypt plantations. Coming from a different perspective Jeff Angel also advocated government intervention because government agencies have the power to plan for the industry rather than simply being subject to the demands made on it for access to resources.

During discussion Allan Stewart (Assessor, Land and Environment Court) made the point that the essential difficulty in a long term activity such as forestry is the conflict between economic and ecological time scales. The interaction of the two is seen in bioeconomic modelling. In many cases the value of economic returns in the future are so discounted by those making investment decisions that it makes economic sense to manage resources in an unsustainable manner. In this light one must question whether a "market forces" approach is a suitable one if ecologically sustainable development is an objective.

Looking to the Future?

In the face of criticism of the record of both forest industries and the Forestry Commission both Colin Dorber and Hans Drielsma were adamant that they wished to look to the future not that past. From Hans Drielsma's perspective this may have been because he has only been in his current position since June 1990 when he replaced Wal Gentle. Colin Dorber on the other hand thought there was "too much time spent blaming our forefathers" for their actions when all they were doing was what they thought was right at the time. While both of these points are valid to an extent, they cannot provide a basis for ignoring past practices when making policy decisions that will affect the future given that this would only leave current statements of intent to guide decision makers.

While, of course, one can hope to be justified in looking only to the future on the basis that forest management has undergone a decisive change there is little evidence to suggest that this is so. A substantially reformed Forestry Act that reflected the primacy of ecologically based management would be an important step in changing the current patterns of forest resource use. Unfortunately, without such reform, we will be justified in looking to the past in order to predict the direction of forest management in the future.

The papers presented at the seminar are available from the EDO.

Notes

1 Prineas, P. (1985) The NSW Forestry Act - A review with some suggestions for reform, Total Environment Centre, Sydney.
2 Boer, B. & Preston, B. (1987) Forestry - Reform and Regeneration, 4 EPLJ 80
3 Public Accounts Committee (1990) Report on the Forestry Commission, Report Number 52 Parliament of New South Wales, Sydney
4 ibid, recommendations 63 and 64
5 ibid, recommendation 69
6 s. 39 of the Act adds State owned corporations to the list of exempt bodies in schedule 2 of the Freedom of Information Act 1989
7 ibid, note 3, recommendations 71 - 5

MARY O'BRIEN IN AUSTRALIA

Mary O'Brien is staff scientist for the Environmental Law Alliance Worldwide (E-LAW) US office. (For information about E-LAW please see the accompanying article). Mary has been brought to Australia by Greenpeace for three weeks. The EDO was fortunate to be able to host an afternoon forum addressed by her on 24 May 1991.

Mary received a PhD in botany in 1982. She served as staff scientist of the Northwest Coalition for Alternatives to Pesticides from 1982 to 1990. This organisation sprang up in response to the use of Agent Orange on the forests of West Oregon after it had been banned in Vietnam. She has worked with diverse agencies to develop policy for alternatives to toxic chemicals including work with the Oregon Department of Environmental Quality on ground water regulation and the US Forest Service in Oregon and Washington on vegetation management policy. She is currently working to encourage the US EPA and the Oregon Department of Environmental Quality to phase out the use of chlorine in the pulp and paper industry.

Mary specialises in helping citizens challenge environmental management based on risk assessment. She describes this as a political process that is used predominantly to legitimise toxic chemical discharges and other environmentally degrading practices. Other specialities include translation of scientific material into terms understandable by "lay" people and development of environmentally sustainable policy alternatives.

At her EDO seminar Mary discussed the current approaches to pollution control and raised three basic flaws:

1. The approaches follow the "assimilative capacity" approach.
2. The approaches use risk assessment.
3. The approaches are aimed towards "end of pipe" solutions.

The properties of compounds known as organo-chlorines (carbon-chorine compounds) can be used to show that the above three flaws are fatal to the approach we use now because of the long term environmental degradation and toxicity necessarily resulting from this approach.

Risk Assessment

One example of risk assessment is the process undergone when answering the question: How much of each carcinogenic pesticide will be allowed in food?

Risk assessment methodology is transparent in the United States. In the USA, assessment of chemicals is conducted using quite involved models.

These assessments are also done in Australia in a much more secretive way. The NH&MRC sets levels based primarily on documents which are not available to the general public. The body itself is not responsible to Parliament. It is the EDO's opinion that this is an untenable situation which must change.

There are several major flaws in the current process of risk assessment. The assessment is done one chemical at a time, with no allowance for the synergistic effects of chemicals from other sources or from the mixture that is ultimately sold as a product.

Only one source of the chemical is examined. While an apple a day may cause a person to be exposed to a "safe" level of a chemical, if that chemical is also found on pears or in cockroach sprays, then the level of exposure may be well in excess of the "safe" level and the risk calculations are meaningless.

Risk assessment often looks at only one end point. For example, what is the risk of cancer caused by exposure to a particular chemical? There may be numerous other results of exposure to chemicals, including birth defects, nerve damage, and effects on the immune system, which usually have not even been investigated.

Often a risk assessment is not done looking at birth defects as the end point. An argument sometimes given is that not all people are reproducing. This argument fails to recognise that we are all reproduced. In many studies only the chemical exposure of females is used to examine the effect on offspring, but male exposure to chemicals can have an effect too and it is dangerous to split genders in any studies or assessment of risk.

Of the many effects that organo-chlorines may have, perhaps the most complicated is the effect on the immune system. Risk assessments are essentially never done on the effect on the immune system. This is probably because there is no organ called "the immune" which can be readily studied.

Lastly, risk assessment is based on results extrapolated from animals. They are directed towards only one species as the subject of concern, generally humans.

Conclusion

The conclusion to be drawn is that quantitative risk assessment is not scientific. It is not scientific to look at one chemical at a time, to look at only cancers when skin defects and birth defects may also occur in greater numbers or to assume that the source of the chemical being assessed is the only source. Mary sees risk assessment as an attempt by those with vested interests to delay and avoid decisions and to protect themselves from the impact of decisions. Industry loves playing with the numbers and will change the numbers rather than change their practices. If one in one million will contract cancer, then the regulatory level will be made to be one in one hundred thousand. The insidious nature of risk assessment is that while it is not scientific, guesses look just like science when expressed as numbers.

False assumptions are made about average exposures to chemicals. For example, the average consumption of fish might well be 6.5 grams per day per person. However some people don't eat fish at all, some people, including fishermen might eat fish every day. Certainly other animals at the top of the food chain, for example bald eagles eat fish all the time and can't have an average level ascribed to them.

It is a fact that in many places in America bald eagles are not reproducing. Their eggshells are so thin they are cracking under their parents before they are ready to hatch. There is also embryo toxicity. If there is too much chemical stress already in the environment why attempt to use risk assessment to say how much extra you can discharge of another chemical?

Mary was so critical of the risk assessment method that she said risk assessment can be equated with pre-meditated murder. The only difference is that the victim is anonymous. If an "acceptable" risk is one cancer in ten thousand people, would it be acceptable if the **names** of those people who would get cancer were known and published upon release of the chemical?

Mary uses the analogy of a woman standing at the edge of a river to illustrate the futility of risk assessment. Behind the woman are a group of risk assessment experts. The experts are giving advice saying that the river is cold but not poisonous; rivers of this type are usually only four feet deep; it will probably be of even depth and there is only a small chance that there will be any potholes; the average woman isn't already hypothermic and to go ahead and cross the river. But the woman refuses to cross, **despite** the risk assessment, because she says there is a bridge upstream.

Organo-Chlorines

The case of organo-chlorines cast severe doubt on the end of pipe method of pollution control. Every atom of chlorine going into a mill has to come out either in the pulp, the sludge, the air or the water. Burning the chlorine-containing paper results in dioxin. Eating from paper containers which have been chlorine bleached results in organo-chlorines passing directly to humans. Using sludge as fertiliser means that the organo-chlorines are re-introduced directly into the food chain. PCBs (poly-chlorinated bi-phenols), some of which act just like pulpmill dioxins, have been dumped into our seas and all marine mammals now have these chemicals in their fats. In fact throughout the world in every person human-made organo-chlorines, such as furons and PCBs, are slowly releasing into the bloodstream.

You cannot get rid of organo-chlorines. They come full circle. The end of pipe approach to pollution control means the organo chlorines are discharged in one place rather than another. Ultimately we need to stop using chlorine, paper, pesticides and plastics and someday we will be able to replace chlorine in drinking water.

The chlorine in paper mills is often justified by the cry that the consumers are demanding "bright" paper. This naive line can't be believed because no survey has been done giving the consumer the choice between the level of white which can then be achieved without chlorine bleaching and putting poisonous chemicals into the environment which will never go away.

The Precautionary Principle

The "precautionary principle" is an approach advocated by many scientists concerned by current attitudes to disposal of waste. It can be paraphrased as: if there may be a problem, don't discharge it. Industry should therefore be looking at and be made to look at alternative technology rather than producing organo-chlorine chemicals. There are dozens of mills around the world not using chlorine in the production of paper. Why use risk assessment to justify levels of organo-chlorines when you can do away with them?

Mary has prepared a dynamic paper explaining the above in full, giving useful references. The paper is available through the EDO.

"Environmental Law and Human Rights in the Philippines"

A **Seminar with Solema Jubilan**, Human Rights Lawyer from Mindanao was held on Friday 21 June at the EDO. Sol has been a human rights lawyer in Mindanao for 10 years, and, according to Amnesty International has received death threats as a result of her work. Despite this, she, continues to handle cases for the poor, oppressed and victims of human rights violations.

Her clients range from tribal people trying to protect their land from mining to evacuees driven from their homes by military action. Payment is often in kind - Sol drives a car which plays a cuckoo waltz every time she touches the brakes. It was payment for four years' work for a group of teachers.

Sol is also Regional Chairperson for Mindanao-Protestant Lawyers League (PLL); Deputy Co-ordinator for her region of the Free Legal Assistance Group (FLAG); and legal counsel for the Mindanao Peasant Forum.

Sol was brought to Sydney by Philippines Australia Legal Support Group.

PALS is arranging an exposure tour of the Philippines for interested legal workers in December 1991. Enquiries 283 3301.

A paper and tape of the Seminar can be ordered by phoning the EDO.

EDO is co-sponsoring a Seminar
"Human Rights and International Environmental Law"
Saturday 12 October 1991 at University of NSW

Phone EDO on (02) 261 3599 for the programme

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United Nations Conference on Environment & Development-A Conference on Trends, Developments and Potential.

28 September 1991, Sydney

The United Nations Conference on the Environment & Development (UNCED) will be held in June 1992 in Brazil. A major conference on the environment has been held every ten years by the United Nations since 1972. There are preparations taking place for the conference around the world amongst governmental and non-governmental organisations (NGOs). As UNCED is a significant event it is important to inform the public and environment and development NGOs about the conference. It is also important for the views of NGOs on the preparations in Australia for UNCED and what should be achieved through UNCED be made known. On 28 September 1991 a conference on UNCED and developments to date will be held in Sydney. Environment and Development NGOs are encouraged to attend and give their views. Please contact the EDO for more details.

EDO NEWS

South Pacific Environmental Law and Policy Training Programme

The Environmental Defender's Office is conducting an environmental law and policy training programme for NGOs in the South Pacific Region, commencing in 1991-92 in the Solomon Islands and Papua New Guinea. The Programme is funded by the Australian International Development and Assistance Bureau.

Many South Pacific countries face daunting environmental and development challenges. Problems include deforestation, insensitive mining and tourist development, rising sea-levels, species depletion, habitat loss and non-sustainable fishing and agricultural development.

Environmental protection laws can help achieve ecologically sustainable development if they are culturally appropriate, capable of practical enforcement, and have the support of increasingly ecologically aware Pacific Island communities.

Trainees will undertake a three-stage programme:

1. Local and National Environmental Law and Policy Survey.

   Trainees will have the opportunity to study existing laws and environmental practices in their home countries. Major problem areas will be identified. Particular interests (forestry, for example) can be pursued.

2. Comparative study and field-work in Australia.

   Trainees will spend three months in Australia, hosted by EDO Sydney. Trainees will increase their awareness of possible responses to environmental problems through a formal study program in the role of environmental law and through institutional and field studies of government agencies, regulatory authorities and environmental NGOs. The programme will allow trainees to research particular interests in addition to the core element.

3. Follow-up.

   EDO will fund and encourage trainees to development particular environmental law and policy initiatives at home upon completion of the Australian field study.

   The EDO invites friends interested in the project to contact David Robinson at the EDO, particularly with regard to planning and hospitality during the three month stay.

THE EMERGENCE OF INTERNATIONAL ENVIRONMENTAL LAW – continued

Nicola Pain, Solicitor, Environmental Defenders Office

Finding another field of law where the rights of individuals are taken into account as well as the rights and duties of states could be very helpful in developing environmental law. The field of international human rights law has possibilities. This has established structure and complaint procedures which provide a useful model at the international level.

To summarise, some of the reasons why existing international environmental law is limited in its ability to protect the environment are as follows. First, it is still developing and so there is no general agreement at the international level aimed at protection of the environment, secondly, it is enforceable in legal terms by states alone leaving no role for citizen enforcement, thirdly, not all the environment is "owned" by states so that areas of the global commons are left open to exploitation.

International Environmental Law in the Future

One impetus for greater consideration of international law and its role in protecting the environment is the next major United Nations conference on the environment which is being held in 1992 in Brazil, called the UN Conference on Environment and Development. The preparations for this conference are focussing the activities of international lawyers and conservation groups, as well as many governments on the instruments which exist at the international level for environmental protection.

As was noted above there is presently an international framework convention on climate change being negotiated. Because of the complex situation giving rise to this global problem, with impacts such as global warming leading to sea level rise likely to occur, the process of negotiating such a convention is unusually difficult. The aim is to have a convention ready for signature at the 1992 United Nations Conference on Environment and Development. The ability of the international community to deal with such complex environmental problems in legal instruments will be tested in this process.

Whether international environmental law can meet the challenge of protecting the global environment is an uncertain question. The outcome of the preparations for and the processes established by the United Nations Conference on Environment and Development will be a major signpost to the development of international environmental law in the 1990s.

July 1991

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Paper by Mary O'Brien, Staff Scientist for Environmental Law Alliance Worldwide, US Office, May 1991 $15.00

"Legal Organisation for Nonviolent Action"
Handbook by David Mossop, May 1991, 82pp $10.00

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Papers from EDO Endangered Species Legislation Seminar, 12 December 1990, 56pp $12.00

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