ANNEX 13

TO MINUTES OF THE SAO PAULO MEETING

LEGAL PRINCIPLES FOR ENVIRONMENTAL PROTECTION AND SUSTAINABLE DEVELOPMENT (WCED/85/24A)

and

RESOLVING ENVIRONMENTAL DISPUTES (WCED/85/24B)

WORLD COMMISSION ON ENVIRONMENT AND DEVELOPMENT

FOURTH MEETING
Sao Paulo, Brazil
25 October to 4 November 1985

WCED/85/24A

To: All Members of the World Commission on Environment and Development

From: Secretary General

Re: Discussion Paper on Legal Principles for Environmental Protection and Sustainable Development

At its Second Meeting (Jakarta, March 1985) the Commission approved the Proposed Programme of Work on International Co-operation (WCED/85/10), including work on (i) legal principles, (ii) modalities for avoiding and resolving environmental disputes, and (iii) multilateral conventions related to environment.

A small Experts Group on Environmental Law was formed to advise and assist on the preparation of a draft set of principles for consideration by the Commission. It met for two days in June at The Hague and agreed on a basic structure and initial list of principles. The lead author and Rapporteur, Dr. Johan Lammers, then prepared tentative drafts with explanatory notes for many of the proposed principles and these were circulated to the experts for comment by late August. Taking into account the comments and suggestions received, an expanded but still preliminary draft was sent for review to the experts in October.

This first Discussion Paper on "Legal Principles for Environmental Protection and Sustainable Development" presents a summary of the main guidelines and thrusts of the work to date on proposed global rights and obligations and those regarding transboundary natural resources and environmental interferences. First of all, however, three selected global issues with significant legal and political implications are presented briefly for discussion and guidance.

To ensure that the future work and report to the Commission addresses the major concerns of Members, five key questions are proposed in this report as a basis for discussion.

1. Three questions concern the selected issues, namely:

   (1) WHAT ARE THE VIEWS OF THE COMMISSION ON WHETHER AND HOW BEST TO ASSERT LEGAL PRINCIPLES TO PROTECT THE RIGHTS OF PRESENT AND FUTURE GENERATIONS AND THE COMMON INTERSTS OF THE COMMUNITY OF NATIONS ?

   (2) TO WHAT EXTENT, AND IN WHAT RESPECTS, SHOULD FUTURE WORK ON LEGAL PRINCIPLES ADDRESS THE RIGHT (SHARED BENEFITS) AND OBLIGATIONS (SHARED COSTS) OF ALL STATES CONCERNING GLOBAL COMMONS AND THE CONSERVATION OF SPECIES, ECOSYSTEMS AND ENVIRONMENTAL FUNCTIONS OF INTERNATIONAL SIGNIFICANCE?

   (3) TO WHAT EXTENT, AND IN WHAT RESPECTS, SHOULD FUTURE WORK DEAL WITH LEGAL OBLIGATIONS REGARDING ENVIRONMENT AND INTERNATIONAL TRADE AND INVESTMENT?

2. One question concerns rights and obligations of a global nature and regarding transboundary resources and environment, namely: ARE THERE OTHER MAJOR POINTS, RIGHTS OF OBLIGATIONS WHICH THE COMMISSION WANTS CONSIDERED IN FUTURE WORK?

3. The last question concerns the general guidelines for current and future work, namely: ARE THERE OTHER MAJOR GUIDELINES WHICH THE COMMISSION WANTS REFLECTED IN FUTURE WORK?

Action required: Discussion and Direction

October 7, 1985

WORLD COMMISSION ON ENVIRONMENT AND DEVELOPMENT

FOURTH MEETING
Sao Paulo, Brazil
25 October to 4 November 1985

WCED/85/24A

Discussion Paper on Legal Principles for Environmental Protection and Sustainable Development

I. SELECTED ISSUES

1. Three significant global issues are presented below, each with major legal and political implications. None is adequately covered by existing international law nor, as yet, in the evolving draft report. Salient points are presented briefly as a basis for the Commission to express its views on the extent to which, and in what respects, they should be considered in future work.

A. Global Rights of Present and Future Generations

2. The universal concern for the welfare of future generations has gradually evolved in international agreements and law since wars became global. The United Nations Charter, drafted fourty years ago in reaction to the devastation of the Second World War, begins "we the peoples of the United Nations, determined to save succeeding generations from the scourge of war ..."

3. The responsibility to conserve the planet's natural heritage for present and future generations was initially asserted in the 1972 Stockholm Conference Declaration. The first principle stated that "Man ... bear a solemn responsibility to protect and improve the environment for present and future generations", and the second principle declares that the "natural resources of the earth ... must be safeguarded for the benefit of present and future

generations". These environmental rights and obligations have been developed further in later declarations such as the resolution on the Historical Responsibility of States for the Preservation of Nature for Present and Future Generations (1981) and the World Charter for Nature (1982).

4. It is proposed to address these fundamental rights and obligations of present and future generations in the first three articles of the evolving draft report for the Commission. They warrant special attention because of their relationship to the primary mandate and objectives of the Commission for environmental protection and sustainable development to the year 2000 and beyond. However, while these rights and obligations have been increasingly stated and gradually gaining recognition at the international level, there are few possibilities under existing international law for asserting and protecting them.

5. One major question relates to the scope of those rights and obligations. While man has always been able to impact adversely on the environment, we now have the capacity to do so on a global scale and, because of increasing ecological and economic interdependencies, in many different ways. Do the rights and obligations of individuals and States extend only to their national environment, or are they global in scope ?

6. A related problem has been highlighted by Commissioner Okita over the past few years: that the aggregate of national environmental and resource management policies, even though all are formulated in accordance with national and international law, may not be sufficient to protect the global environment and the common interests of the community of nations. In the case of the common interests of all States, as with the rights of present and future generations, how can they best be asserted and protected ?

7. Different proposals have been made and they include:

   a. Endow a body of all States, or one representative of or authorized by all States, with the powers and responsibilities to do so;

b. Allow any State the legal possibility to assert the rights and interests of present and future generations or of the community of nations (without having to establish direct injury to its nationals or present interests);

c. Establish ombudsmen at local, national, regional and global levels (to, for example, monitor compliance with national and international laws, investigate alleged violations, and publicize their findings).

FOR DISCUSSION: WHAT ARE THE VIEWS OF THE COMMISSION ON WHETHER AND HOW BEST TO ASSERT LEGAL PRINCIPLES TO PROTECT THE RIGHTS OF PRESENT AND FUTURE GENERATIONS AND THE COMMON INTERESTS OF THE COMMUNITY OF NATIONS?

B. Sharing Global Benefits and Costs

8. International law, through bilateral and multilateral agreements, has developed rapidly over the last few decades with respect to water resources and pollution physically crossing the boundaries of contiguous States and, in the last decade, even on a regional basis with respect to long-range transfrontier air pollution and regional seas. The relevant existing and emerging legal principles and rules are being taken fully into account in the evolving draft report for the Commission.

9. Major legal and political differences arise, however, when considering the shared or even collective responsibilities, rights and obligations of all States with respect to (i) areas outside the national jurisdiction of any State (global commons), and (ii) areas under national jurisdiction where there are species, ecosystems or environmental functions of special international significance.

10. Regarding global commons and their resources, the concept that they are the common heritage of mankind was initially adopted by the UN General Assembly in 1970 as the foundation for the development of a regime to govern exploitation of the seabed. The concept has since been embodied in an extra-terrestrial treaty, the Agreement Governing the Activities of States on the Moon and Other Celestial Bodies (1979), and in the Convention on the Law of the Sea (1982).

11. Although - and because - the general meaning and practical implications of the concept are still in contention, it is important and timely for the Commission to consider it. The key question for the global commons concerns the benefits from their use and exploitation, and the costs of protecting and conserving them. Should these global benefits and costs be rights and obligations shared by all States?

12. Regarding the protection of resources or natural heritage of international significance, there are five major multilateral conventions: the Convention on Wetlands of International Importance (1971); the Convention Concerning the Protection of the World Cultural and Natural Heritage (1972); the Convention on International Trade in Endangered Species of Wild Fauna and Flora (1973); the Convention on the Conservation of Migratory Species of Wild Animals (1979); and the Convention for the Protection of the Ozone Layer (1985).

13. With the increasing population, economic and other pressures on areas within national jurisdictions where there are species, ecosystems and environmental functions of international significance, especially in developing countries, it is timely for the Commission to discuss the possibility that the costs of protecting and conserving them - including any foregone economic benefits - be shared by all States. Moreover, as at present the implementation of the above conventions depends entirely on voluntary contributions; therefore more secure and even automatic forms of funding also be considered.

FOR DISCUSSION: TO WHAT EXTENT, AND IN WHAT RESPECTS, SHOULD FUTURE WORK ON LEGAL PRINCIPLES ADDRESS THE RIGHTS (SHARED BENEFITS) AND OBLIGATIONS (SHARED COSTS) OF ALL STATES CONCERNING GLOBAL COMMONS AND THE CONSERVATION OF SPECIES, ECOSYSTEMS AND ENVIRONMENTAL FUNCTIONS OF INTERNATIONAL SIGNIFICANCE?

C. Environment and International Trade and Investment

14. The evolving draft report for the Commission so far focusses largely on transboundary issues concerning natural resources and environmental interferences. However, there are also critical environmental

issues with significant implications for international law concerning harmful or potentially harmful chemicals, products and technologies entering international trade, and the international movement of hazardous wastes. A completely different but related set of issues concern the avoidance of non-tariff barriers and other possible distortions of international trade and investment due to national environmental policies and measures.

15. With increasing production, use and trade of existing and new chemicals, the potential for widespread pollution or contamination worldwide has also grown. There are an estimated 80,000 chemicals already on the commercial market, most of which are thought to be beneficial, but most of which also are put on the market and released into the environment with little or no knowledge of their potential, cumulative or long-range effects. In addition, an estimated 1,000-2,000 new chemicals enter the market each year. The increased use of chemicals has been most dramatic in the developing countries. The volume of trade in chemicals from industrialised market economies to developing countries has expanded in value from $ 4 billion in 1970 to $ 26 billion in 1980 (not accounting for inflation).

16. Agreements have been reached over the past few years among western industrialized countries on, for example, the testing and exchange of essential information on the known characteristics and effects of chemicals entering international trade. Work at the global level has focussed on toxic chemicals, including the development under UNEP auspices of an International Register of Potentially Toxic Chemicals (ERPTC) and a Provisional Notification Scheme for Banned and Severely Restricted Chemicals.

17. While the limited number of existing international agreements and guidelines provide a basis for further work, there is a continuing major challenge and need to ensure that new international agreements and law develop quickly enough to keep pace with the increased global production, use and trade of chemicals, as well as with increased international movements of hazardous wastes.

18. The impact of trade and investment on the environmental basis of sustainable development is of far greater significance than the converse discussed above, but so far has received little attention. Requirements for prior notification and procedures for consultation remain limited in scope and weak in application. Recently, in the case of certain types of chemicals and hazardous wastes, consideration has

been given to extending the scope from prior notification to prior and timely notification, prior assessment and prior consent. Certain states now require prior notification and prior consent before export of certain products.

19. To date, however, only the industrialized countries appear to have adopted a set of guiding principles concerning the impact of international economic activity on environment and development (and vice versa) and the application of these principles still has a very long way to go. Failure to apply these principles at the global level and the absence of similar principles and guidelines accepted by all States, could become yet another factor contributing to environmental degradation and unsustainable development to the year 2000 and beyond.

FOR DISCUSSION: TO WHAT EXTENT, AND IN WHAT RESPECT, SHOULD FUTURE WORK DEAL WITH LEGAL OBLIGATIONS REGARDING ENVIRONMENT AND INTERNATIONAL TRADE AND INVESTMENT ?

II. SCOPE AND CONTENTS OF THE EVOLVING DRAFT REPORT

20. The presently evolving draft report to the Commission has two major parts dealing respectively with (A) more general or global rights and obligations, and (B) those more specifically concerned with transboundary natural resources and environmental interferences. To ensure that the report to the Commission addresses the major issues of concern to Members, the scope and contents of the evolving draft are presented briefly below.

A. Global Rights and Obligations

21. The intention in the first section is to advance a series of general rights and obligations needed to preserve the interests of each nation and the common interests of the community of nations and mankind regarding environmental protection and sustainable development. As they are intended to be both general and global in their scope and application, the term "global" has been used for working purposes in the title until a more suitable but equally concise term is found.

22. The evolving draft so far includes ten proposed global rights and obligations. The following summary list indicates only the main thrust of each proposal, as more complete and precise legal formulations and explanatory notes are still being developed and tested.

(1) The fundamental right of all people to an environment of a quality that permits a life of dignity and well-being.

(2) The obligation to conserve* natural resources and the environment for the benefit of present and future generations. (* For working purposes the Experts Group adopted the definition of "conservation" used in the World Conservation Strategy: "the management of human use of the biosphere so that it may yield the greatest sustainable benefit to present generations while maintaining its potential to meet the needs and aspirations of future generations. Thus conservation is positive, embracing preservation, maintenance, sustainable utilization, restoration and enhancement of the natural environment.")

(3) The obligation to maintain essential ecological processes and life-support systems, to preserve genetic diversity, and to ensure sustainable use of natural resources.

(4) The obligation to control or prevent wasteful uses of natural resources or the environment.

(5) The obligation to establish adequate norms, to monitor changes in quality or use, and to publish relevant data and research and monitoring results.

(6) The obligation to undertake or require environmental assessments of proposed activities which may detrimentally affect the use of natural resources or the environment.

(7) The obligation to provide prior and timely notification and information to, and to consult with, those whose environment or use of a natural resource may be adversely affected by a proposed activity.

(8) The obligation to provide equal right of access to and treatment by administrative authorities and courts of law to all injured parties.

(9) The obligation to abstain from military or any other hostile use of environmental modification techniques.

(10) The obligation to co-operate and co-ordinate activities in support of environmental protection and sustainable development.

B. Rights and Obligations Regarding Transboundary Natural Resources and Environmental Interferences

23. The intention in the second section of the evolving draft report is to advance a series of rights and obligations dealing largely and more specifically with transboundary natural resources and environmental interferences.

24. The Experts Group agreed to use the term "transboundary" rather than "transfrontier" as it seemed to have a wider application not only to natural resources and pollution crossing the frontiers of two or more States, but also to the boundary between areas claimed by national jurisdictions and the global or regional commons. Moreover, the term "transboundary natural resources" also seemed to avoid some of the difficulties associated with the terms "shared" or "internationally shared" natural resources.

25. The Experts Group also agreed to the provisional use of the term "environmental interferences" to embrace not only activities contributing to transboundary pollution problems but also other environmental modifications with significant transboundary effects (e.g. major changes in streamflows, over-fishing in territorial waters, changes affecting regional or global climate, etc.).

26. The evolving draft so far includes thirteen proposed rights and obligations. As before, this summary list indicates the main thrust of each proposal.

(1) The right to reasonable and equitable use of a transboundary natural resource.

(2) The obligation to prevent or reduce transboundary environmental interferences causing substantial harm.

(3) The obligation to compensate injured parties for substantial harm caused by a transboundary environmental interference.

(4) The obligation to apply the same standards for environmental conduct and effects regarding transboundary natural resources and environmental interferences as are applied domestically.

(5) The general obligation to co-operate in ensuring reasonable and equitable use of a transboundary natural resource and in preventing or reducing a transboundary environmental interference.

(6) The obligation to co-operate in establishing adequate norms, to monitor changes in quality or use, and to exchange relevant data and research results concerning transboundary natural resources or environmental interferences.

(7) The obligation to undertake or require environmental assessments of proposed activities which may detrimentally affect the use of a transboundary natural resource or involve a transboundary environmental interference causing substantial harm.

(8) The obligation to provide prior and timely notification and information to, and to consult with, those who may be adversely affected by a proposed activity involving a transboundary natural resource or environmental interference.

(9) The obligation to develop contingency plans, including provisions for mutual assistance, for emergency situations involving transboundary natural resources or environmental interferences.

(10) The obligation to provide equal right of access to and treatment by administrative authorities and courts of law to non-nationals adversely affected by the use of a transboundary natural resource or an environmental interference.

(11) The right to bring a claim under relevant international law by or on behalf of non-nationals even though local remedies may not have been exhausted.

(12) The obligation to pay compensation to injured parties for a not unlawful environmental interference when the costs or loss of benefits in preventing or reducing the activity are significantly greater than the harm cause in another State.

(13) The obligation to settle disputes concerning transboundary natural resources or environmental interferences by peaceful means, using one or more of the dispute settlement procedures or mechanisms available under international law.

FOR DISCUSSION: DOES THE COMMISSION WISH THE WORK TO PROCEED IN THESE AND/OR OTHER DIRECTIONS AND ARE THERE OTHER MAJOR POINTS, RIGHTS OR OBLIGATIONS WHICH THE COMMISSION WANTS TO HAVE CONSIDERED?

III. GUIDELINES FOR CURRENT AND FUTURE WORK

27. Based on the Commission's primary objectives and strategy as set out in its report "Agenda for Change", and also on the discussions at the first meeting of the Experts Group on Environmental Law, the following major points have so far emerged as a guide for current and future work on legal principles for environmental protection and sustainable development:

(1) International environmental law evolves slowly relative to the problems to be addressed, and often develops on the basis of cases or incidents after significant damage has already occurred. With the increasing incidence, severity and inter-national and even global ecological and economic impacts of environmental problems, relevant principles and rules of international law must be developed more quickly and before rather than after significant damage occurs.

(2) The Commission has a unique opportunity to make a timely and necessary contribution to accelerating the development of international environmental law by reinforcing existing rules and formulating new rules and principles which reflect and support the mainly anticipatory and preventative strategies which the Commission is committed to proposing.

(3) The Commission's work should avoid duplicating and instead reinforce and build on the relevant work of other international organizations (e.g. of UNEP, the International Law Commission, the International Law Association, etc.) which have been working for years and even decades to codify and extend existing international law.

(4) The Commission has far less time but fewer constraints than existing bodies, as well as the obligation to take a longer view "to the year 2000 and beyond". Moreover, one of the Commission's primary objectives is "to propose new forms of co-operations that can break out of existing patterns and influence policies and events in the direction of needed change." Consequently, in addition to examining existing and emerging international environmental law, special attention should be given to international legal principles and rules which ought to be in place now or before the year 2000 to support environmental protection and sustainable development within and among all States.

(5) Given the political and other constraints which normally prevail in formal inter-governmental processes and negotiations on international law, and the Commission's emphasis on anticipatory and preventative measures, the principles and rules should initially be formulated to respond to existing and emerging ecological realities and be carefully reconsidered later by the Commission and associated experts in the light of political realities and possibilities.

(6) The Commission's work should consider not only principles regarding the obligations of States to reduce or avoid activities affecting the environment of other States, but also principles regarding the individual and collective responsibilities of States concerning future generations, other species and ecosystems of international significance, and the global commons.

(7) As the Commission is committed to producing concrete and realistic action proposals which can be widely understood and supported by individuals, voluntary organizations, businesses, institutes and governments, the legal principles should be formulated in terms that are recognizable and defensible in the legal community yet are still understandable by non-lawyers.

FOR DISCUSSION : ARE THERE OTHER MAJOR GUIDELINES WHICH THE COMMISSION WANTS REFLECTED IN FUTURE WORK?

WORLD COMMISSION ON ENVIRONMENT AND DEVELOPMENT

FOURTH MEETING
Sao Paulo, Brazil
25 October - 4 November 1985 WCED/85/24B

To: All Members of the World Commission on Environment and Development

From: Secretary General

Re: Resolving Environmental Disputes

The Commission first discussed new forms of resolving environmental disputes at its Inaugural Meeting in Geneva. The question was raised again in Jakarta and Oslo and it is now on the agenda in Sao Paulo.

Enclosed is a background paper prepared for our meeting on The Settlement of Environmental Disputes. It concludes with a number of suggestions for Commission action which can act as a point of departure for discussion.

Action Required: Discussion and Direction

October 9, 1985

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The Settlement of Environmental Disputes
A Forward Look

A Draft Report for the
World Commission on Environment and Development

By
Robert E. Stein and Geoffrey Grenville-Wood

October 1985

The Settlement of Environmental Disputes
A Forward Look
By
Robert E. Stein and Geoffrey Grenville-Wood*

I. Introduction

In its Mandate for Change, The Commission states that it wishes to examine new forms of cooperation:

> "that can break out of existing patterns and influence policies and events in the direction of needed change."

The Commission adopted an alternative agenda, that permits it "to consider and propose strategies that are mainly anticipatory and preventive in character, rather than reactive and curative."

Thereafter, the Commission articulated the need for consideration of the ways in which environmental disputes could be avoided and settled. It is the purpose of this paper to provide for the Commission, a survey of the ways in which environmental disputes have been and are being avoided and settled and to make some suggestions as to the kinds of techniques that might be used, or used more frequently to make the process of avoiding and settling environmental disputes more effective.

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*Robert E. Stein is President and Geoffrey Grenville-Wood is Vice President of Environmental Mediation International, an organization set up to use mediation and related techniques in the settlement of environmental and resource disputes. They direct EMI's offices in Washington D.C. U.S. and Ottawa Canada respectively. Jennifer Woods, a research assistant with EMI also contributed to the paper.

II. The Present Situation

At the UN Conference on the Human Environment at Stockholm, States agreed to a Declaration that contained principles of responsibility for environmental actions. Principle 21 provides the basis for international environmental responsibility when it states *inter alia* that:

> "States have... the responsibility to ensure that activities within their jurisdiction and control do not cause damage to the environment of other States or of areas beyind the limits of national jurisdiction."

As noted above, there has also been an effort, both nationally and internationally, to review projects before they are approved with a view to assessing their environmental impact and thus avoiding environmental harm before it occurs. Some states, including the United States and Canada use techniques of environmental assessment to review activities before they receive approval by a national, state or provincial agency. Internationally, multilateral lending institutions as well as some bilateral aid agencies and the European Communities have provisions for environmental review of projects. Moreover, some multinational corporations have had some of their projects subject to environmental impact assessment, and through the World Industry Conference on the Enironment have agreed to review projects for environmental impacts.

For the purposes of this paper, the concern is not only with the importance of these procedures, but also with the ways in which the public, both individually and in groups, can have an opportunity to comment on and influence the environmental soundness of a project or program. The paper will also deal with ways in which such procedures may provide a forum for making known any disagreement with the conclusions reached. In the United States, there are provisions for using the judicial system to test the adequacy or timeliness of an environmental impact system. In

Canada, a quasi-judicial tribunal system has been set up in some of the provinces and at the federal level to adjudicate an enviromental impact assessment. While the judicial system may not be appropriate in many countries, having some mechanism to accomplish this purpose that fits within the specific legal and social structure of the country involved is an essential aspect of preventing and settling environmental disputes before they have caused environmental harm.

National and International Disputes

There are several types of situations where enviromental disputes might arise. First, are disputes involving environmental problems that occur completely within a particular country. This would include interjurisdictional disputes within a county, between different levels of governments. Second are those disputes with physical environmental features that cross a boundary. Third, are those disputes affecting an area of the commons.

International disputes may be settled on an ad hoc basis, or pursuant to an international agreement. Where there is an international agreement, a procedure is usually spelled out that may either be very general, obligating the parties to settle their disputes by peaceful means, or very specific, setting out a variety of procedures and kinds of tribunals or mechanisms that are to be used in specific circumstances. Between some countries eg, Canada and the United States, there is an existing institution, the International Joint Commission, which has been given authority to settle certain disputes between the two countries by a variety of means. One recent case involved concern expressed by Canada and by environmental groups on both sides of the border that the raising of a dam in the State of Washington to produce more power would flood wilderness recreation land in Canada. The Commission, which has authority to approve the raising and lowering of water levels across the border, set up

a mediatory mechanism that was able to resolve the problem. The results were incorporated into an agreement between the City of Seattle and the Province of British Columbia, and were confirmed in a treaty concluded between the two national governments.

In other international situations, there may be neither an international agreement governing the issue, nor an existing body that can be seized of the dispute. In that instance, states can choose mechanisms that seem useful and that are mutually agreeable. Domestically, the laws and procedures of a country govern the settlement of their disputes. Since the UN Stockholm Conference, the number of ministries or other government agencies working with environmental issues has grown dramatically. Over one hundred developing countries now have a high level administative body to deal with the environment, compared to fewer than 10 in 1974. Yet with procedures in place, both domestically and internationally, there are still a number of obstacles to the successful settlement of environmental disputes that need to be overcome.

Obstacles to Settlement

One of the obstacles to settlement is the uncertainty of scientific data. For example, the US administration announces that it does not know enough to regulate acid rain; industry questions how much cleanup is really needed at a hazardous waste site; a government official asks how much a decision maker needs to know before a policy decision is made to permit or stop an activity with possible environmental effects. Yet there are cases where the lack of uniform scientific data has not held up action. An independent source to examine that data to provide guidance for the decision maker and to assess the risk of action and non-action may be useful.

A second obstacle to settlement is political will. Even if the decision maker believes that enough is known, decisions are slowed by political opposition, not always related to the

issue at hand. For example, to support his constituents, a municipal official opposes the siting of a waste treatment facility in his political jurisdiction or a government decides not to act on a situation of transboundary pollution because of other considerations such as trade or because its country is not affected by the emission.

Third, there are situations in which an economic reality clashes with an environmental one. If jobs are needed in an area, compromises may be made with pollution controls. In some developing coountries, development activities are seen as contrary to environmental control.

Fourth, where attempts have been made to use some of the newer techniques of dispute settlement, such as arbitration, mediation or conciliation, they are at times not used, because they are "new", because governmental officials believe dispute settlement mechanisms will take power out of their hands, which it does with some of these techniques, such as judicial settlement or arbitration, more than it does others, such as mediation or conciliation. Finally, officials may well believe that the system is working well and that, with environmental laws in place, no further initiatives are necessary. In its 1984 State of the Environment report, the UN's Economic and Social Commission for Asia and the Pacific (ESCAP) recognized that laws were not enough, and stressed the importance of better implementation and enforcement of environmental legislation. Implementation would certainly include the use of techniques that can more effectually assist in the avoidance and settlement of environmental disputes.

III. Techniques for Change

There are a number of techniques that can be used to avoid as well as to settle environmental disputes. These include both formal and informal techniques. Often,

use of mechanisms such as broader consideration during the earlier stages of the environmental assessment or a consultation process to assist in the avoidance or anticipation of environmental harm can be valuable.

Can this be done? Internationally, the anticipatory mechanisms usually looked to include consultation, information exchange and notification. Additionally as noted above, environmental assessments may be carried out by one country, with other affected countries participating. Each of these techniques is important and can make easier some of the initial contact on a problem by other interested states. The Nordic Convention of 1974 incorporates these principles of notification and consultation. However, some of these more formal techniques have been used successfully in some countries in the planning and assessment stages of the problem. Environmental impact assessment can moreover be used to obtain agreement on policies or rules.

Formal Techniques

1. Arbitration, the use of an independent third party to reach a conclusion on a matter submitted for decision, is increasingly being used internationally to settle commercial and related problems. Arbitration is usually more binding on the parties and even in most domestic systems cannot be appealed unless the arbitrator has acted arbitrarily. A number of international agreements call for arbitation to settle environmental disputes. Because of the newness of many of these agreements, their provisions have not yet been tested. Moreover, institutions such as the World Bank's International Center for the Settlement of Investment Disputes,(ICSID) or the International Chamber of Commerce's Court of Arbitration, as well as the arbitration procedures of The UN Conference on Trade and Development (UNCTAD) and the International Court of Justice's Permanent Court of Arbitration can all be drawn upon to provide qualified

impartial arbitrators. While ICSID, the ICC, UNCTAD or the Permanent Court have not yet arbitrated environmental disputes, there certainly is no impediment to their doing so, if the parties choose to bring a dispute to them.

2. Mediation and conciliation involve the services of an independent third party who uses that position to bring the parties to a common agreement on a solution to a problem that the parties can accept. The mediator or conciliator may report to the parties but the essence of these techniques is that they are voluntary. The parties must agree with the decision. In some cases, these techniques may be preferable to arbitration. As one careful observer of international dispute settlement put it,

> "The advantages attributed to domestic arbitation, speed, economy and informality are reversed in international disputes... UNCITRAL Conciliation Rules, in contast to the UNCITRAL Arbitration Rules, apply to parties seeking an amicable settlement of disputes rather than the adversary proceedings, such as arbitration and litigation."

Another commentator adds that "Conciliation may be an advantage when you want procedural flexibility." Thus, in addition to artitration some of the institutions described above can also use mediation or conciliation to settle a dispute. Domestically, mediation has begun to be used in several countries specifically to settle environmental disputes. Mediators have been drawn from the private sector as well as from government agencies. A number of organizations now exist to supply impartial arbitrators and mediators, and in the United States, there have been over one hundred and sixty examples of environmental disputes being settled through the uses of mediation. Internationally mediators can come from governments, international

organizations, or the private sector. In one recent boundary dispute, the Holy See was asked to supply the mediator.

3. A third option for the settlement of disputes is the use of legal proceedings. In some countries, legal actions have provided a vehicle for citizen groups concered about environmenal issues to officially make their views known and to enforce compliance with environmental laws, regulations and standards. They have made it possible for government agencies to bring industry or municipalities into compliance with the law. Legal proceedings can be used to avoid environmental harm, as in the anticipatory suits under the National Environmental Policy Act in the U.S. It is, moreover a traditional remedy both nationally and internationally to assess liability and compensation.

4. Administrative proceedings are a fourth option. In some countries such as Canada , the United States, inter alia, with respect to hazardous waste facilities, and more recently,India, in the field of occupational health and safety, administrative proceedings are more appropriate than judicial proceedings. Here, a governmental tribunal may have the power of approval, and hearings can be conducted to permit the various parties to state their positions and give evidence on their view of the preferred outcome. In some situations these proceedings, as a result of their essentially adversarial nature, have taken on so much of the formality of a judicial proceeding that attempts have been made to introduce mediation or related techniques to streamline the process. Internationally, the Board may be made up of governments, who usually have the power to decide.

5. A final technique which builds on some of the above is regulatory negotiation, the use of negotiation, with an impartial convenor to obtain agreement from interested

private parties and the responsible government agency to a rule or standard. In some countries such negotiation has existed for some time with the affected industry. Its newer application also includes consumer and environmental groups.

Informal Techniques

1. Although mediation and conciliation are described above, they are linked to more informal techniques by their reliance on the requirement for acceptance of the parties to a dispute to any solution before it becomes effective. Mediation is a form of negotiation with a third party neutral. In international usage, conciliation differs from mediation in that the conciliator will make suggestions for a solution as a part of a report to the parties.

2. Perhaps the most widely used technique for the settlement of disputes, environmental or otherwise, is negotiation. It is always tried first, and when it fails, other techniques may be suggested or called for. In some situations, negotiation - with or without a third party - may be the only technique available to parties to a conflict, in the absence of agreement to use other processes. However, negotiation can often be more effective if one of the other techniques is threatened or will automatically follow if negotiation does not succeed within a designated period of time. Then, the possible expense and time necessary to settle a problem through other techniques may make negotiation more attractive.

3. An additional technique which builds on negotiation and mediation is the establishment of a group, with an independent convenor, the purpose of which is to agree on policy initiatives that otherwise would be subject to long and expensive battles in court or other more formal fora. For example, in the United States, several

private organizations have convened groups to consider such diverse issues as, labeling of chemicals, advertising policy for pesticides, policy for disposal of low level radioactive waste, and regional water use policy. In several European countries, industry, environmental groups and governmental representatives have met with an independent chairman to consider an acceptable phosphate level for detergents. In each of these activities, there were several objectives: first to obtain agreement from all of the interested parties to a policy; and second, to secure the implementation of that agreement in a timely manner.

IV. The wider use of dispute settlement techniques to settle disputes

Recent events have made it clear that environmental considerations of development will have to be more fully integrated if development is to succeed. The previous sections of this paper provide ample evidence that techniques do exist which could assist in the avoidance of disputes both effectively, and before environmental harm takes place. Yet these techniques have not received widespread use with the result that some disputes are not resolved before harm has been caused. It is the purpose of this section to suggest some ways to use the existing techniques more effectively. In doing so it will be necessary to separate the domestic from the international use of those techniques, even though there will invariably be some overlap.

The settlement of disputes within a country

Within countries, the most important ingredient for the successful settlement of environmental disputes is to have a legal or policy infrastructure which will provide a framework in which environmental issues can be assessed and then settled before an event has happened. This may form a part of a planning process or flow from legislation or administative action. In Japan, for example, the Law on the Settlement of Environmental Pollution Disputes has institutionalized the use of conciliation, mediation and arbitration for dispute resolution. A second step is to provide, as a part of that infrastructure, a flexible set of mechanisms that can provide options for settlement, without providing opportunities for needless delay and a waste of time and money.

If arbitration or mediation are used, a sufficient pool of independent third parties should be available who can maintain the cnfidence of the parties to the dispute. These individuals can be drawn from existing institutions in the country that may have worked in other sectors, e.g. labor or commercial disputes, or can be trained and selected specifically for their environmental expertise. No one profession should have a preeminent position in the pool of available mediators and arbitrators. An additional group that must have a developed understanding of these processes, is the cadre of government decision makers, who may in some instances serve as negotiators, mediators, hearing officials or arbitrators. Training can be helpful to familiarize the officials with the options that are available.

The settlement of international disputes

Internationally, there are number of recent international agreeements that deal with environmental issues that should be mentioned because of the ways in which thay have encouraged the selection of techniques for the early settlement of environmental

disputes. The agreements concluded under the auspices of the regional areas program of UNEP all contain dispute settlement clauses that contain a variety of options to settle disputes. The Convention on the Mediteranean calls first for negotiation "or any other peaceful means of their own choice, and then for arbtration". Another excellent example are the dispute settlement provisions of the Law of the Sea Agreement. Often, dispute settlement clauses are left to the end of the negotiations before insertion in the final text of an agreement. During the Law of the Sea discussions, a separate committee was formed to draft provisions governing the settlement of a wide variety of disputes including those arising from the environmental and resource use provisions of the agreement. The committee was also to adapt its work to the changes in the text being drafted and considered by other committees. This process resulted in the possible use of a broad spectrum of techniques including mediation, arbitration, and the creation of a special tribunal. An international judicial tribunal represents another possible instrument for use. Some of these institutions have in a more or less direct way been involved in environmental dispute settlement. The International Court of Justice in the Hague has heard a number of cases that have been instrumental in the development of principles of international environmental law. The Court can sit both as a full court or in chambers of fewer members, e.g. five members. The Court, however, can only hear disputes between States, and a very important question is whether this is sufficiently broad based for environmental and natural resource issues. For example, the European Commission of Human Rights can decide disputes brought by a person as well as a government. The arbitral tribunal of ICSID decides cases between a government and a corporation. Interestingly, the agreement between Canada and the United States over the Skagit River, calls for the Secretary General of ICSID to select the neutral arbitrator, if parties can not reach agreement on the selection themselves.

A second issue to pose is whether any existing tribunal has a broad enough

jurisdictional base or experience to hear environmental disputes. Should there be a separate tribunal, or even center for the settlement of environmental disputes? In the Law of the Sea negotiations, early drafts called for separate tribunals for disputes involving the sea bed, fishery resources and environmental disputes. In the final text, however, it was agreed to have a single tribunal to deal with all disputes arising from activities covered by the agreement.

Many of the tribunals and other dispute settlement institutions described above are global in their approach. The International Court of Justice, the International Center for the Settlement of Investment Disputes, The Law of the Sea Tribunal, draw their membership from all over the world. Some UN organizations such as the UN Environment Program, the Food and Agricuture Organization, the World Health Organization, and the World Bank through their programs and resolutions have the ability to assist in the avoidance of environmental disputes. For the first time in its history, the 1985 Annual Report of the World Bank included a section on the relationship of environment and development, and emphasized the efforts of the Bank since 1970 in assessing environmental implications of Bank projects and thus avoiding later environmental problems and disputes. However, for some issues, a less than global approach may be more effective. Thus the UNEP regional seas program approached the problem of marine pollution from the perspective of those countries directly interested. The Organization for Economic Cooperation and Development, through its Environment Directorate has harmonized policies of member countries that have both a geographic and market relationship for issues that affect both of these factors.. The European Community is able to take binding actions for all of the members of the Community, and the Court of the Community can be used against member states that do not give effect to Community actions or to judgments of the Court. Other regional organizations such as the Organization of American States engage in examination of environmental implications of development assistance projects carried out but do not

have bodies that have exercised specific dispute settlement functions in the environmental area. What is clear is that there is a potential, only partly realized for these established organizations, some of which have engaged in environmental activities, to apply their expertise and creditability to the settlement of environmental disputes in the regions. These groups could also perform significant service if they were to assist member countries in developing their own capability to anticipate, avoid and settle environmental and resource disputes that occur within a particular country. The means to accomplish that task are discussed in the following sections. A more comprehensive set of dispute avoidance and dispute settlement instruments is needed. Existing institutions are not now adapted to deal with these issues. Whether they can be, or a new institution is needed, remains an important question.

V. Overcoming Obstacles

One of the first issues for the international community to consider is whether approaches can be more effective if handled on an hoc or systematic basis. As the previous discussion makes clear, both for domestic as well as international environmental disputes, the development of an appropriate infrastructure, including appropriate and enforcable laws and procedures, or workable dispute anticipation and settlement provisions in international agreements can provide more certainty and be more effective than an ad hoc approach. If those involved in a transaction, be they individuals, corporations or governments, understand the context of a proposed project dispute settlement and enforcement privisions, they may be more willing to accept the obligations called for. The Law of the Sea Conference experience of treating dispute settlement as something to accompany and not follow the substantive discussion may have contributed to the willingness of some countries to put faith in that agreement.

It is also important to develop in both international agreements and procedures of bilateral or multilateral lending agencies, ways to anticipate environmental concerns, and have a mechanism or mechanisms that can resolve these concerns before the problem causes environmental harm.

Some situations will be impossible to anticipate. For these, there currently is reliance on domestic processes, or those few international mechanisms that are in place. These may not be well equiped to deal with the complex mix of legal, technical and economic factors that can be involved in an environmental dispute. Having mechanisms in place that have developed credibility is an important ingredient to success. Mechanisms do not have to be only governmental or intergovernmental. A cadre of scientific or technical experts who can be drawn upon, or experts in environmental law or dispute settlement whose independence is known can be of considerable assistance. The World Environmental Center in New York, with cooperation from corporations and other institutions has begun to develop lists who can be drawn on.

Based on the experience to date, the most effective dispute settlement mechanisms are those that provide a continuum of approaches to the avoidance or settlement of disputes. The end point should be a binding form of dispute settlement, for example, administrative determination, arbitration or judicial settlement. Before that, however, it is recognized that negotiation and mediation or conciliation can offer an alternative that may be more effective from a time and cost perspective and may also provide a way for parties that must continue to work together to do so. The difficult task is to frame the set of settlement mechanisms so that they take into account regional, national and even sub-national approaches to dispute settlement in other areas in order to maximize their acceptance.

VI. The Special Situation of Developing Countries

It is always dangerous to generalize when attempting to provide an analysis of any particular situation within a group of countries. In spite of this caveat this section will attempt to assess the general position of developing countries with some reference to particular examples that might be illustrative and appropriate. There will always be differences between individual countries given the wide divergence in a numberof factors, such as, the degree of "development"; the legal, political and administrative systems in effect, cultural differences, and the climatic and physical nature of the country. Nevertheless, there are some important points to be made and some relevant conclusions to be drawn.

This part of the paper will deal primarily with mechanisms for dealing with environmental disputes within countries, rather than between or among countries. The comments made elsewhere in this report relating to international and trans-frontier disputes apply without any essential modification to developing countries. Also, it should be noted that the comments made below with respect to national institutions and the building up of a core of expertise, have application to the trans-national and international situations. This is so, since national policies, attitudes and capacities have a direct bearing on international relations and disputes. Thus, if there is a notable lack of environmental expertise or institutional arrangements in a given country, it is likely that the ability of that country to respond to international disputes with neighbors or within its region will be severely circumscribed.

It has become apparant that there is, in developing countries generally, an increasing concern with environmental issues. Some countries have enacted environmental control or anti pollution legislation while others are in the process of preparing

legislation or other regulatory provisions. The major dilemma facing such countries is that despite the activities of many organisations and lending institutions, environmental protection is still seen by some as a hinderance to development of the industrial base that is an essential element of their development plans. In addition, the need to negotiate resource exploitation and otheragreements with major corporate entities requires the host developing country to face up to the hard choice of permitting the exploitation at the expense, apparently, of environmental concerns.

So often, it seems that these environmental concerns play a minor role in the decision making process simply because the need for development is evident and the pressure is on to make decisions quickly before the "benefactor" moves on to a competing site. The need is clearly, thus, to establish a more systematic and institutionalized process for obtaining environmental clearance for projects that are likely to have an impact. In the absence of such institutionalized processes, the environmental concerns will be too easily negotiated away when faced with hard facts brought forth in favor of direct investments and resultant jobs, royalties, and similar rewards.

From a domestic view point, as well, the lack of assessment and approval systems means that all too often impacts are recognized only after a project has been in place and when it may be too late. In such instances, it is frequently the case that environmental impacts were not even seriously considered in the project planning or construction phases. One example of such an event arose when a housing project in one developing country, involving several hundred dwellings was approved by the responsible Ministry. The project was built and the inhabitants moved into the dwellings. Several months later it was found that the drinking water in a nearby urban area was becoming increasingly polluted. It was learned, upon further investigation, that the sewage from this new development was being channelled, in various ways, into the

source system for the city drinking water. Thus, policy makers now face the question, what can be done retroactively to alleviate the probjem? Of course, such problems and challenges are not the exclusive preserve of developing countries. The United States Canada and many European Countries are now living with the results of environmentally insensitive decisions made many years earlier.

The question to be addressed now is not who to blame nor is it only how to correct the particular environmental damage. It is essential to put in place processes and systems that will enable governments and citizens to assess impacts in advance and thus be in a better position to weigh all the factors prior to approving particular projects. What is needed, then, in many developing countries, and in many developed countries, is an impact assessment system, supported by a mechanism for approval. Tied to this mechanism must be a decision making authority which has in its mandate the capacity to assist in negotiating terms and conditions of approval. Even for countries with a developed system of codes and regulations there is the need, as expressed by the President of Colombia, to "now establish practical tools to enforce it." And all of the above require one essential ingredient, a cadre of trained professionals who will operate the systems and provide the expertise needed to make those systems function.

Much of the development debate over the last several decades has centered around the idea that an early order of business was to provide the infrastructure so that industry could locate in such countries. The current need is for a different kind of infrastructure to protect against the accelerating degredation of the environment. It may not be sufficient for developing countries to enact laws of general application. Unless such laws have provisions for mandatory impact assessment and approval, they will be essentially hortatory and ignored or bypassed when the hard bargaining begins, whether with domestic or foreign proponents. An independent assessment and

approval system is the best guarantee that environmental concerns will be examined and dealt with.

There is still the issue of how to resolve or avoid the disputes that will almost inevitably arise once standards are set and approvals sought. The legal and administrative system in many industrial countries is such that the disputes in the environmental field are resolved either in the courts or through some other form of adversarial proceeding. Although there is an important role for such processes, they may not be conducive to the most effective decision making and policy formulation in problems faced by developing countries. With the exception of those countries that have a close link to the essentially adversarial common law system, a more consensual approach to dispute resolution is better accepted and understood.

As stated above, in Canada, the courts have not been used as extensively as in the United States for a number of reasons, the most relevant of which is that there exists in that country a system of administrative, quasi-judicial tribunals that have legislative jurisdiction to conduct hearings and grant approvals for environmentally sensitive projects. the hearings in these tribunals are essentially adversarial in nature although procedural and evidentiary rules are not as strictly enforced as in the courts.

The experience in both Canada and the United States has been such that increasingly dissatisfaction is being expressed with the efficiency and effectiveness of these systems. It is clear that some disputes require adjudication. Those situations will arise where some independent third party will have to make decisions that may be unpalatable to one or more of the interested parties and where the issues were such that compromise and negotiation were impossible. The existence of that form of dispute settlement and its unpredictability is often the best incentive for parties to negotiate a

compromise. What is too often lacking is a mechanism that can facilitate that compromise.

In the Canadian province of Ontario an experiment is currently underway regarding the siting of a solid waste disposal facility. The responsible tribunal, the Environmental Assessment Board, has requested that mediators under its aegis, but independent from its control, attampt to assist the parties, the various municipalities and citizens groups in the affected area, to reach an agreement on where the facility should be located. The Board, in this case will have to conduct a hearing, in any event, and it will be required to make a decision. The question is whether the proceedings before the Board will be on the basis of an agreed proposal which the Board will likely endorse and make part of its order, or whether there will be a lengthy and adversarial hearing with examinations and cross-examinations.

Since a more consensual dispute resolution fits into the indigenous approach of so many countries, mechanisms should be considered to be put into place to provide for this form of settlement. For example, Indonesia's Constitution states that the Republic is base on five principles, the Pancasila, the fourth of which is that democracy "shall be led by the wisdom of unanimity arising from deliberations amongst representatives." This principle represents the national predisposition for consensual decision making and current dispute settlement techniques are based on this principle. Beyond this point, it should also be borne in mind that this non-adversarial process permits and encourages all the various policy interests to be involved in the decision making and provides an institutional forum in which all the different concerns may be addressed.

VII. Conclusions and Recommendations for the Commission

General Conclusions

This paper contains two sets of conclusions. The first set are applicable to both developed and developing countries, while the second set are keyed to the specific needs of developing countries

1. There are two distinct aspects of dispute settlement that must be addressed. The first are those disputes or disagreements that are found in the planning stages of a project or program. For these, environmental assessment has proven to be an effective tool in some countries but has not been used in many where its use would prove beneficial. Internationally, there is no requirement for using assessment, although it is called for in a number of agreements. Additionally, the increased acceptance of notification and consultation as part of the planning process would also be useful, recognizing the pitfall of it being used to delay. The introduction of dispute settlement mechanisms such as conciliation and mediation or arbitration in advance of environmental damage is also considered desirable for those situations, principally domestic, in which other mechanisms have not provided the ability to integrate the views of those interests which by law,regulation, or legitimate interest have a voice in the decision making process.

2. The settlement of environmental disputes after harm has been created must be subject to procedures that have a finite binding conclusion. That is not to say that the only way to reach that stage is to begin with a binding approach. There may well be reasons where agreement is sought from many parties, eg. in the cleanup of a hazardous waste site, or after a large disaster, in which preliminary mechanisms such as negotiation and mediation can be helpful in reaching a conclusion. In some domestic situations there is little awaremess of the potential of these mechanisms, while in others, they have long been part of the fabric of dispute settlement outside of the environmental area.

3. The two previous conclusions lead to a third, that both domestically within a country as well as internationally, a continuum of approaches offers the most effective way to

settle disputes, both in an anticipatory and after the fact way. The continuum must be carefully crafted to end with a conclusive or binding result, and not provide escapes into delay and avoidance.

4. While internationally there are mechanisms available to settle a wide variety of disputes, they all suffer from some shortcoming as they might apply to environmental disputes. They may only be available to states, or to those from a particular region, leaving corporations or environmental and other interested groups without access. They may not offer a continuum of approaches, but provide only arbitration or judicial settlement. They may never have worked in the environmental area or have the ability to provide independent technical assistance. Does this mean that there is a need for a new tribunal or Center for the Settlement of Environemental Disputes? The concept deserves careful study in comparision with the use of existing institutions or their possible adaptation to better enable them to settle environmental disputes.

Conclusions specifically directed to developing countries

1. There is an increasing level of concern for environmental issues which has expressed itself in the preparation of legislation and regulatory guidelines in some countries, while in others consideration is now being given to initiating this process.

2. However, the existence of legislation, in itself, is not sufficient to protect the environment and further environmental concerns. This is in large measure due to the lack of professional environmental and legal expertise in many countries which makes it difficult to implement and administer existing or proposed laws.

3. Institutional mechanisms need to be developed and established that will provide the on-going framework for environmental management. While the primary scope of such institutions should be national, some functions could be exercised on a regional basis in order to provide the effective use of limited expertise.

4. These institutions should provide for dispute avoidance and resolution techniques that are consonant with each country's legal, cultural and administrative make-up. These conclusions are of necessity general in nature and do not apply to a particular country or group of countries. They result from the observation and analysis of a number of different situations. It is essential that in reviewing these findings,. each country should examine its own needs and objectives to draw its own conclusions from the discussion in this report.

Recommendations at the National Level

1. In developing countries especially, but not exclusively, there is a need for increased education and professional training for present and prospective environmental administrators, managers and legal officers in the fields of environmental assessment, management, administration and dispute resolution. To this end, The Commission should recommend:

a) that this need be filled and that filling it be given increased priority by bilateral and multilateral agencies and funding institutions; and

(b) that experts and institutions with particular expertise should be enlisted to assist in this educational and training effort.

2. The Commission should consider recommending that a national analysis be made by all countries of the appropriate institutional and legal framework best suited to provide for meaningful environmental imput into the development plans for that country. This framework should be applied to general planning decisions and to specific project by project decision making. Where such a framework is in place, the analysis should be extended to include the effectiveness of the system, and the means it provides for the settlement of disputes.

3. The Commission should encourage all countries to adopt a continuum of dispute avoidance and settlement mechanisms, available to the private sector, including individuals, groups and corporations, that is both flexible and effective, and that will result in a binding decision.

Recommendations at the International Level

1. The Report of the World Commission should draw attention to the fact that concerted action on the international level is largely dependent on the systematic assessment, management and regulation of environmentally sensitive activities at the national level.

2. The Commission should urge that when international agreements dealing with environmental issues (whether bilateral or multilateral) are being negotiated, a continuum of appropriate and effective dispute avoidance and settlement provisions be

included and considered by the negotiators as part of the substantive provisions of the agreement contemporaneously with their development.

3. Parties to existing agreements on subjects relating to environment and resource managment should review those ageements, where appropriate, with a view to strengthening their dispute avoidance and settlement provisions along the lines recommended in the previous paragraph.

4. The Commission should recommend the convening of an international ad hoc study team to develop options for an International Center for the Settlement of Environmental and Resource Disputes. The team should consider, inter alia,

(a) The need for a separate center, or alternatives to it;

(b) Services to be offered by the Center, eg. type of dispute settlement (judicial settlement, arbitration, mediation/conciliation, and good offices), independent technical assistance;

(c) the inclusion of a facility to assist in the structuring and handling the compensation of victims of major national and international disasters, without prejudice to the eventual assignment or apportionment of responsibility and liability;

(d) Means for bringing the Center into being;

(e) Whether the Center should have a single location, or comprise a series of regional satellites;

(f) Institutional sponsorship; and

(g) Scope of disputes to be handled by the Center, eg. national, sub-national, international.

The Commission should consider whether it wishes to sponsor this study itself to ensure that its conclusions will be available in time to incorporate into the Commission's final report.