

ENVIRONMENT AND THE LAW — SOME BASIC ISSUES

George Porter*

Introduction

IT IS my belief that international law needs urgent revision in the light of the growing environmental and social crisis besetting the planet. Regrettably, many interests are served by the *status quo*. Grave responsibilities which should lie on the shoulders of those with power and influence are being ignored through an attitude that allows the perpetuation of poverty and human injustice : that allows destruction of the natural world; and that allows eventually, the collapse of life supporting ecosystems and social structures.

The 1992 Earth Summit at Rio carefully avoided creating new comprehensive legal mechanisms or binding agreements that would lock in clear responsibilities for nations, corporations and individuals to act in the interests of people and the planet. As a result, little has changed - rather, the drive for greater economic growth and resource exploitation has taken priority, as evidenced by the move through the GATT to substantially increase trade volumes regardless of social and environmental consequences. Consumerism in the North is burgeoning; inequalities are stretched as the wealthy amass greater and greater fortunes. There are no laws adequate to control the onslaught on the environment.

Definitions

For a rational discussion on current issues there needs to be an agreement on the meaning of commonly used terms. There is a loose and dangerous ambiguity in the use of the key terms "growth" and "development". The dictionary definition of growth is "the increase in size by assimilation or accretion of materials". Development on the other hand means "expanding or realising the potential of ; to bring to a better, greater, fuller state". "Sustainable economic growth" a phrase now

extensively used in official circles is, of course an oxymoron or as Herman Daly put it, " an impossibility theorem" in a world of finite resources. The term "sustained economic growth" as a prime objective, found its way into Agenda 21 without comment or protest. It is a corruption of "sustainable development" brought to prominence in the Bundtland Report 'Our Common Future'. More appropriate terms are "ecologically sustainable development" [ESD] and "sustainable human development". These two terms are complementary; both are equally valid. Conservation of the environment is the more critical concern, and vital for social justice, and so I tend to prefer ESD. But the term "sustained economic growth" must be challenged at every opportunity as few in official circles realise it is a contradiction of terms. Its acceptance gives licence to development that is, in fact, unsustainable.

Building a sound foundation

As a result of the rapid rate of change in the way human affairs are conducted and the increasing deterioration of the environment, human laws must ensure that our actions are in harmony with the needs of a healthy planet. The World Commission on Environment and Development chaired by Mrs Gro Bundtland that paved the way to the 1992 Earth Summit, recommended that such laws should recognise the rights and responsibilities of individuals and states, establish new norms of behaviour, extend the application of existing laws to support ecologically sustainable development and develop methods of avoiding and resolving environmental disputes. This is a tall order! The trouble is so many things need doing simultaneously.

Since the Earth Summit, there has been a disastrous escalation of the destruction of primary and secondary forests world-wide with insignificant attempts at restoration. An environmental holocaust is occurring led by the Mitsubishi Corporation in flagrant violation of

* President, Pacific Institute of Resource management, Wellington, New Zealand.

the forest principles.

Where is the international law to bring those responsible to task?

Accountability

The rapid movement towards a global economy created by private interests has left a great vacuum in accountability. A global market has emerged which operates across national borders without reference to national governments. In this process, for example, the production, processing and marketing of food has become internationalised. An international labour market is being created which operates outside the influence of trade unions of governmental policy. The new GATT Accord protects such internationalisation since attempts to control matters relating to international trade could be interpreted as barriers to trade. Though not constituted as a legal enactment, the new GATT Accord could not be flouted except at the peril of individual countries. In terms of social and environmental justice, GATT is a giant step backwards. At the same time, and without public debate, the power of nations to protect their own industry and labour conditions, and in many respects to protect their own resources has been severely weakened. GATT will have, through coercion, powers as strong as those of law. Only eighteen months after the Earth Summit, the GATT Accord was agreed. It was only at odds with the purpose and intents of the Earth Summit, but was negotiated outside the United Nations at closed meetings dominated by the major economic powers. This being the case, I cannot see any move at this stage, to strengthen international law based on environmental justice receiving the support of the G-7.

Globalisation has allowed TNC's [Trans-national Corporations], international banks and others manipulating international money markets to operate without restraint, accountable to no one. Despite inevitable opposition from the G-7, international opinion must demand that such institutions be accountable to the United Nations.

Far from moving in the direction of

accountability, movement is away from it. The virtual immobilising of the UN Commission on TNC's through the improper action of the UN Secretary-General after only a few weeks in office, indicates the access to influence that exist within the system. The Commission was created by a vote of the General Assembly and clearly the General Assembly was the only authority to properly decide such a matter. Again no protests from within or outside the Assembly.

The G-7 dominates economic policy on behalf of the TNC's and banks. GATT is their instruments. Though not formally enshrined in law, it ensures the current move to a global economy unaccountable to any public authority. Compliance of other governments to the policies of the G-7 is activated by fear that any move to challenge 'free trade' would bring crippling reprisals.

What to do: international law

National and individual responsibilities

The provision in the United Nations Charter that nations must not undertake or permit actions that have adverse effects beyond their national boundaries needs enshrining in international law, since this vital provision is flouted every hour of the day. Were these provisions rigidly enforced, most of our own environmental and human health problems would disappear. Such a provision is included in the statement of forest principles and guidelines signed at the Earth summit. If respected, it could stop most of the destruction of the planet's forests, since our common welfare and even our ultimate existence depends on the retention of a critical mass of forest cover.

Nations and corporations clearly pay little heed to agreement which have no legal sanction. Laws are needed to ensure agreements are adhered to. All such laws need provisions enabling any non-government organisation to bring a case against an offending nation or private concern, that violates a legal agreement including international conventions. And to bring such a charge, NGO's must not be inhibited by costs of complex procedures.

Environmental disputes

As national resources come under increasing pressure from overuse and degradation, conflicts between nations could emerge. Such conflicts could erupt at any time, even though they could be foreseen in advance. The Gulf War could have been viewed as a precursor of such conflict. Fresh water is thought to be as likely cause of future conflicts as is oil.

Crimes against the environment

Eco-crimes by nations, by corporations and individuals include over-fishing, forest destruction, release of harmful chemicals into the environment, nuclear technology, weapons of destruction.

And what of the heinous crimes amounting to genocide, that are being perpetuated against indigenous people living in traditional habitats. Are not those whose policies caused poverty and persistent and widespread human suffering, not responsible for crimes against humanity; and the over consumers, and those who siphon off aid money by corrupt practices. Where does final responsibility lie?

Responsibility

Responsibility needs to be pinpointed, whether it is direct as in the case of forest and scrub fires which destroy species, erode soil and increase atmospheric carbon, or indirect as in the case of poverty caused by excessive consumption, greed or failure to share.

Finally, accountability must come down to those individual people who make the decisions that are causing increasing human suffering; destroying the natural world and in effect, destroying the planet. They commit the greatest crimes of which humankind can be guilty, for life on Earth and the wondrous creations of the natural world, once gone, are gone forever.

Two interesting initiatives to pinpoint individual responsibility are the Canadian proposal by Tom Green and Herb Hammond for an International Centre for the Biosphere, and

the International People's Tribunal to judge the G-7, held in Tokyo in June 1993. The Canadian proposal aims to develop the ecological equivalent to the Nuremberg principles. Future generations, they argue, may prosecute past offenders for such acts, even if these acts were not illegal at the time they were committed, or were carried out in response to the orders of a government.

The recent Tokyo Tribunal of eminent persons drew up an indictment to clarify the realities surrounding the role by the G-7 framework in the so-called "New World Order". The indictment states that the G-7 defines the policies of the World Bank and IMF and act as the dutiful agents of "globalisation from above". These and other agencies serve the interests of corporate finance. It lays emphasis on co-operation of peoples across borders in a common endeavour to promote justice and an exploitation - free world order and asserts that a real network of social activities with local roots and a global vision is the need of the hour. The Tribunal made judgements on the evidence, which it claimed, spoke for itself. Some admirable conclusions were reached.

Conclusion

Finally, responsibility for ensuring survival falls on all of us, whether in positions of responsibility or not. But those directly or indirectly responsible for ecological crimes against humanity and the environment must be held accountable and called on to answer to charges.

Experience has shown clearly, that agreements, censure, pleas and promises are ineffective.

The world situation is much too serious and complex to simply wait and hope. People and institutions cannot be counted on to act responsibly and collectively without compulsion. Effective international law is now urgent. Such law must be based on a universal ethical code of behaviour applying to all living beings and the environment on which they depend. It must be accompanied by rapid and

effective enforcement by United Nations and national agencies. But this will come about only by the strongest demand of civil society acting through global NGO networks. These networks exist, but need to work together to build a critical mass of world opinion, not merely for effective

international law, but also to turn society from its current obsession with sustained economic growth and material wealth to a people-centred society living in harmony with itself, and its environment.