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## **An Environment-Related Foreign Policy Direction**

Ang papel ay naglatag ng mungkahi para sa pagdebelop ng patakarang panlabas kaugnay ng mga usaping pangkapaligiran. Gumamit ang may-akda ng kontekstong pambansa/panloob sa halip na panlabas sa pamamagitan ng pagtukoy sa sariling *Environmental Impact Assessment System* ng Pilipinas bilang simula ng mas malawak na patakarang panlabas.

This essay is meant to suggest a direction for the development of an environment-related foreign policy strategy of the Philippine government now that it is finally taking some effort in defining the relationship between its foreign policy, on one hand, and environment policy, on the other. The first part explains the assumptions presupposing the choice of one of two possible points of departure for identifying such a relationship. The second part is a brief description of our own Environmental Impact Assessment (EIA) system. The third part sketches some trends in environmental diplomacy. Lastly, a policy direction is identified.

Two points of departure are available for the purposes of a work such as this. The first option is to depart from a point external to national context. One may first consider the Kuala Lumpur Declaration on Environment and Development<sup>1</sup> and

move on to lay the grounds for a foreign policy on environment issues, or one may even move farther back into the past and depart from the Stockholm Declaration.<sup>2</sup> The second option is to depart from a point internal to national context. One may, in this case take a particular constitutional mandate and move on to lay the grounds for a foreign policy on environment.

The latter is more useful for the reason that it allows fuller control, an attribute absent in the former as indicated in the following:

1. International treaty-making process is painfully slow. Under the 1969 Vienna Convention of the Law of Treaties, "*States which sign a treaty are expected, pending ratification, not to do anything that undermines its objects and purposes*" and "*Unless they specifically agree to be bound by signature, it is not until states have formally deposited their instrument of ratification . . . and any other requirements for entry into force have been fulfilled . . . that the treaty enters into force and becomes binding. . .*"<sup>3</sup>
2. Although the International Court of Justice allows application of "*international custom, as evidence of a general practice accepted as law*"<sup>4</sup> it still remains a problem to ascertain "*the opinio juris necessary for the creation of customary law . . . given the variety of manifestations of state conduct from which it may be inferred and of forums in which states' views may be expressed.*"<sup>5</sup>
3. The status of UN General Assembly resolutions and declarations is unclear since Article 10 of the UN Charter gives the Assembly power only to make recommendations.<sup>6</sup> Furthermore, adoption of such resolutions and declarations do not require unanimity and when consensus seem to be at hand, it is without resort to vote -- "*the President asks whether any state has any objections to the proposed*

*resolution, and none being voiced, the President . . . declares the resolution adopted by consensus.”<sup>7</sup>*

From the point of view of the choice of the latter, it is implied that already from the start, if the Ramos government is indeed taking GATT<sup>8</sup> as the point of departure, the initiative it is taking, is short of the ideal. This is not, however, to be taken as uncommon and irreparable -- or even avoidable. Margaret Thatcher<sup>9</sup> herself, once has been in such a position: Forced to establish a national policy on account of an impetus external to national context<sup>10</sup> after having been adamant on the matter for more than a decade.

Mrs. Thatcher, of course is best known for her legacy characterized by a belief to put *“an end to consensus, an abandonment of the agreement and continuity between socialist and conservative governments on the mixed economy and the welfare state. . . an end to compromise, bargaining and the search for policies acceptable to the majority. . . (placing) a new kind of politics, variously labelled adversarial, confrontational or conviction politics.”<sup>11</sup>*

For Mrs. Thatcher, consensus often meant appeasing interest groups and avoiding tough decisions. Nowhere was this more obvious (for her) than in the way in which postwar governments came to rely on reference to trade unions in designing and implementing policy. One consistent theme of Thatcherism was the priority given to building a government strong enough to resist the influence of interest groups.<sup>12</sup>

Unfortunately, “interest groups” is taken here to cover groups including environmentalist ones, interest groups that her government has been fond of calling “serpents emerging from the sea to strangle Laocoon and his sons in their coils,” “extremists,” and “pseudo-Marxists” fond of promoting “disinformation and wild accusations” backed by “unscientific rubbish based on myths.”<sup>13</sup>

As the next century draws closer, chances are that more and more leaders of government are going to be placed in this kind of situation that has befallen both President Ramos and Thatcher. Peter Drucker<sup>14</sup> states the reason quite clearly as he describes what he foresees as the new reality of a transnational economy.

*The final new reality in the world economy is the emergence of the transnational ecology. Concern for the ecology, the endangered habitat of the human race, will increasingly have to be quilted into economic policy. And increasingly, concern for the ecology and ecological policies will transcend national boundaries. The main dangers to the human habitat are increasingly global -- and so will the policies needed to protect and preserve it.*<sup>15</sup>

Taking a point internal to our national context as a point of departure, there are a number of laws from which a choice can be made. It may be decided, for instance, to depart from Article II, Sec. 16 of the 1987 Constitution of the Republic of the Philippines. It states that our Republic shall pursue a policy to “*protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature.*” This mandate, however, is too broad as to be almost tautologous or rhetorical.

It may be decided to depart from Congressional Legislation or Presidential Decrees. There are, however, quite a number of them most of which are too narrow in scope, which can be divided into those covering the following:

Energy; Fisheries; Flood Control and National Calamities; Forestry; Land Use Planning and Management; Mining; Pollution and Traffic Management; Waste Management; Water and Water Quality Management; and, Wildlife, Flora and Fauna.<sup>16</sup>

Fortunately, there exists PD 1586<sup>17</sup> establishing the Philippine Environmental Impact Assessment System.<sup>18</sup> The

President's Decree is general enough to cover all of the above and yet specific enough to involve such nitty-gritties as morbidity rates and seismicity profiles.

### **The Environment Impact Assessment System**

The Environmental Impact Assessment (EIA) System, is an *"entire process of organization, administration and procedure institutionalized for the purpose of assessing the significance of the effects of physical developments on the quality of the environment."*<sup>19</sup>

*"It is a mechanism to ensure that major projects or programs undergo comprehensive review prior to construction or implementation."*<sup>20</sup> Furthermore, it involves a multidisciplinary approach to assessment of proposed projects or programs for possible amenable and adverse impacts. The projects or programs may involve such low impact activities as those involving small scale dive resorts to such high impact projects as large scale coal-fired power generating plants.

There are two broad parameters considered in undertaking EIA: (1) bio-physical, and (2) socio-economic parameters. As per the guidelines<sup>21</sup> of the Environmental Management Bureau (EMB), the scope of the bio-physical parameters, on one hand, include the following: Climate, Terrain, Hydrology, Oceanography, Atmosphere, Vegetation, and, Fish and Wildlife.

The scope of the socio-economic parameters, on the other hand, include the following:

1. Land and Resource Use which covers, among other concerns, assessment of "existing land use plans and patterns"<sup>22</sup> and of sensitivity of the site and vicinity in terms of areas of "religious, historic and cultural significance;"<sup>23</sup>

2. Economic and Demographic patterns of the population in the site and vicinity which covers, among other things, geographic, sociological, anthropological and health service data;
3. General Perception of the project by the population within the site and vicinity; and,
4. Aesthetic concerns.

All of these factors are assessed in terms of the following three dimensions:

1. Current state;
2. Prediction of the environment condition without the project or program; and,
3. Prediction of the probable impacts of the project or program.<sup>24</sup>

An Environmental Compliance Certificate (ECC) is awarded to the proponent of a project or program that passes, as per the assessment of the EMB Environmental Impact Assessment Review Committee, the standards of the EMB.

The novelty of the approach is easily identified when it is noted that no ECC is granted when the standards concerning the socio-economic parameters are not met, in spite of compliance with all technical requirements, such as engineering designs, as per the bio-physical parameters involved. For instance, if the perception survey within the site and vicinity involved indicates that a significant majority of the population is not amenable to the project, no ECC is granted. In cases when an ECC is granted despite indication in the perception survey of ambiguity of the position of the population involved, conditionalities are required to ensure some control from the position of this population such as a Memorandum Of Agreement (MOA) between those adversely affected, the proponents, and the government. This aspect of the EIA System is not at all present in, say, the United States' own system

There are a number of reasons why EIA systems may be good points of departure for a foreign policy.

1. EIA systems are founded on scientific enterprises at the level of best possible technology at hand;
2. EIA systems are standard features of quite a number of government systems<sup>25</sup> and are now "*Rapidly gaining worldwide acceptance*"<sup>26</sup> -- interface with other government systems is thus facilitated;
3. EIA systems often cover the entirety of the economic systems of the states involved<sup>27</sup> -- our population, especially government, industry, and NGO/PO sectors, is generally quite sensitive to our own EIA system,<sup>28</sup> and,
4. EIA systems are self-corrective.

Still, basically, these items only justify why EIA systems may be good points of departure and do not exactly specify in the end what may be gained from these.

### **Trends in Environmental Diplomacy and the EIA System**

International response to environment issues usually takes the form of international law that provides "*legitimate basis for action by states and the international community as a whole and translates into legally binding international norms, the dominant international viewpoint on the basic issues of environmental protection.*"<sup>29</sup> To a large extent, the outputs of the 1972 Stockholm Conference on Human Environment<sup>30</sup>, 1982 United Nations General Assembly in Nairobi<sup>31</sup>, 1987 World Commission on Environment and Development<sup>32</sup>, and 1992 United Nations Conference on Environment and Development<sup>33</sup> all take these forms.

Such responses however have their inherent shortcomings. L.K. Caldwell writes,

*For cooperation to be international, it must occur between or amongst nations. But no nation is able unilaterally to administer international activities, and concurrent action by nations may require coordination and direction that they cannot individually provide. Each nation may undertake its share of the action provided the action can be apportioned by national jurisdiction. For environmental phenomena, division of responsibility may be only partially feasible . . . or may not be practicable. . .*<sup>34</sup>

On top of this, a number of other reasons have hindered the effectiveness of such responses such as the following.<sup>35</sup>

1. Those that negotiate agreements are not always authorized nor mandated;
2. The government involved may, occasionally, not be sincere in its commitments;
3. The administrative capabilities of the government involved may be insufficient to carry out its obligations; and,
4. The government involved may fall from power and its successor unwilling to or unable to honor its commitments.

Other reasons have caused the current trends in environmental diplomacy to appear not as rosy as in the last decade. Marc Pallemmaerts<sup>36</sup> argues that whereas the development of a global consensus from the Stockholm Declaration, to the World Charter for Nature, to the Brundtland Report seemed to have been quite progressive, the direction from the Brundtland Report to the Agenda 21 seems to have been in the opposite direction. Pallemmaerts concludes that the regression is indicated by the absorption of environmental law into economic law that the Agenda 21 presupposed. He points out<sup>37</sup> that Rio Principle 11 provides that:



*environmental standards, management objectives and priorities should reflect the environmental and developmental context to which they apply. . . standards applied by some countries may be inappropriate and of unwarranted economic and social cost to other countries, in particular developing countries.*

This, he claims, is precisely what the Stockholm Declaration has embodied earlier<sup>38</sup> that the World Charter for Nature and the Brundtland Report seemed to have moved away from.

The effect of this shift<sup>39</sup> in intellectual presupposition is quite disheartening to environmentalists of LDCs. For instance, "unilateral measures that may be envisaged to restrict trade in tropical hardwood harvested in a non-sustainable manner"<sup>40</sup> is condemned. What is urged is facilitation of open and free international trade in forest products.<sup>41</sup>

At least there seems to be an agreement between the proponents of Agenda 21 and their critics that there is a need to redirect the patterns that have been emerging from the current body of international legal instruments and mechanisms. On one hand for instance, Agenda 21 itself indicates that "many existing international legal instruments and agreements in the field of environmental law have been developed without the adequate participation and contribution of developing countries."<sup>42</sup> Critics of Agenda 21, on the other hand, have noted that, unlike in the past, "there is increasing resort to so-called 'soft' law approach, either through the use of framework or 'umbrella' treaties or of non-binding declarations, codes, guidelines, or recommended principles. . ." <sup>43</sup> Commonly underlying these statements seems to be the belief that what is required at the moment is that "international laws be developed more quickly, in a more flexible manner than in the past."<sup>44</sup>

How can quickness and flexibility required here be attained? From 1902 until 1992, there have been 62 binding

treaties and international acts established worldwide. This excludes non-binding instruments or "soft laws."<sup>45</sup> The sheer number of these treaties and mechanisms that have to be reckoned with one another preempts attainment of these ideals.

The answer lies with the U.S. National Environmental Policy Act of 1969, "*the first to formalize environmental impact assessments (EIAs).*"<sup>46</sup> The philosophy here lies beyond the United Nations Environment Programme (UNEP) statement that the purpose of any EIA is "*to promote a better appreciation of the environmental implications of industrial projects.*"<sup>47</sup> Any EIA in some ultimate sense is meant to matrix all the parameters involved in the assessment, i.e., climate, terrain, hydrology, oceanography, atmosphere, vegetation, fish and wildlife. A significant number of the 62 treaties and mechanisms noted above are silent as to how such matrixing can be made.

Furthermore, any EIA in some ultimate sense is meant to prevent pollution or degradation of the environment by initiating action at the very incipience of the facility or activity that brings about such problems. Complications often set in after pollution has been generated or after degradation has set in. The best type of action is taken to prevent or mitigate such before they actually occur. With any EIA, action is initiated right at the planning stage of the facilities or activities involved. A cursory survey of the 62 treaties and mechanisms noted above shows that a significant number of them do not reflect this philosophy.

The action suggested here is quite simple. Instead of going about taking environment issues piece by piece and setting up treaties and mechanisms piece by piece, it would be more prudent to:

1. Simply encourage states to establish their own EIA systems where there are none or strengthen them where they are already existing;

2. Set up a mechanism that would set the motion in the direction of globally standardizing EIA systems; and,
3. Interface all systems established into a single body.

Although *"the international dimensions of environmental problems have long been apparent,"*<sup>48</sup> as the now classic *Population Bomb*<sup>49</sup> in 1960s has made clear, it is only now in the 1990s-- 1.8 billion additional inhabitants all over since that classic-- that the urgency to address these problems at this level has become quite obvious for all concerned. At this stage, conservative individuals such as Margaret Thatcher<sup>50</sup> or conservative institutions such as the World Bank<sup>51</sup> no longer question the wisdom of such claims. Also at this stage, however, there has been a global political response in the form of a plethora of international legislation which is *"in a state of flux and has yet to find intellectual coherence."*<sup>52</sup> It is now asked, *"Can a fragmented and often highly conflictual political system made up of 170 sovereign states and numerous other actors achieve a high (and historically unprecedented) levels of co-operation and policy coordination needed to manage environmental problems on a global scale?"*<sup>53</sup>

The answer to this dilemma, it has been said earlier, lies within the philosophy of EIA systems. At the bottom of the suggestion has been to use EIA systems as *foreign policy tools*. How can this work?

### **Towards the Development of an EIA system-based Foreign Policy**

To begin with, let us consider two environmental threats,<sup>54</sup> toxic and hazardous wastes, and deforestation, which are potential sources of international conflict.

### Toxic and Hazardous Wastes

Wastes from human activities in the form of household garbage, air and water pollution, toxic, radioactive, and hazardous wastes are fast overcoming our environment; although the Chernobyl nightmare still continues to haunt us<sup>55</sup>, we need not look afar to find evidence for the glaring issues concerned here. Household garbage alone is enough concern for everybody. In the U.S., 16.0B pieces of disposable diapers, 1.6B disposable pens, 2.0B pieces of disposable razor blades, and 220M pieces of rubber tires are produced annually.<sup>56</sup> In Metro Manila, at least 7,000 tons of household garbage is produced daily<sup>57</sup>. In Hongkong, 1,000 tons of plastic wastes are produced daily.<sup>58</sup>

The Organization for Economic Cooperation and Development (OECD) estimates that 330 million metric tons of toxic wastes are generated every year.<sup>59</sup> Much of this come from developed countries -- a significant number of which ship these wastes abroad *"to some developing countries where legislation governing disposal of toxic wastes is usually non-existent."*<sup>60</sup> Note that from 1986 to 1988 alone *"over three million tonnes of waste were known to be shipped from rich to poor countries,"*<sup>61</sup> and "poor countries" here include the Philippines.

Only this year:

34 shipments of used tires and tire castings have been made from Japan,<sup>62</sup>

22.2 tons of computer metal scrap shipment from Australia has been intercepted at the Manila South Harbor,<sup>63</sup>

45 containers of polyvinylchloride (PVC) intended for shipment to the Philippines from Germany has been intercepted in Singapore;<sup>64</sup>

Maritime Industry Authority has announced its plans to promote *"establishment of shipbreaking facilities*

*that will handle passenger ships, non-oil carriers and similar vessels which are destined for the graveyard”<sup>65</sup> as President Ramos inaugurates one such plant in Cebu -- one that plans to “specialize in shipbreaking and steel rolling, ship block export, ship repair and ship oil waste management among others.”<sup>66</sup>*

Government officials have sought Malaysia’s help in the crackdown against rampant smuggling of banned pesticides through the southern backdoor<sup>67</sup> after learning that “smugglers pay P500 a liter of Brestan to suppliers in Malaysia and Indonesia and sell it at P1,500 a liter to Philippine buyers.”<sup>68</sup>

The Philippine situation as far as toxic and hazardous waste importation is concerned is obviously a serious one. Yet, there seems to be no concerted action on the matter. It is still a very profitable industry to import and process scrap motorvehicle batteries.<sup>69</sup> Importation of discarded oil products are still made by the thousands of liters by fly-by-night operations along the Pasig River.<sup>70</sup> These practices and quite a number of similar ones continue to go unabated.

### Deforestation

It is estimated that 80,000 km<sup>2</sup> of tropical forests are destroyed annually.<sup>71</sup> This is about the size of Austria. At this rate of destruction, all known tropical forests would be gone in 25 years time.<sup>72</sup> Once this takes place, it would be a very tragic occurrence simply because “the tropical forests, which cover only 7% of the earth’s surface . . . are home to 50% to 80% of the planet’s species.”<sup>73</sup> Once lost, together with it would be lost some 1.2M species of plants and animals.<sup>74</sup>

In Netherlands, 54% of the forests have reportedly been already destroyed by acid rain; 54% in Germany, and 50% in Switzerland.<sup>75</sup> In Brazil and similarly undeveloped countries, destruction is mostly due to slash and burn techniques<sup>76</sup> -- in

Brazil alone, 6,000 forest fires occur daily.<sup>77</sup> Based on a report by the Department of Environment and Natural Resources<sup>78</sup>, we are losing our forests at the rate of 2.5 hectares per hour; based on other more liberal estimates the rate is 12.5 hectares per hour.<sup>79</sup> Here and abroad we are fast losing genetic pools that are vital to our agricultural stocks<sup>80</sup> and our pharmaceutical industries.<sup>81</sup>

Although deforestation is a major global environmental threat, the international response expected, however, seems to be short of being global itself. Although *“outrage at the devastation caused by unrestrained logging has led to calls for developed countries to boycott tropical timber,”*<sup>82</sup> leaders of developed countries still insist that *“unilateral measures that may be envisaged to restrict trade in tropical hardwood harvested in a non-sustainable manner”*<sup>83</sup> be condemned.

The Asian Development Bank (ADB) is questioning the move of the Department of Environment and Natural Resources (DENR) suspending cutting operations within “naturally growing” residual forests covered under its industrial forest management (IFMA) program. In a letter to Environmental and Natural Resources Secretary Angel C. Alcala dated Sept. 13 . . . ADB agriculture department Nihal Amerasinghe challenged the move, claiming it may *“undermine the credibility of established review and approval procedure”* in processing IFMA applications. He specifically cited the effects such a “blanket suspension” would have on four IFMA concessions supported by the \$25-million industrial forest plantation project loan from ADB.<sup>84</sup> Facilitation of open and free international trade in forest products is urged.<sup>85</sup>

The venues available for settling the above mentioned brought about by toxic and hazardous wastes, and deforestations disputes are in the form of treaties or agreements. On the issue of toxic and hazardous wastes, for example, the following are available:

1. Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal (1989),<sup>86</sup> and,
2. Bamako Convention on the Ban of the Import into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes within Africa (1991).<sup>87</sup>

On the issue of deforestation, the following are available:

1. International Tropical Timber Agreement (ITTA) that "*aims to promote international trade in industrial wood from tropical developing countries*"<sup>88</sup> -- as per the leadership of Japan that itself imports over 2 million cubic meters roundwood a year;<sup>89</sup> and,
2. Tropical Forest Action Plan (TFAP) conceived by the Global Possibles Meeting also for the same purpose above -- sponsored by the World Resources Institute together with FAO, UNDP, the World Bank and IUCN.<sup>90</sup>

"*Treaties . . . ,*" as has been already noted, "*are silent as to how . . . matrixing can be made,*"<sup>91</sup> for instance in this case, between those that concern toxic and hazardous wastes issues and deforestation issue. On one hand, the former issue is addressed through "hard laws" approach, while on the other hand, the latter issue is addressed through "soft laws" approach.

Furthermore, although the comment here does not apply to the latter issue, treaties tend to promote reactionary types of action. In the case of the Basel and Bamako agreements, the regulation covers lines of action that come after the toxic and hazardous wastes have been generated.

Perhaps most importantly, treaties tend to be eschewed to the disadvantage of LDCs. In the case of the Basel agreement, for instance, the lines of action involved tend to center more on the receiving ends of the toxic or hazardous wastes and less on

although both are committed to "sustainable development," they are more meant to supply the needs of the developed world, the members of which have been unabashedly responsible for subsuming environmental assumptions into economic ones at the Rio Earth Summit.<sup>92</sup>

As has been noted, TFAP, for example, naively regarded that:

*. . . people, not profits, are the primary cause of tropical deforestation.*

*The concept that the TFAP and its proponents are trying to propagate is that deforestation has less to do with "formal forestry" (otherwise known as commercial logging) than with a problem resulting from social, economic and land-use factors. This myth is so much a part of the psyche of international development agents that some go so far as to argue that logging concessionaires actually protect the forests from being even greatly depleted by local rural folk.*

Furthermore, TFAP tends to favor the belief

*. . . that scientific knowledge of tropical forests lies with experts from the financier countries of the industrialized world.*

*This negates the experiential knowledge of forest dwellers and some forest-dependents which is not quantifiable in scientific or other terms. Theirs is a knowing that transcends just biological terminology and paper fact and figures; they understand many secrets of life through their intimate relationship with their forests and how best to preserve and utilise these for the survival of all.<sup>93</sup>*

The recommendation here is to make an EIA system-based international enterprise, other than through the traditional forms of treaties or agreements.



Assuming the Philippine setting is involved with a toxic or hazardous waste generating industry, before this industry is even established, plans for it must pass through the entire EIA process. This is required before these plans can be assessed and approved by the Board of Investments, the Department of Trade and Industry, the Banks and the Local Government Units involved. This means the significance of the effects of physical development on the quality of the environment in pursuit of the plan submitted are going to be assessed. Whatever Environmental Compliance Certificate (ECC) that is issued after undergoing the process, monitoring schemes are invariably stipulated together with the specification of specific violations that can be grounds for suspension or abrogation of the certificate. With such a situation, assuming that "proper handling" can be defined to cover any place on the globe, it should not be difficult to use the system as a venue for international action.

Suppose that the situation between Malaysia and the Philippines involving transit of banned pesticides is reversed, (Malaysia now being the receiving end), and assuming, also, that the following steps have been taken:

1. Both the Philippines and Malaysia have been encouraged to establish their own EIA systems;
2. Both the Philippines and Malaysia have set up a mechanism setting the motion in the direction of standardizing their EIA systems; and,
3. Both the Philippines and Malaysia have interfaced both their systems into a single body.

What the Malaysian government can do, if it wants to put a halt to the practice here and maybe even get compensation for any damages caused, is to simply, through channels, file a complaint with our Pollution Adjudication Board (PAB) of the Environmental Management Bureau (EMB) using the ECC<sup>94</sup> as

the basis for the complaint. With an available mechanism such as this, the Malaysian government, or any private entity or individual in Malaysia can hope to put a halt to the practice, and even get compensation.<sup>95</sup>

Under our EIA system, if any industry is found violating the monitoring scheme stipulated by ECC that covers this industry, or, violating the standards set forth by the DENR, the EMB can issue a Cease and Desist Order (CDO) against the industry. If damages are involved, charges may be made in favor of the complainant against any Environmental Guarantee Fund that may be stipulated in the ECC involved. The Malaysian government need not have to resort to the tedious process of international legal proceedings or other common venues for international diplomacy.

This applies also to forestry industries. Any Timber License Agreement (TLA) with a business venture that the government enters into is covered by the EIA system. In addition to the normal process of the EIA system that TLAs have to go through, TLAs are also subject to public hearings. It is stipulated that

*A notice of public hearing shall be published once a week for two (2) consecutive weeks in any newspaper of general circulation at least twenty (20) calendar days prior to the scheduled hearing. Notice shall likewise be posted in a conspicuous place in the municipality or barangay where the project is to be located. All expenses incurred for the notices shall be charged to the project proponent.<sup>96</sup>*

This ensures that whatever development takes place, it is going to address everyone's concern.

Any critic who intends to voice his concern, for instance, over the type of activity that is covered by the participation of the government in the ITTA or TFAP programs may do so during such hearings. Public hearings form an integral part of the

decision making process of the EIA Review Committee that sets forth the basis for the decisions made in such environmentally critical enterprises. Furthermore, these public hearings also form an integral part in the formulation of public policies. In addition, because they are extensively covered by the media, they form an important part in the shaping of public opinion. If any harm can accrue from ITTA or TFAP led programs, it can be mitigated through public hearings.

There are, of course, a number of shortcomings to the approach suggested here. One concern is that there are considerable differences between the EIA systems of the Philippines and its Asean counterparts. While the Philippine system has been heavy on socio-economic parameters since even the Martial Law period, especially when it comes to social acceptability aspects, its Asean counterparts do not even account for such parameters.

For example, according to a report by Chee Yoke Lin of the Asian Pacific Women's Resource Collection Network,

*Indonesia is planning to set up a body which will include environmentalists to resolve disputes arising from timber firms' takeovers of logging areas occupied by farmers, an environment group said on Wednesday. . . This is the first time environmental groups have been given the opportunity to sit alongside government officials to help resolve land disputes . . . The move comes as thousands of Indonesian farmers were preparing to oppose the takeover of their land by timber companies in heavily forested Kalimantan and Sumatra islands.<sup>97</sup>*

In addition, the innovation suggested here, like all other foreign policy tools, can be abused. Chinese Foreign Minister Qian Qichen calls attention to this point. He urges developed countries

*to halt what he calls the tendency toward imposing unrealistic restriction on industries and products of developing nations under the pretext of environmental protection. . . Such limitations could evolve into new trade barriers and "impair the economic growth of developing countries, crippling their ability to cooperate on environmental issues."*<sup>98</sup>

This seems to be exactly what is at issue when Prime Minister Tomiichi Murayama told President Fidel V. Ramos "that Japanese Government continues to keep the Batangas Port in consideration" -- in effect saying that Japan withholds loan for the port project in Batangas until EIA issues are resolved.<sup>99</sup> Fortunately for those concerned in this case, the Japanese move is a welcome relief. But this may not be the case with the proposed Masinloc Coal Fired Plant. In anticipation of a stand-off on the matter, the Overseas Economic Cooperation Fund (OECF) of Japan, a major contributor to the funds for the project, has required the proponents involved "to buy from a Japanese firm an anti-pollutant equipment . . . to contain the emission of sulphur from the coal-fired plants,"<sup>100</sup> a very costly arrangement to the tune of \$65M.<sup>101</sup> and which entails a higher generation cost for electricity.<sup>102</sup>

These shortcomings may turn out not to be insurmountable. Much work may have yet to be done to further thresh out other advantages and disadvantages of the innovation suggested here. It must be repeated, however, that at this point, enough may have already been said to warrant, in the near future, further effort, i.e., in the form of discussions, research, and other such similar lines of action. With much optimism, what is noted here is that EIA systems may turn out to be viable foreign policy tools.

If success is gained here, there should be no reason to be alarmed with pollution or environmental degradation since by the very nature of such an EIA network that is going to be

established, only those forms of pollution or degradation that are produced or caused by obsolete types of facilities or activities are going to be around, and around only for a short period. There is going to be very little need, if there is any, for other treaties and mechanisms -- the proliferation stops here.

Fortunately for Japan and all the Asean members, their own EIA systems are already in place. What is suggested here should take very little effort on their part. What remains is to convince everyone to take steps in the direction identified, the Philippines included©

## Endnotes

<sup>1</sup>Established in the Second Ministerial Conference of Developing Countries on Environment and Development in Kuala Lumpur, Malaysia, Apr 1992.

<sup>2</sup>United Nations Conference on Human Environment, 1972.

<sup>3</sup>Patricia Birnie and Alan E. Boyle, *International Law and the Environment*, Oxford: Clarendon Press (1992), P. 12.

<sup>4</sup>*Ibid.*, P. 15.

<sup>5</sup>*Ibid.*, P. 19.

<sup>6</sup>*Ibid.*

<sup>7</sup>*Ibid.*

<sup>8</sup>The Uruguay Round.

<sup>9</sup>Excellently illustrated by John McCormick. John McCormick, *British Politics and the Environment*, London: Earthscan Publications, Ltd. (1991).

<sup>10</sup>"During the 1980s, a growing proposition of British environmental policy was made as a result of new legislation required by European Community decisions." *Ibid.*, P. 128.

<sup>11</sup>*Ibid.*, P. 48.

<sup>12</sup>*Ibid.*, P. 57.

<sup>13</sup>*Ibid.*

<sup>14</sup>Peter Drucker, *The New Realities*, New York: Harper and Row (1989), P. 133.

<sup>15</sup>*Ibid.*, P. 133.

<sup>16</sup>Nomenclature developed by the Legal Rights and Natural Resources Center, *Law and Ecology*, Quezon City (1991).

<sup>17</sup>Together with its new implementing guidelines, DENR Administrative Order No. 21, Series of 1992.

<sup>18</sup>Sometimes referred to as the Environmental Impact Statement System (EIS System).

<sup>19</sup>*Ibid.*

<sup>20</sup>Dr. Telesforo W. Luna, "Environmental Impact Assessment: A Policy Need for Sustainable Development," paper delivered at the "Environment and Sustainable Development: Social Science Perspectives" Philippine Social Science Council National Conference, 29-30, 1992, PSSC, Commonwealth Avenue, Diliman, Quezon City.

<sup>21</sup>DENR DAO No. 21, Series of 1992, Op. Cit.

<sup>22</sup>*Ibid.*

<sup>23</sup>*Ibid.*

<sup>24</sup>See Appendix A.

<sup>25</sup>All Asean members included.

<sup>26</sup>*The Environmental Business Handbook*, London: Euromonitor Publications Limited (1989), P. 24.

<sup>27</sup>All industries are covered by it.

<sup>28</sup>The assumption here is that the public is a good *resource* and *source*, as Milton J. Rosenberg suggests, for policy implementation and innovation. Milton J. Rosenberg, "Images In Relation to Policy Process: American Public Opinion on Cold-War Issues," *International Behavior*, Herbert C. Kelman, Editor, New York: Holt, Rhinehart, and Winston (1965), *Passim*.

<sup>29</sup>Philippe Sands, Editor, *Greening International Law*, London: Earthscan Publications, Limited (1993), P. ix.

<sup>30</sup>Stockholm Declaration.

<sup>31</sup>World Charter for Nature.

<sup>32</sup>Brundtland Report.

<sup>33</sup>Agenda 21.

<sup>34</sup>L.K. Caldwell, "Beyond Environmental Diplomacy," *International Environmental Diplomacy*, Cambridge: Cambridge University Press (1988), P. 15.

<sup>35</sup>Noted by Caldwell. *Ibid.*, P. 14.

<sup>36</sup>Marc Pallemerts, "International Environmental Law from Stockholm to Rio: Back to the Future?," Sands, *Op. Cit.*, Pp. 1-19.

<sup>37</sup>*Ibid.*, P. 17.

<sup>38</sup>Principle 23.

<sup>39</sup>Back to Stockholm again, Pallemerts exclaims.

<sup>40</sup>Sands, *Op. Cit.*, P. 18.

<sup>41</sup>*Ibid.*

<sup>42</sup>Section IV, Chapter 29.

<sup>43</sup>Birnie and Boyle, *Op. Cit.*, P. 10.

<sup>44</sup>Patricia Birnie and Alan E. Boyle, *International Law and the Environment*, Oxford: Clarendon Press (1992), P. 10.

<sup>45</sup>Sands, *Op. Cit.*, Pp. 248-9. Also Birnie and Boyle, *Op. Cit.*, Pp. xviii to xxvii.

<sup>46</sup>Euromonitor, *Loc. Cit.*

<sup>47</sup>*Ibid.*

<sup>48</sup>Andrew Hurrell and Benedict Kingsbury, "International Politics and Environment: An Introduction," *The International Politics of Environment: An Introduction*, Hurrell and Kingsbury, eds., Oxford: Clarendon Press (1992), Pp. 1-2.

<sup>49</sup>Paul R. Erhlich, *The Population Bomb*, New York: Ballantines (1968).

<sup>50</sup>As excellently documented by John McCormick. John McCormick, *British Politics and the Environment*, London: Earthscan Publications, Ltd. (1991).

<sup>51</sup>Excellently documented by Jacob D. Werksman. Jacob D. Werksman, "Greening Bretton Woods," *Greening International Law*, Philippe Sands, ed., London: Earthscan Publications Limited (1993). Pp. 65-84.

<sup>52</sup>Lomas, Owen, Editor, *Frontiers of Environmental Law*, London: Chancery Law Publishing, Ltd., (1991), P. 1.

<sup>53</sup>Hurrell and Kingsbury, Op. Cit., P. 1.

<sup>54</sup>Discussions in small text are from Agerico M. De Villa, *Social Political Philosophy*, Quezon City: Katha Publications (1992).

<sup>55</sup>"Wasteland: The Soviet Environmental Nightmare," *Newsweek*, 22 Jan 90, Passim.

<sup>56</sup>Jack Langone, "A Stinking Mess," *Time*, 02 Jan 89, P. 31. 16.0B pieces of disposable diapers are 1.0 foot each put end to end will stretch around the world 121 times.

<sup>57</sup>Based on estimates of Atty. Domingo Abadilla, President of the Earthman Society of the Philippines. Atty. Domingo Abadilla. Domingo Abadilla, *The Environmental Crisis*, Philippine Educational Company: Manila. The DENR, however, reports only 3,339 tons per day as of 1990. DENR, *The Philippine Environment in the Eighties*, Quezon City (1990), P. 240.

<sup>58</sup>Langone, Loc. Cit.

<sup>59</sup>Geoffrey Lean, et. al., *Atlas of the Environment*, London: Arrow Books (1990), P. 101.

<sup>60</sup>Ibid.

<sup>61</sup>Joni Seager, Editor, *The State of the Earth*, London: Unwin Hyman, Ltd, (1990), P. 117. The report here covers only those officially acknowledged by the sources of these wastes.

<sup>62</sup>A report based on an article in New Zealand's *Travel Magazine International*. Philinfo, "Tire imports endanger health," *People's Journal*, 19 Sep 94, P. 13.

<sup>63</sup>Johanna G. Son, "Turning Away Toxic Waste," *Philippine Political Update*, Apr 94, Quezon City: Ateneo De Manila University Press.

<sup>64</sup>Ibid. Also "RP rejects incoming plastic scrap cargo," *Philippine Daily Inquirer*, 3 May 94, P. 12.

<sup>65</sup>Marina says no to plan by private groups to use RP as graveyard for old oil tankers (???)," *BusinessWorld*, 25 Aug 94, P. 16.

<sup>66</sup>Connie E. Fernandez, "Shipbreaking recycling plant in Cebu inaugurated." *PDI*, 4 Aug 94, P. 14.



<sup>67</sup>Rolly San Juan, "Malaysia's assistance sought to stop banned pesticides entry," PDI, *Ibid.*

<sup>68</sup>*Ibid.*

<sup>69</sup>Leadpure Manufacturing, Inc. of Bulacan and Imarflex of Pasig are two such enterprises that thrive on such an activity.

<sup>70</sup>As per the on-site EMB EIA Processing Unit inspection of an application for ECC of businesses engaged in such enterprises.

<sup>71</sup>World Resources Institute and International Institute for Environment and Development, *World Resources 1986*, New York: Basic Books Inc., 1986, P. 2.

<sup>72</sup>Eugene Linden, "The Death of Birth," *Time*, *Op. Cit.*, P. 20.

<sup>73</sup>From data compiled by *Time Magazine* from the World Bank, Worldwatch Institute, Oak Ridge National Laboratory, and Population Reference Bureau. "The Major Threats to the Earth's Environment," *Time*, *Op. Cit.*, Pp. 42-42.

<sup>74</sup>Linden, *Time*, *Loc. Cit.*

<sup>75</sup>"The Major Threats. . .," *Loc Cit.*

<sup>76</sup>According to Erik Echkholm of Worldwatch Institute, this is mainly due the pressures from poverty. Noted by Atty. Domingo Abadilla. Domingo Abadilla, *Op. Cit.*, P. 12.

<sup>77</sup>*U.S. News and World Report*, 31 Oct 88, P. 65.

<sup>78</sup>"Are We Losing Our Forests?," *The Philippine Starweek*, 10-16 Apr 88, P. 6.

<sup>79</sup>"The Sad State of the Philippine Environment," *Philippine Daily Globe*, 22 Jan 89, P. 8.

<sup>80</sup>We need genetic pools from wild stocks for breeding purposes to avoid in-breeding.

<sup>81</sup>"Some 25% of the pharmaceutical in use in the U.S. today contain ingredients originally derived from wild plants." Linden, *Op. Cit.*, P. 21.

<sup>82</sup>"Tropical Forest Destruction," Lean, et. al., *Op. Cit.*, P. 72.

<sup>83</sup>Marc Pallemmaerts, "International Environmental Law from Stockholm to Rio: Back to the Future?," Philippe Sands, Editor, *Greening International Law*, London: Earthscan Publications, Limited (1993) P. 18.

<sup>84</sup>Maricris C. Carlos, "ADB slams DENR decision to halt industrial forest mgmt program," *BusinessWorld*, 28 Sep 94, P. 2.

<sup>85</sup>Ibid.

<sup>86</sup>Hurrell and Kingsbury, *Op. Cit.*, P. xi.

<sup>87</sup>Ibid.

<sup>88</sup>Lean, et. al., *Loc. Cit.* This has been established following the UN Conference on Tropical Timber in 1983. W.M. Adams, *Green Development*, London: Routledge (1990), P. 193.

<sup>89</sup>Seager, *Op. Cit.* P. 85.

<sup>90</sup>Asian Pacific Women's Resource Collection Network, *Asian Pacific Women's Resource and Action Series on Environment*, Kuala Lumpur: Asian and Pacific Development Centre (1992), P. 39.

<sup>91</sup>Earlier essay.

<sup>92</sup>Pallemaerts, *Passim*.

<sup>93</sup>Chee Yoke Lin, Asian Pacific Women's Resource Collection Network, P. 40.

<sup>94</sup>The stipulations of the conditionalities.

<sup>95</sup>On top of the closure, under our system, the entities involved gets blacklisted with the BOI, DTI, and the banks.

<sup>96</sup>DENR DAO No. 26, Series of 1992, Section 2.3.1.

<sup>97</sup>Reuter, "Indonesia creates body to settle disputes involving primary logging areas," *BusinessWorld*, 22 Sep 94, P. 16.

<sup>98</sup>Ibid.

<sup>99</sup>"Japan to withhold loan for Batangas port until squatter issue is resolved," *BusinessWorld*, 25 Aug 94, P. 8.

<sup>100</sup>Gerry Lirio, "Delay seen in release of \$650-M energy loans," *Philippine Daily Inquirer*, 18 Jan 93, P. 17.

<sup>101</sup>"ADB finally gives nod to \$200-M loan for coal plant," *BusinessWorld*, 4 October 94, Front Page.

<sup>102</sup>Ibid.

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*Wastes from human activities  
in the form of household  
garbage, air and water  
pollution, toxic, radioactive,  
and hazardous wastes are fast  
overcoming our  
environment...*

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from Castillo, Del A., Fredo I. Lazarte. *Ekolohiya: Kwentong Lahar*. Tambuyog Development Center, Quezon City

