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Debt-for-Nature: The Second Generation

By KONRAD VON MOLTKE*

I. INTRODUCTION

Developments in international environmental affairs are occurring with extraordinary speed. It is difficult to recall that the Montreal Protocol on Substances that Deplete the Stratospheric Ozone Layer (Montreal Protocol) was signed only three years ago, and entered into force on January 1, 1990.¹ The Montreal Protocol was amended significantly in June 1990 to phase out worldwide an entire group of important industrial chemicals which produce the chlorofluorocarbons that are most damaging to the stratospheric ozone layer.² Moreover, a fund was established to help less developed countries (LDCs) switch to chlorofluorocarbon alternatives, thus facilitating their adjustment to the requirements of the amendment.³ This in turn gave the needed impetus for the creation of a Global Environmental Facility (Green Fund) within the World Bank in November 1990.⁴

Similarly, the preparations have continued for an international convention on climate change, which will be ready for signature in June 1992 at the United Nations Conference on Environment and Development in Rio de Janeiro, Brazil.⁵ The details of this effort remain unclear, even though the Intergovernmental Panel on Climate Change submitted its first assessment report,⁶ and the World Climate Conference met in

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1. Montreal Protocol on Substances that Deplete the Ozone Layer, *opened for signature* Sept. 16, 1987, S. TREATY DOC. 10, 100th Cong., 2d Sess. (1987), *reprinted in* 26 I.L.M. 1550 (1987) [hereinafter Montreal Protocol].

2. N.Y. Times, June 30, 1990, § 1, at 1, col. 3.

3. *Id.* See also UNEP NORTH AMERICA NEWS, Aug. 1990, at 1; *Parties to Montreal Protocol Argue to Phase Out CFCs, Help Developing Nations*, 13 Int'l Env't Rep. (BNA) 275, 275-76 (1990).

4. See N.Y. Times, Nov. 30, 1990, at D2, col. 1.

5. *Stabilization of Greenhouse Gases Called for in Draft Ministerial Document*, 13 Int'l Env't Rep. (BNA) 456 (1990) [hereinafter *Stabilization of Greenhouse Gases*].

6. *Summary Conclusions*, 3 INT'L ENVTL. AFF. — (1991) (in press).

Geneva in late October 1990.⁷ Arguably, negotiating this regime to govern global climate change is the most important task facing the international community at present, as it will have implications for social and economic conditions far into the next century which promise to reach into almost every household on the planet.⁸

Next to these global concerns, topics which were the focus of attention a few years ago such as regional developments on acid rain in Central Europe, or regional seas and fisheries have receded into the background. Even a dramatic development in Brazil, arguably the most significant event in international environmental policy in 1990, has gone largely unnoticed: Brazil has shifted from a policy of exploiting the Amazon to one of seeking sustainable patterns of use.⁹ While the ultimate results of this policy shift remain to be seen, Brazil has already become a major actor in international environmental negotiations since its Amazonian liability has been limited.

This flurry of activity has not occurred in isolation. The linkages between international environmental management and international finance and trade are becoming increasingly apparent: development theory and practice, structural adjustment, trade, national accounting, and international finance are all being reconsidered in the light of environmental imperatives. Debt-for-nature programs are part of this broader process. Indeed, they have been one of the engines of change.

There are several variations of the debt-for-nature swap.¹⁰ Generally, a bank exchanges part of the debt of a LDC for that country's bonds or currency, which the bank sells or donates to an environmental conservation organization.¹¹ In some swaps, the conservation organization uses the bonds or currency to promote conservation or wildlife preservation in the debtor LDC.¹² Alternatively, the bank sells or donates the debt directly to the conservation organization which forgives the debt in return for environmental concessions.¹³ Consent of the debtor LDC must be

7. *Stabilization of Greenhouse Gases*, *supra* note 5, at 456; U.S., *Western Europe Reach Compromise on Dealing with Greenhouse Effect Gases*, 13 Int'l Env't Rep. (BNA) 479 (1990).

8. von Moltke, *Régimes for Reducing Greenhouse Gas Emissions*, in *LIMITING THE GREENHOUSE EFFECT: OPTIONS FOR CONTROLLING ATMOSPHERIC CO₂ ACCUMULATION* (G. Pearman ed.) (in press).

9. Recent Developments, *Environmental Law: Brazil Enacts New Protections for the Amazon Rain Forest*, 30 HARV. INT'L L.J. 503, 503-13 (1989).

10. See Sadler, *Debt-For-Nature Swaps: Assessing the Future*, 6 J. CONTEMP. HEALTH L. & POL'Y 319, 321 (1990).

11. See *id.* at 320.

12. Dionne, *Treasury Agrees to Construe Revenue Ruling on Debt-for-Nature Swaps Liberally*, 39 TAX NOTES 307 (1988) (discussing deductibility of donations).

13. See Sadler, *supra* note 10, at 320-21.

obtained before the initial sale or donation.¹⁴

When the chosen conservation or preservation project entails continuing ownership of land or management of a trust fund by an environmental conservation organization, the organization which negotiated the swap sometimes enlists the aid of a second conservation organization from the debtor nation. The first organization transfers its interests in the debt to the second. This avoids disputes with LDCs which are disinclined to allow foreign ownership of land or foreign interference in management of government-owned parks and preserves.¹⁵

Debt-for-nature programs rest on a deceptively simple notion: the negotiation of reductions in the debt of an LDC in return for increased conservation efforts on its part. Unless closely observed and carefully negotiated, debt-for-nature swaps appear to be a sleight of hand: the turning of a liability into an asset. Over the past three years, however, they have become an accepted part of conservation funding.¹⁶

When originally proposed, debt-for-nature swaps seemed to be a strange idea indeed. By late 1990 however, at least fifteen programs had been concluded, for a total payout to conservation organizations in LDCs of more than one hundred million dollars in funds and bonds.¹⁷ Most of these initial swaps were undertaken by private organizations with the concurrence of the debtor country's government. Others were funded by the governments of developed nations, and were modeled on the private swaps.¹⁸

The achievement of private organizations in providing debt-for-nature transactions should not be underestimated. In every instance, complex negotiations must be held between conservation organizations in the debtor and the creditor nations, governmental agencies in the debtor country, and creditor banks. These negotiations require extraordinary resources and institutional capabilities. At the end of the negotiations, conservation organizations must fund the transactions with money gen-

14. *Id.* at 321.

15. *See id.* at 320-21; *see also Debt-for-Nature Swaps Made Elsewhere in Latin America Said Unfeasible in Mexico*, 11 *Int'l Env't Rep.* (BNA) 408 (1988).

16. *See European Conference on Debt and Conservation: November 2-3, 1989*, 2 *INT'L ENVTL. AFF.* 130, 130-86 (1990) [hereinafter *European Conference*].

17. World Wildlife Fund, *Officially Sanctioned Debt for Nature Swaps* (Mar. 1991) (available from the World Wildlife Fund, 1250 Twenty-Fourth St., NW, Washington, D.C. 20037).

18. The governments of Sweden and the Netherlands funded swaps in Costa Rica; the U.S. Agency for International Development (AID) funded a program in Madagascar.

erated from donations.¹⁹

This leveraging generates more money than has ever been available for conservation in LDCs. Nevertheless, as significant these efforts may be, they do not represent the full potential of debt-for-nature swaps. The transactions to date have demonstrated the linkage between conservation and international economic and financial relations. They will ultimately have a place in intergovernmental relations and point the way towards cooperative ventures between governments, based on the creative use of the debt crisis. Part III of this Article will examine the prospects for this second generation of debt-for-nature programs, and will particularly emphasize the recent Enterprise Initiative for the Americas as a model.

Other linkages between conservation and international economic relations are less obvious. Yet, there are a number of emerging and potential international economic tools used by developed nations to foster incentives for environmental protection in LDCs. These policies relate to debt management, trade, subsidies, and resource valuation. They do not always produce the best environmental effects, however, and are generally not utilized to their full potential. A number of these issues will be studied in Part II for illustrative purposes.

II. INTERNATIONAL ECONOMIC POLICIES AFFECTING CONSERVATION EFFORTS

A. LDC Debt Management

The introduction of debt-for-nature programs in several developing countries has served to focus attention on the wider prospects of debt and conservation linkage.²⁰ Nevertheless, the precise dynamics of debt servicing and debt reduction, and their potential impact on natural resources in LDCs, has not yet been assessed.

At a superficial level, the coincidence of debt and tropical forest conservation is fairly obvious: many of the most indebted countries also have exceptionally high rates of deforestation.²¹ The absolute magnitude of debt alone, however, is a poor inducement of conservation measures. It is the combination of debt in proportion to a nation's Gross

19. von Moltke, *Negotiating in the Global Arena: Debt-for-Nature Swaps*, RESOLVE (No. 22) 1, 3 (1990).

20. See generally *European Conference*, *supra* note 16.

21. Brazil has a total debt of over 111 billion dollars, STATISTICAL Y.B. FOR LATIN AMERICA AND THE CARRIBEAN at 766, U.N. Doc. E/CEPAL/Z/Ser. A/13, U.N. Sales No. E/S.90.II.G.1 (1989), and had an annual deforestation rate of 2323 hectares as of 1988, WORLD RESOURCES INST., INT'L INST. FOR ENV'T & DEV. IN COLLABORATION WITH UNEP, WORLD RESOURCES, 1988-89, at 286 (1988).

Domestic Product (GDP), and of deteriorating terms of trade for an LDC's traditional products, which creates a strong incentive for conservation as one of the few available sources of additional income.

Due to the economic imbalance created by overwhelming levels of debt, LDCs often adopt short-term economic policies designed to meet their next interest or principal payment. Since the benefits of environmental conservation are typically long-term in nature, they tend to be disregarded in favor of the short-term interests of debt servicing and of feeding and housing a growing population.

The extraordinary imbalances created by such debt management can be illustrated in a number of ways. Perhaps the most dramatic example is the widespread phenomenon of net resource flows from LDCs to the developed countries within the Organization of Economic Cooperation and Development.²² This phenomenon is contrary to fundamental principles of economic management, and represents a major breakdown in the international financial system.²³ Many factors have contributed to this breakdown, among them the accumulation of excessive debt by LDCs in the 1970s, the rapid creation of worldwide markets in which economically less efficient systems were at a distinct disadvantage, and the continued imbalance of payments of the world's largest economy.²⁴ In the past few years, efforts to rectify the breakdown have tended to focus mainly on the policies of the debtor countries, and not on those of the creditors. While this is economically acceptable, it is doubtful that it is politically prudent.

In an attempt to rectify the general economic distortions resulting from unsustainable levels of debt, which in turn encourage the harvesting of tropical forests, a number of specific debt management agreements have been developed at the international level. The most important of these are the International Monetary Fund's²⁵ structural adjustment programs and restructuring agreements between debtor countries and commercial banks.²⁶ Thus far, however, these schemes have not given adequate consideration to the issue of conservation.

22. Schmidt, *Facing One World: A Report by an Independent Group on Financial Flows to Developing Countries*, 2 INT'L ENVTL. AFF. 174, 174-81 (1990).

23. *Id.*

24. *See id.* at 175.

25. Articles of Agreement of the International Monetary Fund, Apr. 30, 1976, 29 U.S.T. 2203, T.I.A.S. No. 8937. The International Monetary Fund was conceived at the Bretton Woods Conference of July 1944.

26. *See generally Sovereign Debt Restructuring*, 23 COLUM. J. TRANSNAT'L L. 1, 1-154 (1984).

B. Trade Protection

The rapid growth of worldwide markets has created both opportunities and disruption for the economies of developing nations. This growth has been fostered by a sustained global drive towards greater free trade and open financial markets. While markets may remain largely unregulated by lack of formal international agreement, free trade is the result of a conscious policy of trade liberalization achieved through bilateral negotiations and the multilateral framework of the General Agreement on Tariffs and Trade (GATT).²⁷

The GATT is primarily a negotiating forum rather than an international organization, since the Havana Charter,²⁸ which was to establish an International Trade Organization as the final element of the Bretton Woods structure, was signed but never ratified by the United States. Consequently, GATT was created with the express purpose of forming a legal forum which could be approved by executive agreements, that is, without the consent of the U.S. Senate. The GATT is thus a weak institution with no executive authority.²⁹ Implementation of GATT provisions occurs primarily through the Conference of Parties or in the domestic courts of the parties.

The GATT has established rules governing trade between its parties. At the heart of this system is the principle of most favored nation (MFN) status, whereby no country is given special trading advantages which are not available to all MFN countries.³⁰ In the initial phase of GATT, and through the Kennedy Round of the early 1960s, the parties' focus was on lowering tariffs. Since then, attention has shifted to nontariff barriers to trade (NTBs), among which environmental criteria may figure. The preferred approach to eradicating NTBs is their conversion into tariffs, and the subsequent phased reduction in these tariffs.

Until recently, the GATT focused on trade barriers to manufactured goods. The Uruguay Round was to facilitate the inclusion of agricultural products and services under the GATT umbrella.³¹ The

27. The General Agreement on Tariffs and Trade, *opened for signature* Oct. 30, 1947, 61 Stat. A7, T.I.A.S. No. 1700, 55 U.N.T.S. 187.

28. The Havana Charter never entered into force, mostly because of opposition by the United States. INTERNATIONAL ORGANIZATION AND INTEGRATION: ANNOTATED BASIC DOCUMENTS AND DESCRIPTIVE DIRECTORY OF INTERNATIONAL ORGANIZATIONS AND ARRANGEMENTS, Dir. I.B.2.1, at 1.

29. *Id.* at 2.

30. *Id.*

31. Ministerial Declaration on the Uruguay Round of Multilateral Trade Negotiations, Sept. 20, 1986, *reprinted in* 24 I.L.M. 1623 (1986).

inevitable important environmental implications of this policy have not been addressed.

The GATT regime could not be applied in an undifferentiated manner to all countries. Consequently, provisions were introduced allowing the creation of regional areas of greater free trade, such as the European Community or the United States and Canada, which permit preferential treatment of imports from certain LDCs. The most important of these preferential systems are the Lomé Accords between the European Community and a group of African, Caribbean, and Pacific (ACP) countries,³² and the Generalized System of Preferences (GSP).³³

Since GATT is not a free trade regime, but a process for reducing trade barriers, the option facing GATT negotiators is not, as is often stated, a choice between free trade or trade barriers. Rather, it is a choice between acceptable and unacceptable barriers. Thus, the trade regulations which may be essential to achieve environmental conservation in LDCs, either as leverage or as incentive, can be entirely consistent with GATT.

Important precedent exists for the use of trade restrictions as an instrument to enforce environmental policies. The Washington Convention on International Trade in Endangered Species³⁴ (CITES) is one example. The Montreal Protocol clearly envisions the use of trade restrictions as a means of ensuring compliance with its provisions.³⁵ A ruling was obtained from the GATT Secretariat that these provisions were acceptable under article XX, which concerns measures for public health and safety.³⁶ The use of trade regulation as a means of conservation is, however, a risky undertaking. Trade protection is, however, justifiable in protecting the subsistence sector of an LDC's economy while the

32. Fourth African, Caribbean and Pacific States-European Economic Community Convention [ACP-EEC] [Lomé IV], done Dec. 15, 1989, reprinted in 29 I.L.M. 809 (1990); Third ACP-EEC Convention [Lomé III], done Dec. 8, 1984, reprinted in 24 I.L.M. 571 (1985); Second ACP-EEC Convention [Lomé II], done Oct. 31, 1979, reprinted in 19 I.L.M. 327 (1980); 1975 ACP-EEC Convention of Lomé [Lomé I], done Feb. 28, 1975, reprinted in 14 I.L.M. 595 (1975).

33. Trade Act of 1974, Pub. L. No. 93-618, tit. V, 88 Stat. 1978, 2066-71 (1974) (codified as amended at 19 U.S.C. §§ 2461-2466 (1988)).

34. Convention on International Trade in Endangered Species of Wild Fauna and Flora, Mar. 3, 1973, art. II, para 4, 27 U.S.T. 1087, 1092, T.I.A.S. No. 8249, 993 U.N.T.S. 243, 246 (stating that: "the Parties shall not allow trade in specimens of [specified species] except in accordance with the provisions of the present Convention.").

35. Montreal Protocol, *supra* note 1, art. 4, reprinted in 26 I.L.M. at 1554-55.

36. Personal communication with Ambassador Richard Benedick, U.S. Chief Negotiator for the Montreal Protocol (Nov. 1990). The Montreal Protocol trade restrictions have not, however, been fully defined thus far.

long-term problems of marketing goods and protecting the environment are solved.

The major risk of trade protection is the creation of nonbeneficial economic structures which tend to perpetuate themselves. The ultimate result is higher consumer prices and lower levels of production. The irony is that the goal of trade regulation is to benefit conservation by raising prices to consumers, thus depressing total consumption. In normally functioning markets, however, production rises in response to the stimulus of higher prices.

In essence, the result of trade regulation for conservation is the creation of cartels, with all the attendant economic distortions and little likelihood of achieving long-term viability; long-term viability is an essential criterion for a nation's economic success. Thus, many complex issues remain to be resolved in regard to trade regulation and conservation. The fact that the goals of conservation are laudable does not alleviate the negative economic implications of trade regulation. These implications cause those concerned primarily with economic policy to resist strongly any attempt to manipulate the international trade system to achieve environmental goals.

C. Subsidies

The GATT seeks to limit, and eventually to eliminate, market subsidies, both as a tool of trade policy and of economic policy. This is because subsidies increasingly distort international competition as more goods are traded internationally. The adverse economic impacts of subsidies are particularly severe in a long-term perspective; the environmental perspective must necessarily be long-term. Economic theory holds that negative impacts magnify with the passage of time; subsidies are granted in the short-term, so that longer term impacts are subject to compounded interest calculations.

A number of subsidies have recently emerged which are of particular significance to conservation. Among them are subsidies for restraint in pesticide use, timber extraction, and water pricing.³⁷

The issue of subsidies is particularly complex in the environmental arena. Many countries use subsidies only for certain remedial actions, whereas other nations employ subsidies to accelerate environmental compliance. Exemplary use of subsidies has been made in the European

37. H. P. BINSWANGER, *FISCAL AND LEGAL INCENTIVES WITH ENVIRONMENTAL EFFECTS ON THE BRAZILIAN AMAZON* (1987).

Community.³⁸ In any subsidy program, economic tools are used to counterbalance the inelasticity of the legal system, which results from the slowness of legal processes or from the fact that, in some countries, changes in permit requirements are considered a governmental taking. The essential lesson which has emerged from the protracted debate in the European Community concerning subsidies for environmental purposes is that these economic incentives must be limited in time and strictly limited in volume. They must be viewed as tools to facilitate the transition to more sustainable practices.

Subsidies are, however, clearly contrary to the "polluter pays" principle, whereby the costs of environmental degradation are properly allocated. When properly applied, these allocations will always lead to an increase in consumer prices, and hence a reduction in total consumption, since the ultimate "polluter" is the consumer of natural resources. Increasingly, however, there is a lack of appropriate mechanisms to ensure that all environmental costs associated with a product are internalized and passed on to its users. The ultimate result is a form of distorting subsidy of the costs of pollution. This is particularly serious in relation to energy pricing.³⁹

D. Resource Valuation

Raw resources have no market value apart from the price of the land on which they are located, provided that land ownership conveys control over all resources. Indeed, frequently the land may be valued more highly than whatever resources are on it, creating incentives to remove them as an obstacle to development. In the absence of an identifiable market valuation, such natural resources have been economically invisible, creating strong disincentives for conservation.

A recent study reassessed Indonesia's basic economic indicators in light of the ultimate impact of deforestation, oil depletion, and soil erosion, thus assigning a concrete value to these resources.⁴⁰ Indonesia presents a successful example of development policy. A recent study revised Indonesian national accounts from 1971 to 1984 to take into consideration the three conservation factors mentioned above. The result

38. Reh binder & Stewart, *Environmental Protection*, in 2 INTEGRATION THROUGH LAW: EUROPE AND THE AMERICAN FEDERAL EXPERIENCE (M. Cappelletti, M. Seccombe & J. Weiler eds. 1985).

39. See generally M. Kosmo, MONEY TO BURN? THE HIGH COSTS OF ENERGY SUBSIDIES (1987).

40. Repetto, *Balance Sheet Erosion: How to Account for the Loss of Natural Resources*, 1 INT'L ENVTL. AFF. 103-37 (1989).

was that the annual growth of GDP proved to be 4.0 percent rather than the previous calculation of 7.1 percent.⁴¹ Similarly, the calculation of the average growth of gross domestic investment fell from 11.4 to 1.3 percent according to this reassessment.⁴²

These figures make good intuitive sense since resources in place are assimilated to the capital stock of a country; hence, unsustainable harvest is a form of disinvestment. On the other hand, protection of these resources is equivalent to maintaining the capital base of a country, which has important beneficial effects on its credit standing and long-term economic viability. The recognition of resource valuation in the international economic arena would thus encourage conservation of resources as valuable commodities.

III. SOVEREIGN DEBT-FOR-NATURE

None of these linkages between conservation and international economic relations is self-evident. All require complex trade-offs between sometimes arcane, or seemingly arcane, matters. They are not designed to catch the attention of major policymakers who require a concise, focussed, exposition of issues. Debt-for-nature programs, on the other hand, have the needed characteristics to make them readily comprehensible at all levels of policymaking. They appear simple, though in practice they require extremely complex operations. Consequently, debt-for-nature programs have received a remarkable level of political commitment. The U.S. President and the heads of state and government of the G-7 industrialized countries, as well as individual heads of government, have at various times indicated their willingness to undertake debt-for-nature swaps. Both the Paris and the Houston Summits referred positively to the potential of debt-for-nature conversions.⁴³ Debt-for-nature swaps based on sovereign debt conversions has recently been the focus of two West German transactions⁴⁴ and of the Enterprise Initiative for the Americas, launched by President Bush in advance of his recent trip to Latin America.⁴⁵

41. *Id.* at 133.

42. *Id.* at 134. The author excluded 1971 since the strongly positive resource flow in the first year influences the result. If 1971 was included, net domestic investment would show an average annual decrease of 3.6%.

43. Paris Economic Declaration: "In special cases, ODA [official development aid] debt forgiveness and debt-for-nature swaps can play a useful role in environmental protection." Houston Economic Declaration, item 72: "We recognize that debt-for-nature swaps can play a useful role in protecting the environment."

44. See *infra* notes 48-51 and accompanying text.

45. See *infra* notes 53-66 and accompanying text.

The issues involved in using sovereign debt conversions for conservation are quite different than those involved in private transactions. In private transactions, only one government is necessarily involved: that of the debtor country. In sovereign debt transactions, at least two governments will be involved since the creditor is now also a sovereign government, and a convergence of interests must be achieved for both of these governments.

Sovereign creditors have found the Paris Club to be a forum in which issues of debt and debt management are coordinated. The Paris Club also serves the same purpose achieved in renegotiation of private debts by *pari passu* clauses: it ensures that no single creditor country undertakes steps for its own benefit at the expense of other creditors. Thus, an essential precondition for sovereign debt transactions is to obtain a Paris Club agreement for sovereign debt conversions. This was achieved in late 1990 through a passage recorded in the minutes of the El Salvador restructuring agreement:

On a voluntary basis, the Government of each creditor country or its appropriate institutions may sell or exchange, in the framework of debt for nature, debt for aid, debt for equity swaps, or other local currency debt swaps:

- (1) the amounts of outstanding loans . . . as regards official development aid loans and direct government loans, [and]
- (2) the amounts of other outstanding credits . . . up to 10% of the amounts of outstanding claims as of August 31, 1990 or up to an amount of 10 million U.S. dollars, whichever is higher.⁴⁶

The use of such language in the debt restructuring of other lower middle income countries will open the door for a systematic approach to sovereign debt-for-nature conversions. The West German government indicated more than two years ago that it planned to forgive Kenyan debt in exchange for conservation, but no agreement has been announced, and the negotiations appear to have advanced haltingly, possibly because of "Paris Club" complications.⁴⁷ Another effort was undertaken by the German government in connection with a loan to Poland, which did not follow "Paris Club" rules, since it was part of an initial package of agree-

46. Agreed Minute on the Consolidation of the Debt of the Republic of El Salvador, Sept. 17, 1990 (available from the World Wildlife Fund, 1250 Twenty-fourth St., NW, Washington, D.C. 20037).

47. Only anecdotal information is available. The project followed commissioning of a study on debt-for-nature by the federal Chancellorry. Oberndörfer, *Schutz der tropischen Regenwälder durch Entschuldung*, in 5 PERSPEKTIVEN UND ORIENTIERUNGEN (1989).

ments between the German and Polish governments in 1971,⁴⁸ and not a form of development aid. This debt has recently been forgiven, but the conditions are not widely known yet. During the negotiations, conservation was under consideration as one element of the Polish quid pro quo (support for German language teaching in Polish schools and protection of sites related to the German resistance against National Socialism being the others).⁴⁹

Enterprise Initiative for the Americas

The major current initiative in the area of sovereign debt-for-nature programs is the U.S. Enterprise Initiative for the Americas (the Initiative).⁵⁰ As proposed on June 27, 1990, by President Bush, the Initiative pursues three major goals: (1) to establish free and fair trade rules with individual Latin American countries; (2) to help introduce major investment reforms, including the privatization of state-owned companies and the liberalization of investment regimes; and (3) to permit partial debt reduction of various types of loans for eligible countries in Latin America and the Caribbean.⁵¹

Eligibility for debt reduction under the proposal would be dependent on the debtor nation's performance under four variables: (1) an economic reform program approved by the International Monetary Fund (IMF), in practice a structural adjustment program; (2) structural or sectoral loans under the World Bank or International Development Association (IDA); (3) measures in the areas of trade and investment outlined by the Initiative; and (4) satisfactory agreements with commercial banks.⁵² The United States would reduce the loan principal of eligible countries and permit interest to be paid into a local currency trust fund at a concessionary rate.⁵³ If the debtor country has reached an environmental agreement with the United States establishing an environmental fund, the interest payments would be made in local rather than U.S. currency. The environmental fund would be disbursed for environmental

48. Personal communication with Justus von Widukind, Coordinator of the Global Challenges Network, in Munich (1989).

49. *Id.*

50. *Remarks Announcing the Enterprise for the Americas Initiative*, 26 WEEKLY COMP. PRES. DOC. 1009 (July 2, 1990).

51. *Id.* at 1009-13.

52. White House Fact Sheet on the Enterprise for the Americas Initiative Act of 1990, 26 WEEKLY COMP. PRES. DOC. 1372, 1373 (Sept. 17, 1990) [hereinafter White House Fact Sheet].

53. *Id.*

programs.⁵⁴ The proposed Initiative would include all sovereign debt.⁵⁵ It also would provide for the sale, reduction, or cancellation of some quasi-government loans from the Export-Import Bank⁵⁶ and assets acquired as a result of credit guarantees by the Commercial Commodity Corporation (CCC), so long as they are used for debt-for-equity and debt-for-nature programs.⁵⁷ These sales, reductions, or cancellations of Export-Import Bank loans or CCC assets would only be done in connection with satisfactory plans for debt-for-equity and debt-for-nature swaps.⁵⁸

The Initiative clearly demonstrates how the wide range of international economic and financial policy issues can be interrelated and brought into focus by debt-for-nature programs. The challenge presented to environmental interests following President Bush's announcement was to identify the environmental consequences of the nondebt elements of the Initiative (trade, investment, and restructuring), and to balance the environmental advantages and disadvantages of the entire packet. Some organizations clearly concluded that the Initiative offers sufficient advantages to make the program as a whole attractive,⁵⁹ or at least worth considering, as the Initiative required congressional approval before it could be implemented.

Of the sections of the Initiative which required congressional action, only the provisions for PL 480 loans passed in the 101st Congress.⁶⁰ PL 480 debts total about 1.7 billion dollars in Latin America.⁶¹ The passage of this portion does, however, establish the institutional mechanisms and lays out the principles to be applied to sovereign debt reduction programs on a larger scale. Under the legislation, eligible countries can have their

54. *Id.* at 1373-74.

55. *Id.* at 1373.

56. Export-Import Act of 1945, Pub. L. No. 79-173, 59 Stat. 526-29 (codified as amended at 12 U.S.C. §§ 635-635t (1988)). White House Fact Sheet, *supra* note 52, at 1374.

57. These assets were acquired as a result of credit guarantees made in connection with export sales under programs authorized pursuant to the Commodity Credit Corporation Charter Act, Pub. L. No. 80-806, 62 Stat. 1070-75 (1948) (codified as amended at 15 U.S.C. §§ 714-714p (1988)) and Section 4(b) of the Food for Peace Act, Pub. L. No. 95-501, § 4(b), 92 Stat. 1685-86 (1978) (codified as amended at 7 U.S.C. § 1707a (1988)). White House Fact Sheet, *supra* note 52, at 1374.

58. White House Fact Sheet, *supra* note 52, at 1374.

59. See Passell, *Washington Offers Mountain of Debt to Save Forests*, N.Y. Times, Jan. 22, 1991, at C1, col. 4, C9, cols. 5-6.

60. Food, Agriculture, Conservation, and Trade Act of 1990, Pub. L. No. 101-624, 104 Stat. 3359, 3658-62 (to be codified at 7 U.S.C. § 1738(a)-(m)).

61. World Wildlife Fund, Congressional Debt Owed to U.S. Government as of December 1989 (Latin America and the Caribbean) (available from the World Wildlife Fund, 1250 Twenty-Fourth St., NW, Washington, D.C. 20037).

PL 480 debt reduced (perhaps by as much as fifty to sixty percent), while interest on the remaining debt is channelled in local currency into an environmental fund administered by a local panel.⁶² According to the legislation, this panel will include the following representatives: one or more individuals appointed by the President; one or more individuals appointed by the government of the beneficiary country; and nationals of the beneficiary country who represent a broad range of nongovernmental organizations active in conservation, community development, and scientific or academic organizations.⁶³ This last category will form a majority on each panel.⁶⁴

The legislation differs in two significant ways from the original proposal. The eligibility conditions are weakened in exceptional circumstances to allow countries which are making "significant progress" toward putting in place IMF standby adjustment loans, and moving to a more open investment regime, to qualify for the program.⁶⁵ Second, a public-private Enterprise for the Americas Board (Board) will be established in the United States to oversee the development of guidelines for the implementation of the program in participating countries.⁶⁶ The Board will be comprised of five U.S. government representatives and four "private, non-governmental, environmental, scientific and academic organizations with experience and expertise" in the region.⁶⁷ The Board was created to allay congressional concerns for adequate accountability.

IV. CONCLUSION

The 102d Congress will almost certainly need to address the Enterprise for the Americas Initiative generally, and its debt-for-nature component in particular. Now that precedent setting decisions have been made, it is possible to implement some sovereign debt-for-nature programs. Clearly, choosing an appropriate debtor nation is a crucial first step, and several Caribbean and Central American countries are currently under consideration.

It is perhaps premature to declare a new era of sovereign debt conversions. Too many problems remain to be resolved. However, the ability of implementors of this second generation of debt-for-nature

62. Food, Agriculture, Conservation, and Trade Act of 1990, Pub. L. No. 101-624, 104 Stat. 3359, 3658-62 (to be codified at 7 U.S.C. § 1738(a)-(m)).

63. *Id.* at 3660.

64. *Id.*

65. *See id.* at 3658.

66. *See id.* at 3661.

67. *Id.*

programs to successfully conclude a significant number of transactions in the absence of a formalized framework suggests that most of the outstanding issues will soon be resolved. Whether other countries will follow the path developed primarily by U.S. environmental organizations remains to be seen.

The Enterprise for the Americas Initiative indicates above all, however, that it will be increasingly difficult to disassociate the issues of conservation and international economic management. Whatever the results of the Initiative, the world economy is entering a phase where debt, trade, development assistance, structural adjustment, and technology transfer will all be reviewed and adjusted in light of the environmental imperative. Debt-for-nature programs historically represent the first practical step in this process, and may yet continue to provide an important focus for further developments.

