

Inspiration for Global Governance

The Universal Declaration of
Human Rights and the Earth Charter

Ruud Lubbers

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**10 December 2008 – 60th Anniversary of
the Universal Declaration of Human Rights**



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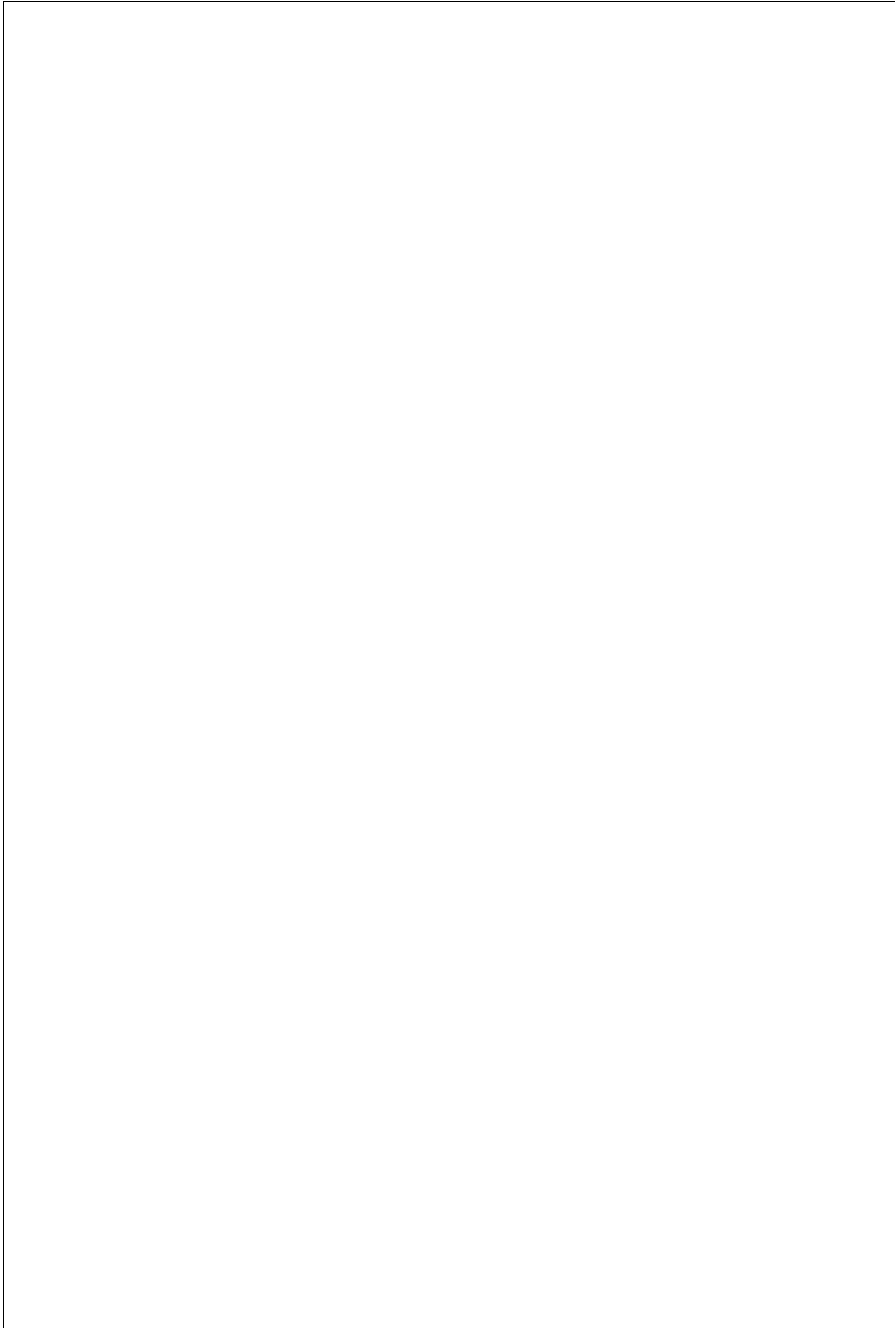
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Preface and Acknowledgements

In May 2008, the Authors first consulted the Earth Charter International Council about the initiative for this book. The members gave their hearty support. Maurice Strong and Mikhail Gorbachev, Co-Chairs of the Earth Charter Commission, also welcomed the publication. At the celebration of the 60th anniversary of the Universal Declaration of Human Rights – within the framework of the 61st annual conference of the non-governmental organisations associated with the United Nations, which was held at UNESCO Headquarters in Paris, France, in September 2008 – the proposal for this book was submitted to Koïchiro Matsuura, the Director-General of UNESCO. He encouraged us to go ahead with the publication and expressed his confidence in the project.

Early December 2008, a special “High Level Earth Charter Meeting” was held in Amsterdam, The Netherlands. At this meeting, a pre-publication copy of this book was presented for discussion. Also in early December 2008, Maxime Verhagen, Dutch Minister for Foreign Affairs, hosted a Business Meeting ‘Business and Human Rights’. Keynote speaker was Professor John Ruggie, Special Representative of the United Nations Secretary-General on the issue of human rights and transnational corporations and other business enterprises. The same pre-publication copy of this book was presented to the participants of this Business Meeting.

The Authors would like to express their gratitude to the Advisory Group of this publication: Steven C. Rockefeller (Co-Chair of the Earth Charter International Council), Alide Roerink (Member of the Earth Charter International Council and of the National Committee for International Cooperation and Sustainable Development, NCDO), Maurice Strong and Mikhail Gorbachev (Co-Chairs of the Earth Charter Commission), Mirian Vilela (Executive Director Earth Charter International Secretariat), Koïchiro Matsuura (Director-General of UNESCO) and Krista Pikkat (member of his staff), Mary Evelyn Tucker (Member of the Earth Charter International Council), Johannah Bernstein (Senior Advisor to the Earth Charter International Council),

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December 2008, on the occasion of the 60th anniversary of the UDHR

Notes on the Authors



Ruud Lubbers
Credit: Paul Fleming

Ruud Lubbers is one of the founding fathers and member of the Earth Charter Commission. He was Prime Minister of The Netherlands from 1982 to 1994 and Minister of Economic Affairs from 1973 to 1977. In 1995, Ruud Lubbers was appointed Minister of State. From 1995 to 2000, he lectured Globalisation Studies at Tilburg University, The Netherlands, and at the John F. Kennedy School of Government, Harvard University, United States. He was the United Nations High Commissioner for Refugees from 2001 to 2005. Ruud Lubbers has held and currently holds many positions, including with the Rotterdam Climate Initiative, Chair of the Curatorium of VNO-NCW (Dutch employers association) and Chair of the Supervisory Board of the Energy Research Centre, Tilburg University and the University Asylum Fund of The Netherlands. He is also Co-Chair of the Dutch Round Table of Worldconnectors, and Advisor to the Dutch human rights non-governmental organisation Stand Up For Your Rights.



Willem van Genugten

Willem van Genugten is Professor of International Law at the Faculty of Law of Tilburg University, The Netherlands. He is also Senior Researcher at the International Victimology Institute Tilburg since 2006. He is a visiting professor at Minnesota Law School since 2000 and extraordinary Professor of International Law at North-West University (South Africa) since 2008. From 1991 to 2006, he was Professor of Human Rights at the Faculty of Law of Nijmegen University, The Netherlands. He is one of the authors of *The United Nations of the Future. Globalization with a Human Face* (KIT Publishers: Amsterdam, The Netherlands 2006), and published numerous publications in the field of international law and human rights law. Among other

NOTES ON THE AUTHORS

functions, Willem van Genugten is Chair of the standing Human Rights Commission of the Dutch Advisory Council on International Affairs, of NWO/WOTRO Science for Global Development, and of the Commission on International Public Law of the T.M.C. Asser Institute. He is also Advisor to Stand Up For Your Rights.

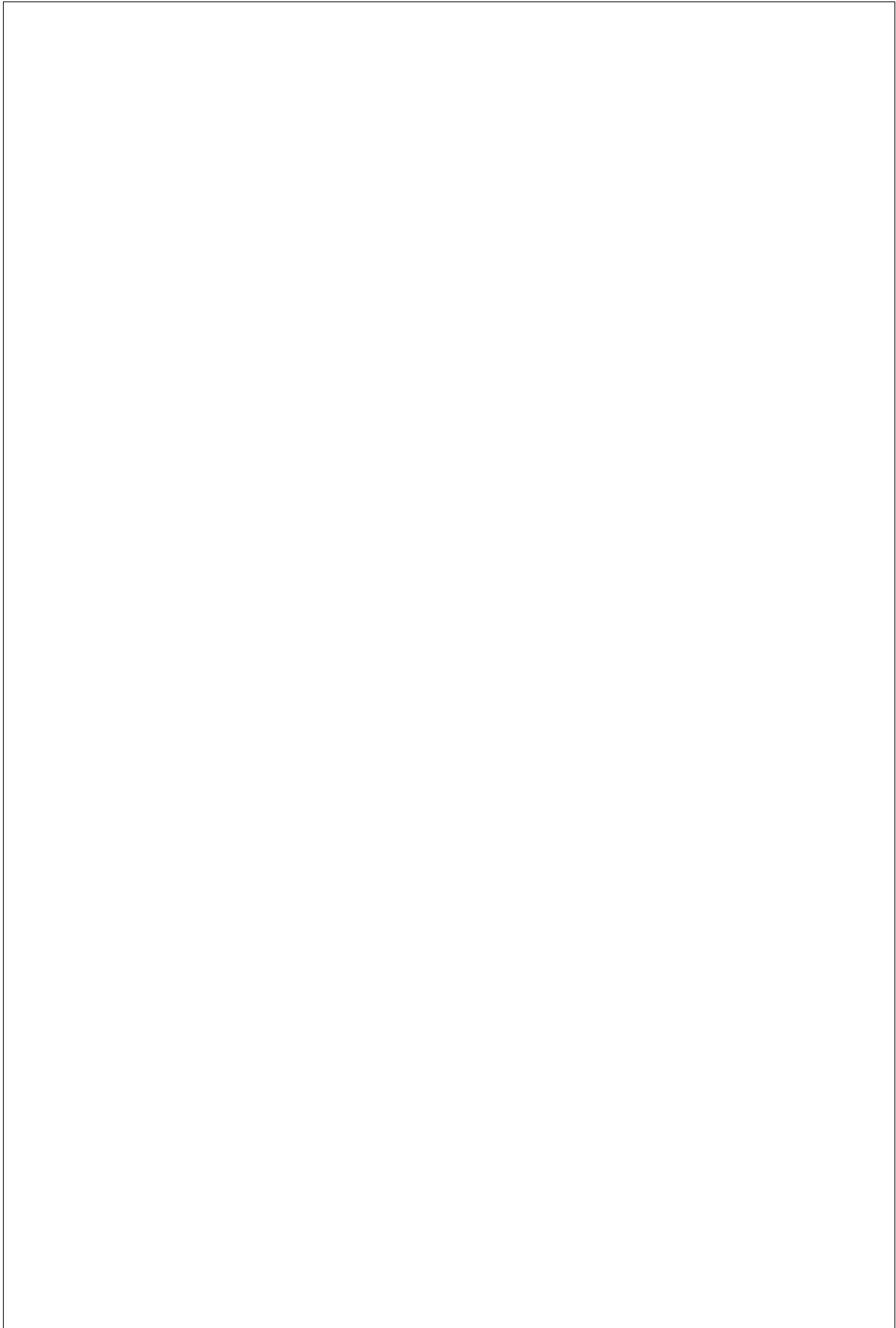


Tineke Lambooy
Credit: Ed Lonée

Tineke Lambooy is lecturer at the Faculty of Law of Utrecht University, The Netherlands. She lectures on Legal Aspects of Globalisation – Corporate Social Responsibility and Mergers & Acquisitions (LLM International Business Law and Globalisation Programme) since 2006. She is also Senior Researcher in the field of corporate social responsibility at the Center for Sustainability of Nyenrode Business Universiteit, The Netherlands. In 2006, Tineke Lambooy published *Een Wereld te Winnen. Zestien visies op Maatschappelijk Verantwoord Ondernemen* (Kluwer: Deventer, The Netherlands 2006) with 16 expert interviews on corporate social responsibility. She is also the author of several publications on corporate public reporting, human rights and business as well as on various subjects of corporate law. Until 2007, she practiced corporate law, specialised in mergers and acquisitions and due diligence research, with Loyens & Loeff, an international civil law and tax law firm in The Netherlands. Tineke Lambooy is a member of the Board of Stand Up For Your Rights and the Board of the Club of Rome Netherlands Chapter. She is Advisor to the One Percent Club, The Netherlands, and to the Golden Child Preparatory School, Asamankese, Ghana, and a member of the Round Table of Worldconnectors in The Netherlands.

List of Abbreviations

ATCA	Alien Tort Claims Act (United States)
GRI	Global Reporting Initiative
IACHR	Inter-American Commission on Human Rights
IAEA	International Atomic Energy Agency
ICT	Information and Communications Technology
ILO	International Labour Organisation
IUCN	International Union for Conservation of Nature
MDGs	Millennium Development Goals
NCDO	National Committee for International Cooperation and Sustainable Development (The Netherlands)
NGOs	Non-Governmental Organisations
NPT	Treaty on the Non-Proliferation of Nuclear Weapons
NWO	Netherlands Organisation for Scientific Research
OECD	Organisation for Economic Co-operation and Development
SUFYR	Stand Up For Your Rights
UN	United Nations
UNCED	UN Conference of Environment and Development
UNESCO	UN Educational, Scientific and Cultural Organization
UNGA	UN General Assembly
UDHR	Universal Declaration of Human Rights
VNO-NCW	Confederation of Netherlands Industry and Employers





United Nations
Educational, Scientific and
Cultural Organization

Organisation
des Nations Unies
pour l'éducation,
la science et la culture

Organización
de las Naciones Unidas
para la Educación,
la Ciencia y la Cultura

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**Message from Mr Koïchiro Matsuura,
Director-General of UNESCO,
on the occasion
of the publication on the Universal Declaration of Human Rights
and the Earth Charter**

Sustainable development is an evolving notion. The Brundtland Commission, in *Our Common Future* (1987), defines sustainable development as "development that meets the needs of the present without compromising the ability of future generations to meet their own needs". At the World Summit on Sustainable Development in Johannesburg, South Africa, in 2002, the term sustainable development was considered a collective responsibility based on three interdependent and mutually reinforcing pillars: economic development, social development and environmental protection. UNESCO has always argued the need to include culture as a fourth pillar, stressing the importance of taking into account different ways of being, acting and believing in achieving sustainable development.

The Earth Charter of 2000 takes this understanding of sustainable development and goes even further in spelling out ethical and spiritual principles that together provide a framework for: respecting earth and life in all its diversity; caring for the community of life with understanding, compassion and love; building democratic societies that are just, participatory, sustainable and peaceful; and securing the earth's bounty and beauty for present and future generations. In 2003, at their General Conference, UNESCO's Member States recognized the Earth Charter as an important ethical framework for sustainable development and resolved to use it as educational tool. As global coordinator of the United Nations Decade of Education for Sustainable Development (2005-2014), UNESCO is supporting this effort by working to bring the principles and vision of the Earth Charter into daily teaching and learning.

This publication provides valuable insights into how the Earth Charter and the Universal Declaration of Human Rights should be promoted together, thus furthering our continuous efforts to make our planet a better and more harmonious place for all living beings, now and in the future.

A handwritten signature in black ink, appearing to read 'K. Matsuura', with a stylized flourish at the end.

Koichiro Matsuura

PROLOGUE

From the Universal Declaration of Human Rights to the Earth Charter

Ruud Lubbers, Willem van Genugten, Tineke Lambooy, Steven C. Rockefeller (Co-Chair Earth Charter International Council) and Jos van Gennip (President NCDO)

This book is inspired by the belief that the Universal Declaration of Human Rights (UDHR) and the Earth Charter are two unique documents of special significance for human development in the 21st century; and that there are many advantages to reflecting on these two documents together. Each document contains a vision of fundamental values and principles, and the two visions complement each other.

During the year 2008, we celebrated the 60th anniversary of the UDHR, which provided a unique opportunity to reflect on the important role the UDHR has played in establishing the human rights tradition. The UDHR has exerted a strong moral, political and legal influence around the world, and it continues to be an important standard against which the conduct of governments towards their citizens is to be measured.

The UDHR not only contains 'first generation' human rights, which call upon the governments of sovereign States to respect the rights of all individuals within their territories; it also includes 'second generation' human rights that motivate governments to create adequate living standards for their people.

However, despite the impressive development of international human rights law over the past sixty years, there are new challenges that must be confronted: a decline in the quality of life due in large measure to environmental degradation, loss of biodiversity from over-exploitation of natural resources and climate change, financial and economic crises, persisting absence of human security, poverty and

PROLOGUE

injustice leading to uncontrolled migration flows, and increasing cultural and religious intolerance. Moreover, globalisation and the development of emerging markets pose new questions to companies with regard to human rights issues.

These developments have required the international community to map out new ambitions: to realise sustainable economic development, including nature conservation and poverty eradication, to respect and value cultural diversity, and to link the pursuit of spiritual and religious values with a commitment to building a culture of peace. Worldwide, new values and aspirations have emerged.

The time has therefore come to promote the Earth Charter, which was launched in 2000, as widely as the UDHR in an effort to address these challenges. Just as the UDHR provided an important set of parameters for the development of nations, the Earth Charter has the potential to lead the way beyond. It emphasises that we are all interconnected with the greater community of life, as well as with future generations, and that the protection of the Earth's vitality, diversity and beauty is a sacred trust. The promotion of the Earth Charter will give guidance to the partnership of government, civil society and business and strengthen this partnership, so essential for effective governance.

Over the past decades, on the international political plane, States have signed many treaties centred on human rights. Declarations emerged, such as the United Nations Millennium Declaration, which show the good intentions of all supporting States. Even so, history has made evident that States *alone* do not succeed in resolving the structural challenges the world now faces. *Governance power* has partly shifted from national governments to civil society and multinational companies. Many of these businesses are giants, and some of them even exceed the size of States in income and influence.

A necessary precondition for improving the world is to attain support from all parties involved: States, business and civil society. In other words, it means practising *complementary governance*. The global challenges then require that in addition to the UDHR, which traditionally addresses States, other approaches and soft-law instruments, such as the Earth Charter, are needed to promote this global transition to sustainable development. The Earth Charter builds on the values and aspirations reflected in the UDHR, but takes also into consideration values and norms affirmed in numerous other international treaties. Moreover, the vision in the Earth Charter has been

strengthened and deepened by its recognition of the importance of spirituality and by the adoption of an inclusive ethical framework. What is more, the Earth Charter itself has been written after consultation with, and advice from countless civil society organisations. Consequently, it has the support of many of the non-State actors who are co-responsible for *global governance*.

The Earth Charter is inspired by the ideals and principles of the UDHR, but it also adds new dimensions, as suggested above. Both of these precious documents are of tremendous value to the world. Together, they can contribute to a peaceful and sustainable development of the world. Each of them has been created by different actors. Each of them also addresses different sectors of governance. Together they constitute an important basis for global governance.

The original texts of the UDHR and the Earth Charter are included in this book. You will find both texts remarkably easy to read. Their relevance will surprise you.

With regard to the other content of this book:

Chapter One has been written by Ruud Lubbers, statesman and one of the founding fathers of the Earth Charter. Together with the other authors of the Earth Charter, Ruud Lubbers is presently Earth Charter Commissioner. In Chapter One, he recalls the beginnings of the UDHR and the Earth Charter. Reflecting on recent history, he demonstrates the importance of complementary governance, wherein business and civil society both have to play a role besides States and governments. This Chapter also highlights the many ways in which the Earth Charter fulfills a role in governance and complements the UDHR.

Chapter Two was written by Professor Willem van Genugten, an expert in international law, and Tineke Lambooy, an expert in the field of legal aspects of corporate social responsibility. This Chapter addresses important legal dimensions and the particular impact that the UDHR has had in the development of human rights law around the world. It analyses to what extent the environment has entered the field of human rights in the last decades. Special attention is paid to the role of the business community regarding human rights. In this connection, the work of Professor John Ruggie – who first served with the United Nations Global Compact and was appointed in 2005 as the Special Representative of the United Nations Secretary-General on the issue of human rights and trans-

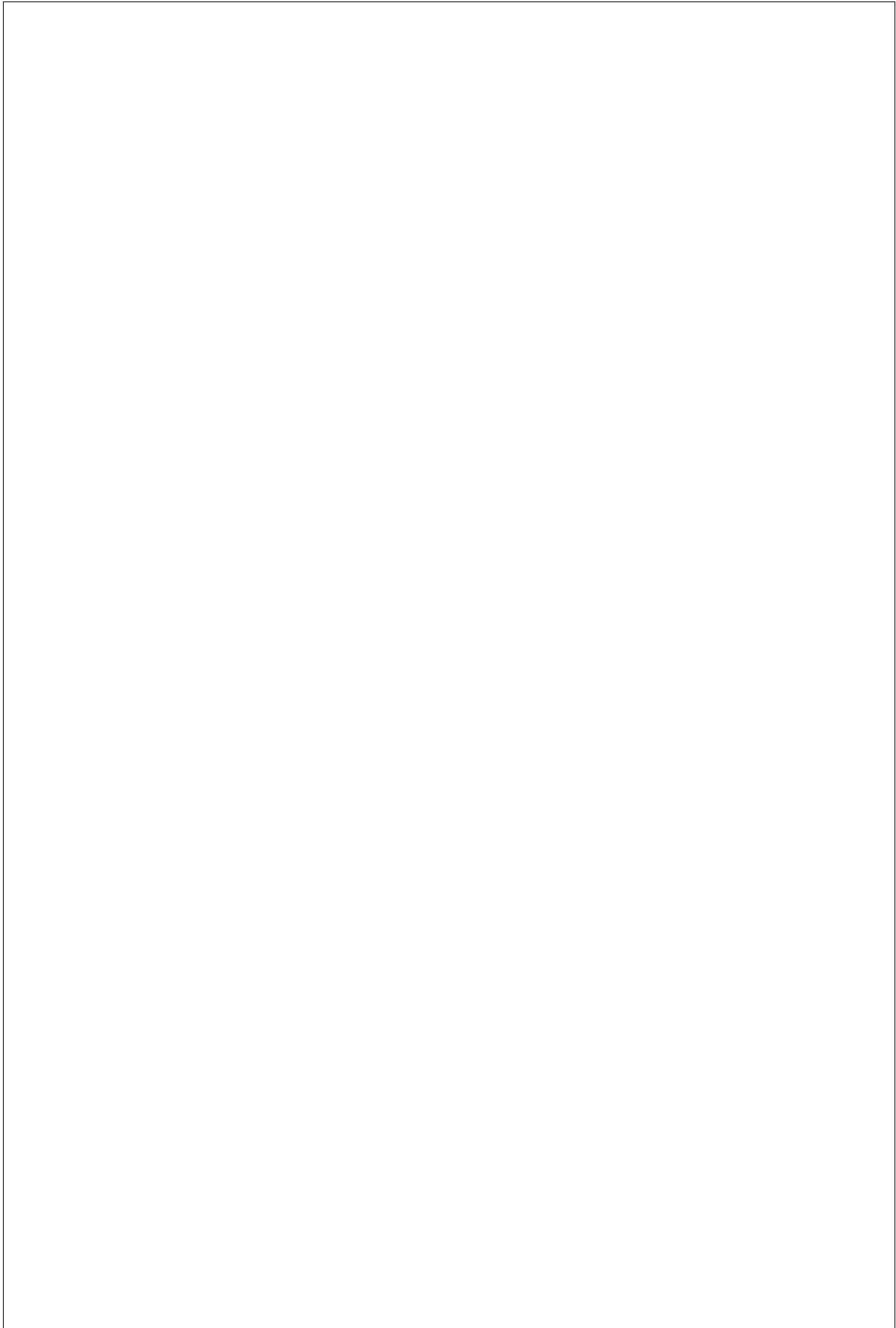
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national corporations and other business enterprises – is also presented in Chapter Two. The establishment of this post acknowledges the relevance of business in the advancement of human rights and the common responsibilities of civil society, companies and governments.

The *Epilogue* by Ruud Lubbers elaborates on ideas for *The Way Forward: “From Individual Rights to Common Responsibilities”*. The Epilogue is preceded by a very interesting letter by Mahatma Gandhi of 1947 regarding his ideas for a universal declaration of human rights. He underlines the correlation between rights and duties.

This book concludes with a guideline for business leaders: “Corporate Social Responsibility and Opportunity”. It addresses the question of how the Earth Charter can be used by companies searching for a way to sustainable business.

We trust that this publication will be of interest to you and inspire you to think about the role that the Earth Charter and the UDHR can play in your life or organisation.





Complementary declarations

CHAPTER ONE

The Earth Charter: Inspiration for Global Governance¹

Ruud Lubbers

1. Introduction

The 60th anniversary of the Universal Declaration of Human Rights (UDHR) poses the question: is this document and tradition still relevant to our lives today as it was 60 years ago? Yes, it is. But at the same time there is ample cause to reaffirm the ideals proclaimed in the Earth Charter, in addition to the UDHR, and to promote them throughout the world. Why? There are at least three reasons:

Firstly, the UDHR was adopted in 1948 when the United Nations (UN) were composed of 58 Member States. Since then, global ethics and values have been widely endorsed in societies around the world and have surfaced as absolutely key in modernity. The Earth Charter's ethical vision is grounded in the indivisibility and interdependence of the values of environmental protection, human rights, equitable human development, peace and non-violence. As such the Earth Charter can inspire all nations and societies to identify not only with the human communities of which they are members, but also with the larger community of life.

Secondly, the UDHR was adopted at a time when national governments were the dominant agents of governance. It specifically called upon the democratic governments of sovereign States to respect the rights of their citizens. However, in modernity, governance can only be effective if politics, business and civil society work closely together.

1. Chapter One is the revised text of an article published under the title *The Earth Charter to Inspire Governance in Modernity* (Chapter 14) in: Frans Bouwen (ed.), "The Ecumenical Movement at the Crossroads: After Sixty Years: What Does "Amsterdam 1948" Mean for us Today", Kok, 2008.

The rise of *corporate social responsibility* is an important reflection of this trend; along with the increasing role that non-governmental organisations (NGOs) and religious and spiritual movements are playing in addressing new challenges. It is important to stress that the 'partnership of governance, civil society and business' is not only a fundamental tenet of the Earth Charter; this partnership also characterises the way in which the Earth Charter was actually developed. The Earth Charter has been designed to inspire all State and non-State actors to assume leadership and responsibility in the creation of a new form of governance, which places justice, peace, democracy, human rights and environmental protection at the core of decision-making.

Thirdly, the comprehensive framework of the Earth Charter on environment and development could complement the UDHR, in order to address the new generation of complex drivers which perpetuate human rights abuses around the world. With its integrated set of ethical guidelines, the Earth Charter not only supports the UDHR and the global human rights movement; it also provides a stronger basis for developing integrated solutions to the new generation of global survival challenges.

Already 20 years ago, the UN recognised that climate change was indeed a common concern for humanity (UNGA Resolution 43/53 (1988)). Despite the transition to a truly multipolar world following the end of the Cold War, it is clear that we have a long way to go from rights to responsibilities in order to, in the words of the Earth Charter, "celebrate life together".

2. Enlightenment and beyond

For a very long time modernisation was considered to be the result of the Enlightenment.

The Enlightenment was about the triumph of sciences, all the way from Copernicus and Galilei to later on Einstein. It was about the modernisation of economics, the political economy as conceived by Adam Smith, the *Wealth of Nations*, all the way to econometrics; and eventually the triumph of market-economies over planned economy. A global market-economy seemed to be the ultimate Enlightenment goal.

Politically, it was about the American and French Revolutions. It was about the development of a new political order, the implementa-

tion of the *trias politica* after the Peace of Westphalia. Since then, it was all about States and 'national sovereignty'.

The next step involved the establishment of the UN, the end of colonialism and the vesting of sovereignty in all peoples according to democratic principles. Above all, it was about promoting the rights of the individual, the emancipation and empowerment of people.

Together, all these interrelated dimensions represented the Enlightenment. And for a long time Enlightenment seemed the ultimate goal of all over the world. However, we now witness modernity as going beyond Enlightenment, which was very much about the pursuit of developing a secular society; or more precisely, an ever more economically and politically maturing society. What is there, beyond Enlightenment?

3. The development of the post-secular society

Recently the famous German philosopher Jürgen Habermas gave a speech on the *post-secular society*. The title was intriguing. Firstly, because it suggests that, before, there was a secular society; secondly, because it suggests that our present society is no longer secular. Habermas made clear that in modernity one has to find a symbiosis between the secular and the religious. He criticised secularism for opposing the religious dimension of life, while at the same time making it clear that the secular dimension continues to be important. Indeed, the religious and ethical dimensions have to complement the secular. There are several reasons for this.

Continuing secularisation alone 'empties' humankind of values and identity. This is the outcome of a process of exaggerated individualisation and the economisation of life. In modernity, this era of globalisation draws businessmen, politicians and journalists into a 'Bermuda Triangle' of short-term interests and actions:

- business feels a pressure to publish earnings quarterly or semi-annually, thereby – arguably – compelled to make short-term strategic and business choices, which may discount the planet as irrelevant and disregard human needs. Moreover, in the present financial system, 'People' and 'Planet' elements are not clearly reflected in financial figures;
- politicians seem to think that only plans that can be realised within their electoral terms are worthwhile pursuing;

- since the media presently is business, the news has to be sold; and news sells when it is sensational; when it highlights one-liners, rather than presenting objective and balanced perspectives.

This is what I mean by the Bermuda Triangle of the short-term interests and actions. Besides this exaggerated short-term thinking, there is the temptation to claim superiority of one civilisation over the other. Given the global power balance after the Cold War, this seems to be the American way of life.

Against this backdrop, individuals are searching for a sense of identity, for values to guide their daily lives, for a greater sense of harmony and a place for spirituality. As a result, religion and spirituality enjoy a resurgence, and rightly so.

To understand 'Enlightenment and beyond' as well as the post-secular dimensions of our society, it is necessary to recall recent history and to reflect on several milestones.

4. Two generations ago

Let me take you back to 1941. In that year, President Franklin Delano Roosevelt delivered his *Four Freedoms* speech to convince the American people that the time had come to participate in the Second World War and to fight fascism; at the same time to foresee the consequences for the future. In a way, this phenomenon of a World War – and this was already the second one – indicated a globalising world. Roosevelt formulated four freedoms:

- The Freedom of Speech and Expression;
- The Freedom to worship God, each in his own way;
- The Freedom from Want; and
- The Freedom from Fear.

And every time he added with his sonorous voice: "Everywhere in the world". It is significant that this address was about values; not about vital interests of the United States of America (USA). The message was a profoundly ethical one. Roosevelt urged the American people not to retreat from this mission to defend the four freedoms.

A few years later, the four freedoms were considered key in a comprehensive effort to formulate and agree upon the UN Charter and the UDHR. These two documents cannot be understood without the

context of not only the end of the Second World War, but also of the colonial era.

All peoples deserved their right to self-determination, be it internally (recognising their autonomy) or externally (the right to establish a sovereign State). Colonialism had to come to an end and all the sovereign nations, the old nations as well as the new ones should work together in the UN. Yet, each government of these sovereign States should respect human rights vis-à-vis their own citizens.

5. The Universal Declaration of Human Rights

The UDHR, now sixty years old, has fulfilled an important role in guiding the behaviour of sovereign States all over the world. Civil society created the NGO Amnesty International and many other human rights NGOs to report on the human rights performance of governments. The reporting efforts of international media, and specific initiatives such as World Press Photo, also contributed to mounting pressure on governments to observe human rights obligations.

At the same time, there was also criticism of the UDHR, which was considered too Western in its approach; too focused on the rights of the individual. There is no doubt that the UDHR was an important offspring of the Enlightenment, in which the recognition and empowerment of the individual had come to be recognised as paramount. The world, however, still had to face the phenomenon that those who are in power claimed the right to prioritise the vital interest of the State – in order to protect themselves. Political leadership – always about individuals being in power – claimed that it was sometimes necessary to prioritise the control of power above human rights.

Many violations of human rights occurred in the name of the State; because of interests which were considered vital by those who were in power, vital for the State. For a long time one thought that this phenomenon was the consequence only of totalitarian regimes or failing democracies; but more recently it became clear that even a large and seasoned democracy such as the USA may violate human rights, if for example, terrorism seems to justify such violation. This makes the UDHR even more important. Let us therefore – 60 years after the UDHR – continue to acknowledge this important achievement of civilisation.

6. Not only sovereign States; not only the UDHR

Modernity, this era of globalisation, is no longer a world comprised only of sovereign States. Fukuyama called the end of the Cold War, the overcoming of communism, and the triumph of market based economies, the 'end of history'. Nowadays, we know it was not; but it is true we have entered a truly new phase in history. Soon after this 'end of history', the world became confronted with the anti-globalisation movement. They argued that the free flow of capital, of 'direct foreign investment' all over the world, would result in a race to the bottom. Their theory was understandable. Developing economies relied on foreign investment to fuel their economic growth. Confronted as they were with the reality of a global capital market, they would become overcautious, choosing not to enforce higher labour and environmental standards in order not to jeopardise the flow of capital to their countries. They had a point: In a world where multinational companies follow local laws, higher profits might be expected in countries where regulations are the most 'capital-friendly'. This leads to a 'race to the bottom'.

7. From the 'race to the bottom' to 'best practices'

However, this understandably anti-globalisation thesis did not take into account another consequence of globalisation caused by the development of information and communication technology.

When we think back, we remember Silicon Valley as the icon of technological development; from telephone to fax, from computers to emails, from the internet to mobile phones; ICT really did become a revolution. It connected the world; it changed citizens, humankind and its institutions.

The anti-globalisation movement embodied the concerns and the anger about the overruling forces of corporate capital taking possession of the world, whereby profits and greed would fuel a race to the bottom. Indeed to a certain extent this indeed is what happened, and continues to happen – but at the very same time, the ICT revolution resulted in a number of important consequences. NGOs became emailing societies. These non-governmental, not-for-profit organisations – aiming at social objectives, wanting to improve life, overcoming the downsides of capitalism *per se* – started to globalise as well.

While in the past, multinational companies used to observe the different laws of each country in which they were active, in modernity this no longer sufficed.

NGOs and civil society organisations started to point out to these companies, and to the world at large, that deficiencies, shortcomings, social as well as environmental, could no longer be accepted just because national laws, non-enforcement and corrupt practices, in particular in developing countries, tolerated them. NGOs in developed economies and democracies started to report globally. Child labour and environmental degradation were reported to and by the media. This was no longer a cry out against governments; it directly addressed the behaviour of multinational companies and other companies acting transnationally. Moreover, these companies started to be affected by this new situation and appeared to change.

How did that happen?

8. From a public relations approach to 'neutralise' civil society to 'corporate social responsibility'

At the beginning of this trend, companies thought efficient public relations would suffice to overcome the pressures of civil society. But, subsequently, it became clear that the talented executives and other employees in these globalising companies, their main intellectual capital, no longer appreciated the fact that 'their' companies were severely criticised in the press. Simple remarks of friends and family, "Oh, are you working for that company?" became very effective in catalysing important changes within companies.

The second factor, which promoted change for the good, was the very experience that adherence to higher moral and ethical standards started to make companies more efficient and more profitable. Policies such as 'zero-accident' and 'zero-emissions' were proved to result in lower risks, lower costs as well as overall gains in productivity. Scientific studies show the positive financial results of sustainably led companies. This resulted in 'ethical' mission statements and, subsequently, in social and environmental reporting.

So, the same globalisation, which had prompted a 'race to the bottom' fifteen years ago, now became a catalyst for a new generation of 'best practices'. It became best practice to publish a sustainability report, in which the company describes its efforts to adhere to the highest

standards and best technologies available in the world. Of course, economic realities – the non-level playing field in a world practising market economy all over – still represent a considerable force that hampers social and environmental progress. Yet at the same time, modernity with its fundamentally different reporting, a changed role of the media and civil society, and the experiences of companies going for better practices are indeed creating a new situation.

Not long ago, going for ‘best practices’ and corporate social responsibility was considered a luxury; today, corporate social responsibility and sustainability reporting, in line with the guidelines of the Global Reporting Initiative (GRI), are key for the credibility of a company. It appears to be important for any successful company.

Above I mentioned the ‘race to the bottom’, as vocalised by the anti-globalisation movements. However, what we now see is a world of ‘best practices’ becoming visible in mission statements aimed at ethical standards all over the world, and in global reporting on the implementation of these worldwide standards. Obviously, the battle has not yet been won. Time and again the tendency of business to exploit nature and to generate profit out of the suffering of powerless people still represents a sad reality; but at the same time there are more and more examples to be found of truly corporate social responsibility; of ‘best practices’.

9. Complementary governance in modernity

What has happened is that ‘governance’ today has another connotation than in the past.

The word governance was traditionally related to governments, to States and intergovernmental agreements. Today “the partnership of government, civil society and business is essential for effective governance”. This quote is taken from the wording used in the Earth Charter. The Earth Charter by its very name appears to be associated to nature and the environment. And so it is, but it is about much more. I have already pointed out the enormous impact of ICT on the development of complementary governance; it has stimulated the partnership of government, civil society and business in order to make governance effective.

10. Environmental awareness

I also wish to point out the role of environmental awareness as this has been developing. In the early 1970s, a groundbreaking report was published by the Club of Rome. Based on the then new computer calculations, it highlighted the consequences, when and if the economies of the poor, *i.e.* the developing countries, were to mature to the same consumption levels as developed countries. These consequences were described both in terms of the environment and in terms of the depletion of natural resources.

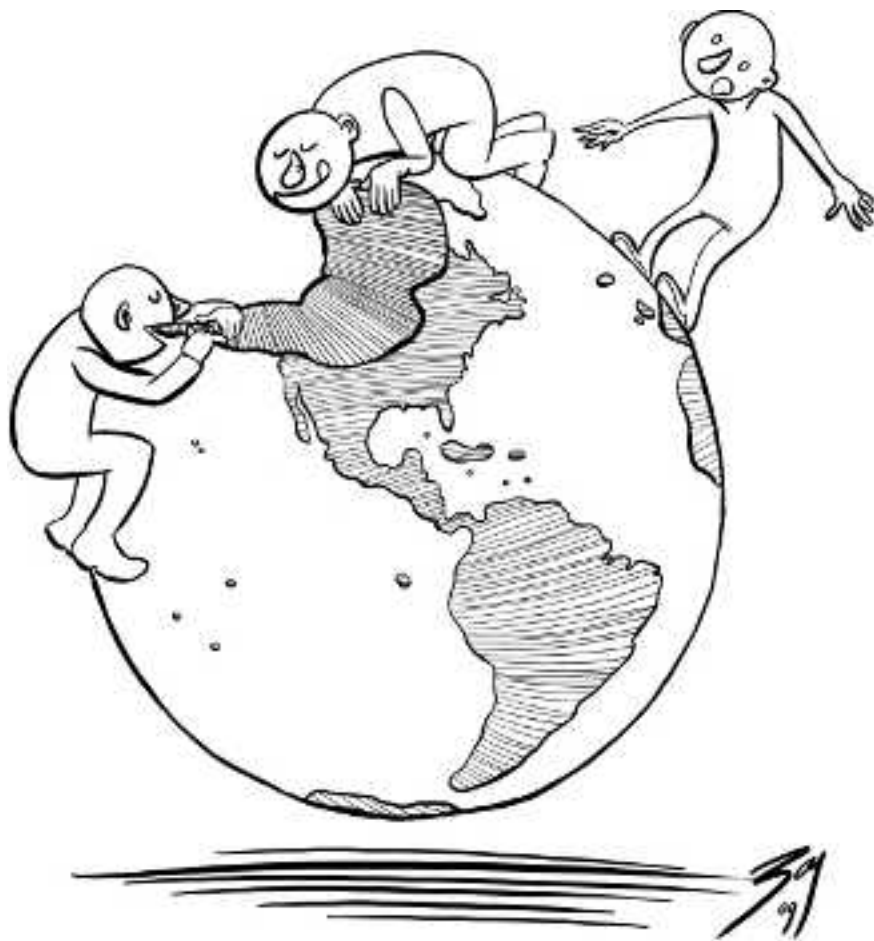
These consequences were so worrying that the title of the report became *Limits to Growth*.

On the one hand, this report had an enormous impact; on the other, it was quickly shelved as irrelevant. In terms of 'depletion of national resources', it indeed obviously underestimated technological progress. In relation to the assumption that poor, developing countries such as China and India would catch up, it was considered unrealistic. Above all, the battle between capitalism and socialism still dominated the scene.

The *Limits to Growth* publication was by no means the first environmental manifesto. In the sixties, Rachel Carson's *Silent Spring* had generated much attention in the USA for the environmental risk of a rapidly growing economy. *Silent Spring* gave birth to the green movement. Another milestone was the 1972 UN Conference on the Human Environment, held in Stockholm.

11. Our Common Future: sustainable development

In 1987, the Brundtland Commission published *Our Common Future*. This title is a clear indication of a growing awareness. It articulated the concept of 'sustainable development', defined as "development that meets the needs of the present without compromising the ability of future generations to meet their own needs". With the development of the concept of sustainable development, there came an increased focus on the worsening consequences of economies growing and growing; both within and between countries. From polluted rivers and acid rain to the hole in the ozone layer, which formed the catalyst for the Montreal Protocol, from the nuclear disaster of Chernobyl to the increasing loss of biodiversity, wetlands and nature. While *Our Common Future* saw technology as an instrument to attain sustain-



Exhausting our world

ability, at the very same time the ‘precautionary principle’ was introduced; *i.e.* when an activity or policy might have environmental harmful consequences, measures should be taken now rather than waiting for incontrovertible scientific evidence – even if some cause-and-effect relationships are not fully established scientifically.

12. Market economy conquers the world

With the end of the Cold War, China, under the *de facto* leadership of Deng Xiaoping, began to develop quickly. In 1992, two decades after Stockholm, the UN Conference of Environment and Development (UNCED) was held in Rio de Janeiro. It turned out a remarkable conference. In the aftermath of the demise of communism, the message was about the importance of the market economy and global economic development – it was as if the first, second and third worlds did not exist anymore.

Yet at the same time, the presence of NGOs and indigenous peoples in Rio was impressive. They came to express their concern about the paramount importance attached to economic growth as opposed to the environment and nature. The UN and governments had prepared and adopted an agenda for achieving sustainable development in the 21st century. However, the NGOs and indigenous people pointed out that a more fundamental choice was required: Awe and Respect for Nature and Ecology, above Economy.

And they made a plea for an ‘Earth Charter’; an idea that was already mentioned in *Our Common Future*. Maurice Strong, UNCED Secretary-General, promised to press for an Earth Charter. Shortly after, the UNCED efforts were merged with those of the Green Cross, chaired by Mikhail Gorbachev. The *Earth Charter Initiative* became a movement. Even then, it took more than seven years to formulate the Earth Charter, an initiative of global civil society in what has been called “the most open and participatory process worldwide”. The final result was achieved in 2000.

13. The Earth Charter

While the UDHR addresses how governments should behave *vis-à-vis* their citizens in respecting their human rights, in the Earth Charter the peoples of the Earth declare “responsibility to one

another, to the greater community of life and to future generations”. The 16 Principles are clustered into four groups:

- Respect and Care for the Community of Life;
- Ecological Integrity;
- Social and Economic Justice; and
- Democracy, Nonviolence, and Peace.

These principles are preceded by a Preamble and followed by *The Way Forward*. This comprehensive approach makes it clear that the Earth Charter, though originating from concerns about the global environmental crisis, strives to inspire awe and respect for the Community of Life. In the words of the Earth Charter’s Preamble:

To move forward we must recognize that in the midst of a magnificent diversity of cultures and life forms, we are one human family and one Earth Community with a common destiny. We must join together to bring forth a sustainable global society, founded on respect for nature, universal human rights, economic justice and a culture of peace.

This wording introduces the Earth Charter as a charter of common responsibility.

14. The Way Forward

In the conclusion of the Earth Charter, *The Way Forward* asserts the importance of “the partnership of government, civil society and business as essential for effective governance”. It also calls for a fundamental change of mind and heart and a “new sense of global interdependence and universal responsibility”. It stresses: “[...] we have much to learn from the ongoing collaborative search for truth and wisdom”. The Earth Charter recognises important realities:

Life often involves tensions between important values. This can mean difficult choices. However, we must find ways to harmonize diversity with unity, the exercise of freedom with the common good, short-term objectives with long-term goals.

The Way Forward concludes:

Let ours be a time remembered for the awakening of a new reverence for life, the firm resolve to achieve sustainability, the quicken-

ing of the struggle for justice and peace, and the joyful celebration of life.

The Prologue has already underlined why time has come to link the UDHR with the Earth Charter. These reasons are compelling.

15. Spirituality has to be part of The Way Forward

It is remarkable to consider the appreciation of the spiritual dimension of life, as expressed in the Earth Charter. Among the universal spiritual values recognised in the Earth Charter are reverence for the mystery of being, gratitude for the gift of life, reverence for life, compassion, love, hope, humility, peace, appreciation of beauty, “being more, not having more”, and the joyful celebration of life. It is as if true modernity is beyond Enlightenment, beyond individualism and beyond entrusting the public cause to secular democratic institutions alone. Spirituality and spiritual movements have to be understood as equally relevant for the common good as the human rights tradition, good governance by governments and the secular UN. Spirituality can blossom in a world in which people, planet and profits balance the importance of the market economy with corporate social responsibility, and where the Earth Charter complements the UDHR. We might even begin to speak about the four P’s: People, Planet, Profit and ‘Pneuma’.

In Western civilisations based on one of these three monotheistic religions: Judaism, Christianity and Islam, the Enlightenment highlighted the importance of maintaining a clear separation between ‘church and State’ in order to protect the public interest. Let us be honest: this separation was indeed in a wonderful way realised by the creation of the *trias politica*. Since then, the public interest was looked after by ‘Democracy’ and not any longer by ‘Religion’.

Even if we acknowledge the weakness of States, the weakness of the architecture of international treaties and the weakness of the UN itself, we still desperately need to strengthen the rule of law where conflict and war have destroyed it. This is even more difficult because time and again, all over the world, corruption degrades democracies to the realities of greed. Again and again, we endeavour to strengthen transparency and accountability mechanisms in order to reduce corruption. It is thus for good reasons that Principle 13 of the Earth Charter reads:

Strengthen democratic institutions at all levels, and provide transparency and accountability in governance, inclusive participation in decision making, and access to justice.

Indeed, ethics and spirituality are needed, but the secular dimension continues to be important to enhance and to strengthen democratic institutions and democracy itself.

16. Co-existence of the political, spiritual and religious dimensions of life

Still there is this need to forge harmony between the political, spiritual and religious dimensions of life and society. We have to be aware that this need exists beyond the three monotheistic religions. It is a global need and we have to include spirituality. We have to 'walk on two legs'; Science and Religion, or rather Science and Spirituality.

Western dominance coming from the dark Middle Ages has claimed the word 'Enlightenment' as a catch word for bringing humanity forward by science and individualism. People became more and more 'aware' and self-assertive. In a way, this wording is strange. Eastern traditions recognise a divinity within nature, as well as its capacity to restore harmony within ourselves by sublimating our ego. Reflecting on modernity may offer the observation that the 'East' is now offering the enlightened 'West' eastern spiritual dimensions and practices. In this tradition, the spirit is set free not by decoupling the body, but on the contrary, spiritual exercises are very much about aligning the two. They are about listening to nature and enjoying prana. Spirituality is also about nurturing a reverence and awe for nature, for life and for all that lives. Spirituality is nurtured by narratives and parables, and it is about the capacity to understand life and passion, and joy in and by narratives. The brief stories and riddles, in Zen Buddhism called 'koans', remind us of the parables in the holy books of the monotheist religions.

17. People, Planet, Profit and *Pneuma*

The Earth Charter movement is a pro-globalisation movement. We, the People all over the globe, offer the Earth Charter to balance and complement democracies and market economies. True modernity is certainly not only about information and communication technology or the market economy; it is also very much about the renaissance of

spirituality all over the world, by meeting each other and learning from each other – which has been made possible by communication. True modernity also means that humankind is becoming aware of the fact that we are all part of one human family; a family that in a tragic way is exhausting the very Earth, the greater community of life to which we belong.

18. The collaborative search for truth, wisdom and cultural diversity

In the words of the Earth Charter: “As the world becomes increasingly interdependent and fragile [...] we have much to learn from the ongoing collaborative search for truth and wisdom”.

The time has come to add the Earth Charter to the UDHR and its human rights tradition. The UDHR was in a way the ultimate outcome of the Enlightenment, and as such the foundational ethical principle on which the UN was based. Now, the Earth Charter offers us a new dimension to complement this ever important UDHR document. The Earth Charter adds to this the notion of wholeness: that not only the pursuit of individual identity and individual rights *versus* the State are needed. Nation States, businesses and civil society also have an important role to play. The wholeness of nature, preservation of biodiversity, cultural diversity of people and diversity of religions – co-existing with each other in peace and democracy – have to be incorporated in our rethinking of our ethical values. All actors need to contribute, and that is exactly what happened during the international consultations which shaped the Earth Charter. I explained that complementary governance – the partnership of governments, civil society and business – is essential for effective governance.

Corporate social responsibility – and opportunities! – as well as local, regional and global civil society promoting the meaningful participation of all interested individuals and organisations in decision making, will complement political governance. A special challenge in our time is the capacity to recognise cultural diversity as something positive; even as a creative force. This connection of civilisations is needed worldwide, but it is also a challenge within countries, because of increasing numbers of migrants, of the first, second and third generation.

As I already mentioned earlier, sustainable development, cultural diversity and space for spirituality are particular Earth Charter

values. Yet beyond governance, as one human family and one Earth Community with a common destiny, we have to reaffirm our “faith in the inherent dignity of all human beings and in the intellectual, artistic, ethical and spiritual potential of humanity”.

19. Diversity instead of superiority

Those who value and practice spirituality and who believe in religion cannot blame the secular dimension of life, even when the words security and terrorism are part and parcel of secular and democratic dimensions. Violence was, and is, all too often linked to religion and its tendency to claim superiority, going even as far as legitimising violence; blessing the arms and sacralising the martyrs. Yet peace, as the Earth Charter describes it, “is the wholeness created by right relationships with oneself, other persons, other cultures, [and here I allow myself to add: other religions] other life, Earth, and the larger whole of which all are a part”.

Our cultural diversity is a precious heritage and each of us will find his or her own distinctive ways forward. The secular world will only be human if spirituality is practiced as well.

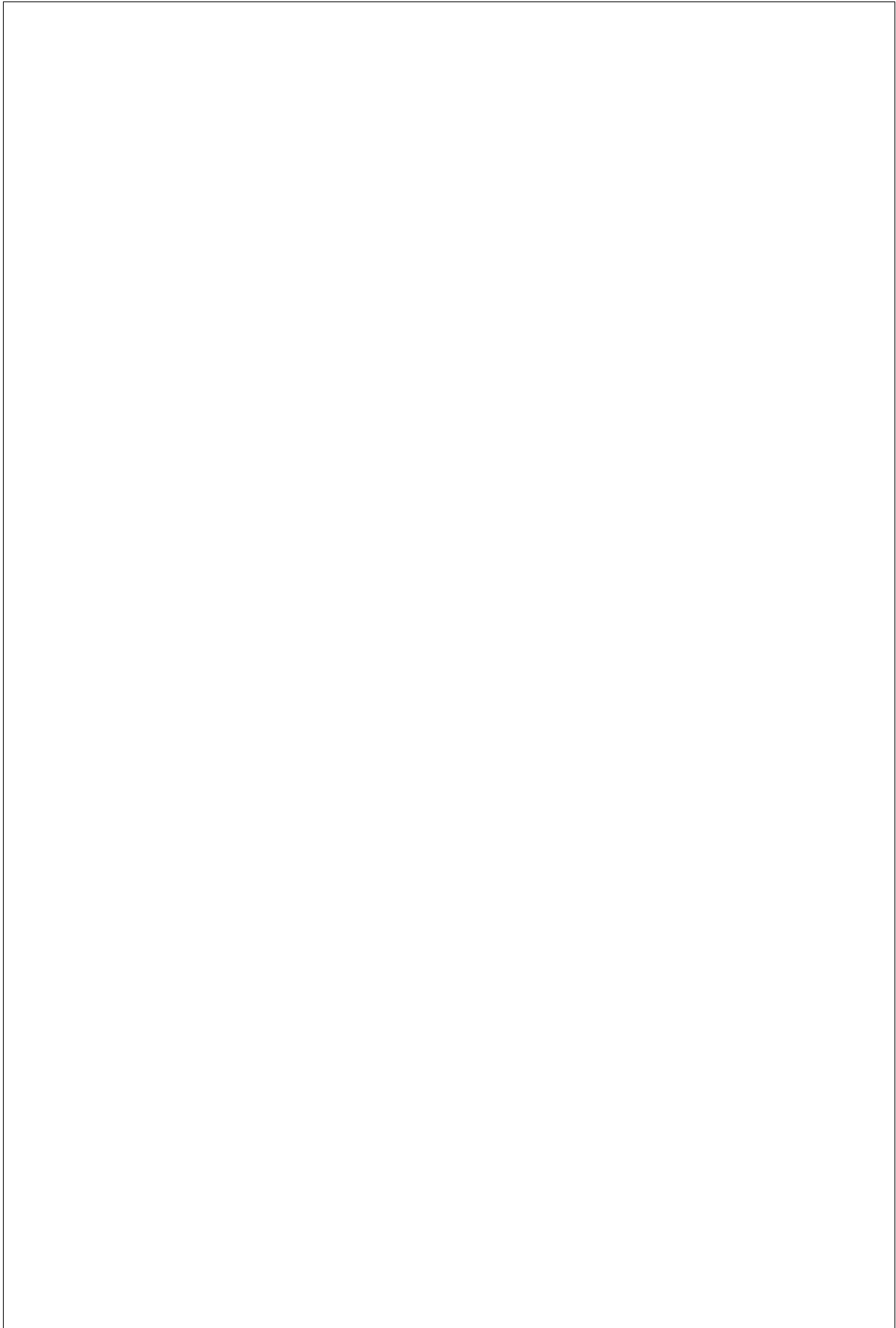
20. Conclusion

The Earth Charter, both in terms of values beyond the UDHR – sustainable development, cultural diversity and space for spirituality beyond secularism – as well as in terms of complementary governance, *i.e.* “the partnership of governments, civil society and business in order to make governance effective”, deserves to be added and linked to the UDHR.

This is even more crucial while at the very same time that “we, the peoples” are becoming more and more aware that “we are one human family and one Earth community with a common destiny”, the devil, Diabolos, the one who divides by slandering, is gaining force again.

This is the paradox of modernity.

The “joyful celebration of life” requires in the first place not giving in to the seduction to be divided, not to claim superiority and not to blame the others.





Justice and the Rule of Law

CHAPTER TWO

The Universal Declaration of Human Rights: Catalyst for Development of Human Rights Standards

Gaps Analysis: Environmental Justice, Sustainable Development and Role of Private Actors

*Willem van Genugten and Tineke Lambooy*¹

1. Introduction and background

For the authors, when asked by Ruud Lubbers to reflect on the 60 years of the Universal Declaration of Human Rights (UDHR) and the linkage with the Earth Charter, three issues present themselves. *Firstly*, this linkage concerns the ongoing development of human rights standards, including, recently, the attention for the interplay

1. The authors are grateful to five eminent Dutch experts in the fields of international law, human rights law and environmental law, for their very valuable comments upon the draft text of their chapter: Prof. Theo van Boven, Maastricht University (former UN Special Rapporteur on Torture, former Director of Human Rights of the UN and former member of the UN Sub-Commission for the Promotion and Protection of Human Rights); Prof. Cees Flinterman, Utrecht University and Maastricht University (member of the UN Committee on the Elimination of Discrimination against Women, former alternate member of the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities); Prof. Peter Kooijmans (former Chairman and Member of the UN Commission on Human Rights, former UN Special Rapporteur on Torture and former judge in the International Court of Justice); Prof. Nico Schrijver, Leiden University (Chairman of the Committee on Sustainable Development of the International Law Association, member of the UN High Level Task Force on the Right to Development and member of the Permanent Court of Arbitration, The Hague) and Prof. Jonathan Verschuuren, Tilburg University (vice dean, honorary professor at North-West University, Potchefstroom, South Africa and member of the IUCN Academy of Environmental Law). The authors would also like to thank Marie-Ève Rancourt for her assistance with research and editing.

between human rights and the environment. *Secondly*, it brings forward the progress of the legal enforcement of human rights standards. *Thirdly*, it points at the actors that would have to play a major role in fully realising this.

States, international organisations, non-governmental organisations (NGOs) and companies can all contribute to the development of standards and their enforcement, even more so if they cooperate. In the Prologue and Chapter One, the importance of 'complementary governance' has been highlighted as essential for effective global governance. The Earth Charter underlines this view. Concerning the development of the concept of governance, the Ruggie Report on business and human rights, presented to the UN Human Rights Council in April 2008, is well worth to be examined. It refers to current 'governance gaps' and offers a framework reflecting the 'differentiated but complementary' responsibilities of States and companies.

Considering that the Earth Charter initially developed from concerns regarding the environment, special attention will be devoted in this Chapter to the role of the environment in the human rights arena.

Part I: Development of human rights and the role of environmental issues

2. The UDHR: bringing human rights together

The inception of, and the political reasons behind, the adoption of the UDHR – 60 years ago – have been discussed in Chapter One. From a legal standpoint, the UDHR is still considered a remarkable and extremely important document. At first glance, an initial element to highlight is the fact that its text brings together different human rights – civil and political rights, as well as economic, social and cultural rights – varying from the right not to be tortured to the freedom of expression, and from the right to seek asylum to the right to an adequate standard of living. The latter is expressed in Article 25 of the UDHR:

Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness,

disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

Here, we recognise President Roosevelt's 'Freedom from Want', as expressed in his 1941 *Four Freedoms* speech, already quoted in Chapter One by Ruud Lubbers.

3. Promoting the universal respect of human rights – UDHR and UN Charter

Another element worth emphasising is Article 28 of the UDHR, stating that "Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realised." This Article has to be read in combination with Articles 55 and 56 of the 1945 Charter of the United Nations (UN Charter). Article 55 of the UN Charter states that "With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations", the UN shall promote, *inter alia*, "higher standards of living, (...) solutions of international economic, social, health, and related problems (...) and universal respect for, and observance of, human rights and fundamental freedoms (...)". Article 56 adds that "All Members pledge themselves to take joint and separate action in cooperation with the Organization for the achievement of the purposes set forth in Article 55".

These two Articles of the UN Charter, being part of a core document of the era of modern international law, can be seen as the ground pattern for how 'things' in the world community of States, peoples and individuals should be done. Moreover, these Articles taken together with the above quoted Article 25 of the UDHR clearly show that human rights do not only relate to the obligation of States to *refrain* from violations, but also to their obligation to *provide support*, individually as well as collectively, if people(s) are not able to effectuate human rights. Furthermore, while granting rights, the UDHR stresses that individuals have also duties towards each other, so that each of us can enjoy those rights (Article 29 of the UDHR). In addition, the Preamble to the UDHR upholds the "inherent dignity and worth of the human person" and the task to fully realise this aim all over the world, as "a common standard of achievement for all peoples and all nations". Formulating this task, the UDHR literally addresses "all peoples and all nations", but also "every individual and every organ of society". Realising the UDHR is even by the Declaration itself seen as a common effort.

4. From human rights to sustainable development including the environment

At the time of the adoption of the UN Charter (1945) and the UDHR (1948), environmental degradation, and its effects upon the right to live in human dignity, was not yet seen as an issue. The word 'environment' is not used in either of the two documents. For a correct understanding of today's interplay between international legal human rights standards and the environment, several documents should be mentioned.

The first is the Declaration of the UN Conference on the Human Environment (Stockholm, 1972). It states in Principle 1 that "Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being" and that "he bears a solemn responsibility to protect and improve the environment for present and future generations (...)".

The second is the UN World Charter for Nature (1982) which says, amongst others, that "Civilization is rooted in nature, which has shaped human culture and influenced all artistic and scientific achievement", and that "living in harmony with nature gives man the best opportunities for the development of his creativity, and for rest and recreation".

The third is the document resulting from the UN Conference on Environment and Development (UNCED, Rio de Janeiro, 1992). Its Principle 1 reads that "Human beings are (...) entitled to a healthy and productive life in harmony with nature".

The fourth is the Copenhagen Declaration on Social Development, resulting from the World Summit for Social Development (Copenhagen, 1995). It states that the participating governments "are deeply convinced that economic development, social development and environmental protection are interdependent and mutually reinforcing components of sustainable development" and that "equitable social development that recognises empowering the poor to utilise environmental resources sustainably is a necessary foundation for sustainable development". No less, no more.

Related wordings can be derived from another document to be mentioned: the UN Millennium Declaration. At the UN Millennium Summit (New York, 2000), the Heads of State and governments recognised freedom, democracy, equality, solidarity, tolerance, a respect for nature

and shared responsibility as common fundamental values. By selecting and underlining these values, the UN Millennium Declaration clearly has brought together many of the intentions expressed during the previous major UN conferences, as mentioned here as well as in Chapter One, and the Second World Conference on Human Rights (Vienna, 1993). Bringing forward all these values can be considered both as a strength and weakness of the text. It is about nearly everything, and therefore runs the risk of drowning in an overload of information and lack of selectiveness and priorities. Be that as it may, these fundamental values have also been translated into more or less concrete targets for the 21st century: the Millennium Development Goals (MDGs). For instance, the goal on environmental protection and its underlying targets include:

IV. Protecting our common environment

21. We must spare no effort *to free all of humanity, and above all our children and grandchildren, from the threat of living on a planet irredeemably spoilt by human activities, and whose resources would no longer be sufficient for their needs.* [emphasis added]
22. (...)
23. We resolve therefore to adopt in all our environmental actions *a new ethic of conservation and stewardship* [emphasis added] and, as first steps, we resolve:
 - To make every effort to ensure the entry into force of the Kyoto Protocol, preferably by the tenth anniversary of the United Nations Conference on Environment and Development in 2002, and to embark on the required reduction in emissions of greenhouse gases.
 - To intensify our collective efforts for the management, conservation and sustainable development of all types of forests.
 - To press for the full implementation of the Convention on Biological Diversity and the Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, particularly in Africa.

Furthermore, it is relevant to note that the UN Millennium Declaration states that “only through broad and sustained efforts to create a shared future, based upon our common humanity in all its diversity, globalization can be made *fully inclusive and equitable*” (emphasis added). Similar terms have later been used at the 2005 World Summit, organised on the occasion of the 60th anniversary of the UN. The

authors consider these terms as 'relevant' because such words cannot be used freely, without any further consequences.

At the same time, it cannot be denied that the documents quoted in this section are not legally binding. Nevertheless, principles derived from it are sometimes used in legally binding contexts. A good example is the Iron Rhine Arbitration (Permanent Court of Arbitration, The Hague, 2005).²

5. The expansion of human rights standards

The core UN conventions

Since the adoption of the UDHR in 1948, new human rights standards have been developed, and new conventions have been concluded; either specifying the general human rights standards (*e.g.* civil and political rights, and economic, social and cultural rights), underlining the specific importance of particular human rights issues (racial discrimination, torture, enforced disappearances and disabilities) or to ensure better protection of specially vulnerable groups, such as children, women and migrant workers. Of these, nine are considered the *core human rights conventions*:

1. International Convention on the Elimination of All Forms of Racial Discrimination, adopted in 1965 and as of now acceded to or ratified (hereafter: ratified)³ by 173 States;
2. International Covenant on Civil and Political Rights (1966; 162 States);
3. International Covenant on Economic, Social and Cultural Rights (1966; 159 States);
4. Convention on the Elimination of All Forms of Discrimination against Women (1979; 185 States);
5. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984; 145 States);
6. Convention on the Rights of the Child (1989; 193 States);
7. International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (1990; 37 States);

2. The Award of the Arbitral Tribunal states that "Environmental law and the law on development stand not as alternatives but as mutually reinforcing, integral concepts, which require that where development may cause significant harm to the environment there is a duty to prevent, or at least mitigate, such harm" and that this duty "in the opinion of the Tribunal, has now become a principle of general international law".

3. The status of ratification indicated in this Chapter is as of 1 September 2008.

8. International Convention for the Protection of All Persons from Enforced Disappearance (2006; four States); and
9. Convention on the Rights of Persons with Disabilities (2006; 36 States).

To this list of conventions, the 1989 Second Optional Protocol to the International Covenant on Civil and Political Rights can also be added. It aims at the abolition of the death penalty (ratified by 66 States).

Other international law conventions and instruments

However, there are many other international conventions with an extremely high relevance for the field of human rights. To name but a few:

- Convention on the Prevention and Punishment of the Crime of Genocide (1948; 140 States);
- the 'human rights conventions' of the International Labour Organisation (ILO) on issues, such as forced and compulsory labour (1930 and 1957), discrimination in respect of employment and occupation (1958), and the worst forms of child labour (1999);
- the four Geneva Conventions (1949) and their two additional Protocols in the field of international humanitarian law – on 'human rights in times of war', especially the ones on the treatment of prisoners of war and on the protection of civilian persons in time of war; and
- Convention relating to the Status of Refugees (1951; 144 States).

Alongside these legally binding conventions, numerous other instruments have been developed, often in the form of UN General Assembly Resolutions or Declarations. All these instruments demonstrate that the UDHR has acted as a *catalyst* in terms of development of human rights standards. From its adoption in 1948, the rights and duties embodied in its initial text have been 'strengthened' by a series of specific human rights instruments.

6. The role of the environment in human rights instruments

As pointed out above, human rights and the environment were perceived as different issues. Only recently one sees care for nature and the dimension of 'quality of life' entering the world of human rights.

An interesting and recently adopted UN instrument of a non-binding character (*i.e.* an instrument that creates primarily moral and political obligations) is the Declaration on the Rights of Indigenous Peoples (2007), which states:

Article 29

1. Indigenous peoples have the *right to the conservation and protection of the environment* and the productive capacity of their lands or territories and resources. States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination. [Emphasis added]
2. States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent.

Certain *regional human rights treaties* also contain provisions relating to the environment. In particular, the “right to a general satisfactory environment favourable to their development” is contained in the African Charter on Human and Peoples’ Right (African Charter) (1981) and “the right to live in a healthy environment” in the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (1988). Although the European Convention on Human Rights does not provide any explicit provision on the right to a healthy environment, the European Court of Human Rights has found ways to fill this gap by allowing compensation for environmental damages based upon other rights, *e.g.* the right to life, the right to privacy and the right to property.

Explicit references to environmental issues cannot be found in many UN human rights instruments. One exception is the previously mentioned International Covenant on Economic, Social and Cultural Rights, which speaks of “the improvement of all aspects of environmental and industrial hygiene” (Article 12(2)(b)).⁴

Another rare example of a human rights convention with a provision on environmental issues is the, also previously mentioned, Convention on the Rights of the Child. It refers to environmental protection

4. The definition of ‘industrial hygiene’ is: “The science that deals with the anticipation and control of unhealthy conditions in workplaces in order to prevent illness among employees.” Consequently, it basically concerns the health of workers rather than the environment itself.

in respect to the child's right to health. Article 24(2)(c) provides that States Parties shall take appropriate measures to combat disease and malnutrition through, among others, "the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution".

On a global scale, it is interesting to note that the 1998 Rome Statute of the International Criminal Court refers to the environmental impact of war activities. Apart from the duty to refrain from the use of poison or poisoned weapons and asphyxiating, poisonous or other gases, the label 'war crimes' also covers the "intentionally launching an attack in the knowledge that such attack will cause (...) long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated" (Article 8(2)(b)(IV)).

Although not a human rights instrument, the Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus, Denmark, 1998) also aims to protect the right to live in a healthy environment. As its title suggests, it grants the public rights and imposes obligations on the Parties to the Convention and public authorities regarding access to information, public participation and access to justice in environmental matters.⁵

As a current development in this field, it is worth pointing at the UN Human Rights Council's decision "to appoint, for a period of three years, an independent expert on the issue of human rights obligations related to access to safe drinking water and sanitation" (Resolution 7/22, dated March 2008). But again, despite the growing awareness, explicit provisions on the environment are still quite exceptional in the existing human rights treaties and human rights related instruments.

5. Article 1 of the Aarhus Convention provides: "In order to contribute to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being, each Party shall guarantee the rights of access to information, public participation in decision-making, and access to justice in environmental matters in accordance with the provisions of this Convention." The Aarhus Convention was ratified by 42 Parties, in Europe and Central Asia, as of 1 September 2008. In particular, it has been ratified by the European Community.

Part II Enforcement of human right standards

7. Strengthening the legal character of the UDHR, and beyond

It is often said that the UDHR represents ‘only’ a Declaration, meaning that it is not legally binding, in other words: an instrument that creates moral and political obligations only. This statement, however, might be overestimating law and underestimating ‘non-law’. Apart from that, the UDHR certainly is more than just another text adopted by the UN General Assembly. It should be kept in mind that in UN-practice a Declaration is a “formal and solemn instrument”, only suitable “for rare occasions when principles of great and lasting importance are being enunciated”. In using such an instrument, it is generally expected that it will contribute to the creation of international customary law. Under international law, customary law is considered as important as treaty law. There is no hierarchy between the two of them. It has often been argued that, in the 60 years of its existence, the UDHR has reached the level of customary international law. In a more precise argumentation, however, every article and sub-article would deserve being dealt with separately, thereby using the criteria of the International Court of Justice for international customary law, before such a general statement can be made. Generally, two elements are regarded essential: (1) there must be a consistent and general international practice among States, and (2) the practice must be accepted as law by the international community.

Be this as it may, many UN documents, instruments and bodies in practice do recognise the UDHR as a common framework for human rights protection worldwide. This is the case, for instance, for the 1993 World Conference on Human Rights and the 2005 World Summit, and for the Universal Periodic Review created in 2007. The latter mechanism establishes that the human rights practices of all UN Member States will be scrutinised on a periodical basis by the UN Human Rights Council. The basis of this review is: (a) the UN Charter; (b) the UDHR; and (c) human rights instruments to which a State is party (Resolution 5/1 of June 2007, unanimously adopted by all 47 Council members). This reconfirms the status of the UDHR.

As regards enforcement, however, it is important to understand that the UDHR standards are, although clear to a great extent, open to interpretation. Moreover, *universality* does not necessarily mean *uniformity* in applying the standards within different national contexts. Human rights standards do leave space for, what is called a

'margin of appreciation', although with the exception of rights of a peremptory character (*ius cogens*). In order to have that margin defined by independent experts and not by States' governments only, the concept of 'supervisory committees run by experts' has been conceived. Most of the core human rights conventions have established such committees, with the task to scrutinise periodical State reports on the implementation of their treaty obligations. In addition to the reporting mechanism, complaint procedures have been created. Individual complaints, State-to-State complaints, and inquiries regarding treaty violations, can be brought before human rights treaty bodies. Some of these mechanisms will hereinafter be shortly dealt with.

8. Regional human rights courts and commissions

Regional judicial institutions have played a significant role in the development of the legal enforcement of human rights standards.

Council of Europe

Taking the UDHR as a starting point, the framers of the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950) "sought to pursue the aims of the Council of Europe through the maintenance and further realisation of human rights and fundamental freedoms". Indeed, the Convention represented one of the first steps towards the collective enforcement of certain rights set forth in the UDHR. Under the Convention, a mechanism was set up for the enforcement of the obligations entered into by Contracting States. The States entrusted this responsibility to three institutions: the European Commission of Human Rights (established in 1954), the European Court of Human Rights (1959) and the Committee of Ministers of the Council of Europe.

Under the original version of the Convention, complaints by individuals, groups of individuals or NGOs could be brought against Contracting States, either by other Contracting States, or by individual applicants. Nevertheless, recognition of the right of individual application was optional, and it could therefore be exercised only against those States which had accepted it. Since the coming into force of Protocol No. 11 in 1998 (after ratification by all Council of Europe Member States) the complaint procedure is not optional anymore. Protocol No. 11 also abolished the European Commission of Human Rights. Since then, complaints are brought directly before a Court Committee of three judges for consideration of their admissibility,

followed – if the cases pass the admissibility barriers – by an examination of the cases itself by a Court Chamber composed of five judges. In exceptional cases, the judgements of the Chambers can be tested before the Court's Grand Chamber (17 judges). Meanwhile, the Court system suffers from a structural overload of cases. This led to the adoption of another Protocol (No. 14) to further streamline and simplify the supervisory procedures. The coming into force of this Protocol is, however, so far halted by the Russian Federation.

Americas

The inter-American human rights system was born with the adoption of the American Declaration of the Rights and Duties of Man in 1948. From this instrument, the Inter-American Commission on Human Rights (IACHR) was created in 1959 with the principal function to promote the observance and defence of human rights in the Americas. By 1961, the IACHR had begun to carry out on-site visits to verify the general human rights situation in a State or to investigate specific situations. Since 1965, the IACHR is expressly authorised to examine individual complaints or petitions alleging human rights violations.

The American Convention on Human Rights was adopted in 1969 and entered into force in 1978. This Convention established the Inter-American Court of Human Rights and defines the functions and procedures of both the Commission and the Court. The objective of this Court is the application and interpretation of the American Convention on Human Rights – ratified by 25 American States – and other related treaties concerning the protection of human rights in the American States, such as the 1988 Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador). Over the years, the Inter-American Court has played an important role, especially regarding the recognition of the rights of indigenous peoples.

The Commission may only process individual cases where it is alleged that one of the Member States of the Organisation of American States is responsible for the human rights violation. A case brought against a State which is a party to the American Convention on Human Rights, will be judged against the standards set forth in this Convention. In the case that a State is not a party thereto, the Commission applies the American Declaration of the Rights and Duties of Man.

Africa

The African Charter of 1981 empowers the African Human Rights Commission with a wide and general mandate that includes the interpretation of the African Charter and investigation. The African Charter embodies, alongside civil and political rights and economic, social and cultural rights, also other types of rights. Examples are *peoples' rights*: the right to self-determination, the right to freely dispose of their wealth and natural resources, the right to development and to a "generally satisfactory environment favourable to their development". The African Charter is also the first human rights charter that specifies the duties of the individual towards "his family and society, the State and other legally recognised communities and the international community".

The African Human Rights Commission may hear inter-State complaints and can receive communications from individuals and groups containing complaints against States. Although the Commission is not empowered to render binding sentences, it can issue recommendations to States and suggest provisional measures. In addition, the African Court of Human and Peoples' Rights was established in 2004 having advisory, conciliatory and contentious jurisdiction. The Commission, the State Parties and the African intergovernmental organisations have access to this Court. Under certain conditions, it also has jurisdiction over complaints of individuals and groups.

Since 2005, the African Human Rights Court is in the process of merging with the African Court of Justice (which was established under the Protocol of the Court of Justice of the African Union adopted in 2003, but not yet ratified), in order to create a single African judicial organ to address inter-state conflicts and to strengthen human rights protection.

9. Individual complaint mechanisms in case of human rights abuses

As mentioned, several UN human rights conventions contain procedures granting individuals and groups, including often NGOs, the right to submit complaints on human rights violations committed against them by 'their' States. Such procedures create the right for an individual to have an extra, *international* look at an alleged human rights violation at the moment when one is not satisfied by the response of the national judicial system. In fact, these complaint

mechanisms can only be used after the exhaustion of local remedies. This individual complaint mechanism is incorporated in the form of an optional article within the relevant Convention itself or added to it through an additional Protocol.⁶ In all cases, such procedures are of an optional nature, *i.e.* States have to ratify via an additional procedure their adherence to the individual complaint mechanism. Consequently, a complaint by an individual may only be lodged if the State is a party to the Convention concerned *and* the State has declared that it recognises the competence of the relevant body in charge of receiving such complaints. The same goes for State-to-State complaints.

These individual complaint mechanisms are often described as an important element of the 'quasi-judicial supervision' of the observance of human rights. The term 'quasi' is used because, unlike for example the European Court of Human Rights, the Committees which supervise the observance of human rights in the UN cannot take decisions that have binding effects on the addressees. Nevertheless, this does not mean that they and their activities are less valuable as a result. In particular, their decisions can influence the development of human rights law, relying upon action by national courts, sensitise national policy makers and support the national civil society organisations.

6. Such individual complaint procedures exist, leaving aside specificities, in relation to a number of UN human rights conventions previously exposed in §5: (1) International Convention on the Elimination of All Forms of Racial Discrimination: procedure incorporated in the Convention under Article 14 and accepted by 53 States; (2) International Covenant on Civil and Political Rights: procedure added to it in 1966 in the form of an Optional Protocol to the Covenant and ratified by 111 States; (4) Convention on the Elimination of All Forms of Discrimination against Women: procedure added to it in 1999 under an Optional Protocol to the Convention and ratified by 90 States; (5) Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: procedure incorporated in the Convention under Article 22 and accepted by 63 States; (9) Convention on the Rights of Persons with Disabilities: procedure added to it in 2006 under an Optional Protocol and ratified by 22 States, and; (7) International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families: procedure incorporated in the Convention under Article 77 but not by 2008 yet into force considering that no State Party has yet made the necessary declaration. Similar individual complaint procedures are 'in progress'. Concerning the draft optional protocol to the International Covenant on Economic, Social and Cultural Rights, there is hope that after the adoption of the Protocol by the Human Rights Council (in June 2008) it will be officially adopted by the UN General Assembly in the context of the 60th anniversary of the UDHR. Furthermore, some NGOs are campaigning for the UN to establish a similar complaints mechanism to the Convention on the Rights of the Child.

10. 'Charter-based' supervisory procedures

In addition to these quasi-judicial UN procedures, there are the politically oriented supervisory procedures, so-called 'Charter-based' instruments, including the procedures available to the UN Human Rights Council. The human rights situation in States that are not party to the above-mentioned conventions may also be brought to the attention of the Council. In addition, *all* UN Member States are subject to the Universal Periodic Review mentioned in §7. Such control is based on a number of sources of information, including the reports of a series of Special Rapporteurs, Special Representatives, Independent Experts and Working Groups of such Rapporteurs/Experts (hereafter: Rapporteurs), appointed to examine the general human rights situation of a particular State or a specific thematic aspect of human rights at the international plane. There are nine Country Rapporteurs and 30 Thematic Rapporteurs (and Working Groups). Most relevant for the present context are the Rapporteurs on the Dumping of toxic and dangerous products and wastes (mandate established in 1995), Extreme Poverty (1998), Adequate Housing (2000), Food (2000), Health (2002), and Access to safe drinking water and sanitation (2007). Also relevant for the present context is the work of the Special Representative on human rights and transnational corporations and other business enterprises (2005), which will be further addressed in §17.

11. The roles of the UN High Commissioner for Human Rights and the UN Human Rights Council (before: the UN Commission on Human Rights)

Over the decades, the UN human rights 'machinery' has become quite diverse and wide-ranging. *A fortiori*, this Chapter has so far mainly dealt with specific human rights instruments, bodies and activities, not yet addressing the activities of other UN bodies – such as the UN Security Council that will be further examined under § 12 – with a high relevance for human rights as well. Against this background of 'multitude and variety', the function of UN High Commissioner for Human Rights was created in 1993, being one of the Under-Secretary Generals of the UN. The core task of the High Commissioner is to coordinate and further strengthen all the activities undertaken by the UN in the field of human rights, to support the respective treaty-based and charted-based mechanisms as to the fulfilment of their mandates (see above, § 7, § 9 and § 10), and to be the principal UN representative for human rights to the outside world. This position

has been fulfilled consecutively by: Ayala Lasso (Ecuador, 1994-1997), Mary Robinson (Ireland, 1997-2003), Sergio Vieira de Mello (Brazil, 2003-2004), Louise Arbour (Canada, 2004-2008) and Navanethem Pillay (South Africa, since 1 September 2008).

In 1946 the UN General Assembly had instituted the UN Commission on Human Rights, initially to pursue the task of drafting and submitting an 'International Bill of Rights' – which later on turned out to be the UDHR and the two International Covenants on Human Rights – to the UN General Assembly. Over time, it was mandated to further develop human rights standards, leading to additional human rights conventions (§5). From the late 1960s on, the UN Commission on Human Rights has also been given a role in the international debates on compliance with human rights standards. For that aim, it made use of, amongst other things, the system of Rapporteurs (§10) and so-called 'country resolutions'. In 2006, these tasks were transferred from the UN Commission on Human Rights to the UN Human Rights Council, created by the UN General Assembly. Both bodies consist of representatives of States (47 in the case of the Council). The UN Human Rights Council autonomously discusses all relevant human rights issues, but is also to be seen as part of the larger UN human rights structure. Core decisions are taken by the UN General Assembly, after preparations within its Third Committee on social, humanitarian and cultural affairs. Both are composed of all UN Member States.

12. Should there be a role for the UN Security Council?

Alleged human rights violators, these days, are on the defensive and run the risk of being condemned or corrected. States know, should and could know that their sovereignty, although a corner stone of modern international law, is limited as soon as human rights violations occur. The defence that their human rights behaviour belongs to 'their own business' (internal affairs), is not accepted anymore in the international arena. As worded in the document adopted by the 1993 World Conference on Human Rights: "The promotion and protection of all human rights is a legitimate concern of the international community." And while it is added that "the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind" – as stressed in the previous remark on the 'margin of appreciation' (§7) – it is also said that it is the duty of States, regardless of their political, eco-

conomic and cultural systems, to promote and protect *all* human rights and fundamental freedoms.

What if they do not? In that case, there is either the variety of (quasi-) legal and political mechanisms as described above, or, at the other end of the enforcement spectrum, the possibility of sanctions or other enforcement mechanisms available to the UN Security Council. 'Available', however, does not necessarily mean effective, nor that the political willpower to use these instruments will be there in a specific case. Without going into this in detail – and without discussing systematically the broader question of the limits of international law – factors that underscore the complexity of UN enforcement vary from the position of the veto-powers in the Security Council and their inclination to favour their 'friendly allies', to the often devastating effects of all-embracing sanctions, leading to the debate and practice of 'smart sanctions'. The renewed discussion on a 'Responsibility to Protect' pinpoints the question whether or not the international community of States does have a *duty* to intervene in case of gross human rights violations in a co-member of the international community (and if so, by what means?). It should be understood that the powers of the Security Council to take enforcement measures according to international law are limited to situations involving "threats to the peace, breaches of the peace, or acts of aggression" (Article 39 of the UN Charter). Nevertheless, in the last decades, it has become clear that in case of gross violations of human rights, *e.g.*: violations on the level of genocide and crimes against humanity, the Security Council considers itself to be competent to intervene.

13. 'Green interpretation of human rights': towards strengthening environmental values

Having given this overview of the progress achieved in the enforcement procedures concerning human rights standards, the question arises whether sufficient progress has also been accomplished in the specific field of the environment and human rights? The answer is a clear 'no'.⁷ Despite some progress, much more remains to be done. The near absence of environmental clauses in human rights treaties has already been referred to. However, it should also be clear that UN human rights supervisory bodies, in concrete cases as well as in their so-called 'General Comments', and in their reactions to States' reports,

7. See also: D. Shelton, Human Rights, Health and Environmental Protection: Linkages in Law and Practice, 1(1) HR&ILD (2007), pp. 9-59.

have often recognised the impact of environmental issues. This is occasionally referred to as the 'green interpretation of human rights'.⁸

For the authors, the 'green interpretation of human rights' by the human rights supervisory bodies deserves full support. Especially the role of independent experts, as members of these supervisory bodies, should be highlighted; they are taking the lead where they consider that gaps exist. Nevertheless, more extended standard-setting of the linkages between human rights and the environment is sorely needed, followed by intensification of the enforcement efforts. In either of these two directions: the right to an adequate environment should be recognised as a separate right; or environmental issues should be further integrated into decisions and the jurisprudence on other human rights law. Within the UN, the focus long seemed to be on the latter position, especially since the adoption in 1994 of the final report of the then UN Special Rapporteur on Human Rights and the Environment, Fatma Zohra Ksentini, whose focus was on integration.⁹ However, the recently established Dutch NGO *Stand up for Your Rights* aims at the recognition of the environment as a separate human right. It promotes linking the acknowledgment and upholding of human rights to "a sustainable future on planet Earth".¹⁰ However, whether the emphasis is on a separate

8. For example, the Committee on the Elimination of Discrimination against Women linked environment to the right to health in its Concluding Observations on the 2000 State Report of Romania (UN Doc. CEDAW/C/2000/II/Add.7 at para. 38, 2000). The Committee on the Rights of the Child recommended on the State Report of Jordan that it "take[s] all appropriate measures, including through international cooperation, to prevent and combat the damaging effects of environmental pollution and contamination of water supplies on children and to strengthen procedures for inspection" (UN Doc. CRC/C/15/Add.125 at para. 50, 2000). The UN Committee on Economic, Social and Cultural Human Rights, supervising the 1966 Covenant on Economic, Social and Cultural Rights incorporated environmental notions in its 8 November 2000 'General Comment 14' on "Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social and Cultural Rights (Article 12)", which stated that "the right to health embraces a wide range of socio-economic factors that promote conditions in which people can lead a healthy life, and extends to the underlying determinants of health, such as (...) a healthy environment" (para. 4). Its 2002 'General Comment' contains statements on the Right to Water. Such General Comments are used by UN supervisory bodies to explain how they understand the legal obligations of the States being Parties to the relevant conventions. Although the General Comments as such are not legally binding, they are generally considered to be 'authoritative statements' that cannot easily be neglected by the State Parties.

9. The same approach of inclusiveness was followed by certain NGOs, such as the Center for Human Rights and the Environment (Córdoba, Argentina).

10. *Stand up for your Rights*, <http://www.standupforyourrights.org>. For further information also see: *Right to Environment.org*, <http://www.righttoenvironment.org> (last visited on 1 September 2008).

right to a clean environment or on integration between human rights and the environment ('inclusiveness'), the core issue is that environmental values need to be strengthened in order to bring them into a better position, when they have to be balanced against or alongside other values.

Part III: The role of corporations and civil society in the implementation of human rights

14. Companies and human rights law

Parts I and II focussed on what *States* should do to further promote the enforcement of human rights standards. In this Part, the attention will shift to the roles of business and civil society. Human rights instruments and bodies have not yet focussed very well on *complementary governance and responsibilities*, such as how to address the role corporations could and should play in the field of human rights.

In general, it has been accepted under international law – because of the peremptory, *ius cogens*, character of some human rights norms – that enterprises are directly obliged to comply with a range of human rights standards. The *ius cogens* character implies that a certain norm is considered by the international community of States as a norm for which derogation is not allowed. Examples include prohibitions related to child and forced labour, to the duty to refrain from harsh treatment and even torture of employees who advocate the freedom of trade unions, and to the obligation to respect the freedom of religion of employees or their freedom of movement.

There are, however, hardly any international legal procedures for directly addressing enterprises with regard to their responsibilities. For the *direct legal responsibility* of enterprises, even for multinational companies, it is currently still necessary to think primarily in terms of national legislation which imposes responsibilities and duties on companies, and of national courts that can deal with concrete cases. This is due to the fact that, as a rule, States have been addressed regarding human rights observance within their territory and they are expected to control compliance by its industry. However, due to globalisation, companies are doing business everywhere,

whereas States can generally not control corporate activities outside their territory.¹¹

The core example in addressing human rights violations by multinational companies under *national law* is the American *Alien Tort Claims Act* (ATCA). This old Act, adopted in 1789, grants jurisdiction to US Federal Courts over “any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States.” For clarification purposes: the concept ‘law of nations’ can be equated to ‘human rights’. The ATCA has been used in a range of cases, including some 25 cases against companies for human rights violations since 1979. In May 2008, the US Supreme Court has ruled that a case initiated by South African residents against several multinationals that operated in South Africa during the Apartheid regime – thereby arguing that these corporations, like Deutsche Bank and Coca-Cola, ‘aided and abetted’ the racist regime by doing business in the country – can be brought under the ATCA. We will have to wait and see what the outcome of this case on racial discrimination will be.

Proceedings against multinational companies for injuries occurred in developing countries have also been initiated before the British House of Lords. *E.g.*, the case of asbestos victims who worked in a mine in South Africa (*The Cape Plc* cases),¹² and a cancer victim who worked in a uranium mine in Namibia (*Connelly v. R.T.Z. Corporation Plc*).¹³ These cases raised the question whether a company owes a ‘legal duty of care’ to those injured by its overseas operations. It was advocated before the House of Lords that multinational companies should no longer be able – in this globalising world – to get away with a practice whereby their subsidiary companies located in developing countries apply lower health and safety standards than their factories elsewhere (‘double standards’), thereby violating the right to live and health.

11. See: UN, General-Assembly, Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, (A/HRC/4/035) (2007).

12. *Rachel Lubbe v. Cape Plc.* (1998) CLC 1559 and *Lubbe et al v. Cape Plc.* (2000) 2 Lloyd’s Rep 383; (2000) 1 WLR 1545. A class action was later settled out of court.

13. *Connelly v. RTZ Corporation Plc*, (1996) 2 WLR 251 and 1997, 3 WLR 373-388. Jurisdiction and standing accepted in 1994, claims denied in 1998.

15. Companies, globalisation, civil society and codes of conduct

As a consequence of globalisation, there is a growing awareness of business-related human rights violations, as observed in the 2008 Ruggie Report on business and human rights. The fact that compliance with human rights standards by business actors has not been incorporated in international human rights instruments can be considered as a gap when evaluating human rights law development.¹⁴ This 'governance gap' results from globalisation, whereby the scope and impact of economic activity are global – as opposed to the still mainly state-based law systems. Enforcement of labour law as well as the compliance with fundamental rights of people are still basically organised per State. At the same time, however, it can be observed that in the last decade, an increasing number of businesses all over the world have stipulated in internal codes of conduct, that they will observe internationally recognised human rights. In addition, or alternatively, many of them have endorsed one or more international codes of corporate conduct. The 1976 Guidelines for Multinational Enterprises of the Organisation for Economic Cooperation and Development (OECD, non-UN but acting globally) is one of these. Its revision performed in 2000 has allowed the incorporation of certain provisions related to sustainable development, including recommendations on human rights.

Another important international code for business is the Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy, already adopted by the ILO in 1977. With regard to the protection of human rights, it states that the parties concerned by this Declaration, including enterprises, should, in the light of the tripartite structure of the ILO:

(...) respect the Universal Declaration of Human Rights and the corresponding International Covenants adopted by the General Assembly of the United Nations, as well as the Constitution of the International Labour Organisation and its principles according to

14. On this topic, see: *Ethical Corporation Magazine*, John Ruggie, 'Business and human rights – Treaty road not travelled', 6 May 2008, <http://www.ethicalcorp.com/content.asp?ContentID=5887> (last visited on 10 November 2008). In this article, Prof. Ruggie indicated: "Specific elements of the business and human rights agenda may become candidates for successful international legal instruments. But it is my carefully considered view that negotiations on an overarching treaty now would be unlikely to get off the ground, and even if they did the outcome could well leave us worse off than we are today".

which freedom of expression and association are essential to sustained progress.

In later years, the ILO has adopted a range of other relevant instruments, amongst others the Declaration on Fundamental Principles and Rights at Work (1998). In line with the composition of the ILO, both Declarations have been based upon a tripartite initiative, while the OECD Guidelines were primarily initiated and developed by States.

Closely linked to this effort to involve companies in the protection and promotion of human rights is the *Global Compact*, which was launched in 2000 by former UN Secretary-General Kofi Annan. The Global Compact proclaims ten universal principles of *responsible corporate citizenship*, in the areas of human rights, labour, the environment and anti-corruption. These principles are explicitly addressed to corporations thereby implying the recognition of 'complementary governance'. As indicated in Chapter One, this concept promotes the shared responsibility of civil society and business, together with governments, for the well-being of the Earth and its inhabitants. The Global Compact principles are derived from, among other documents, the UDHR, the Rio Declaration on Environment and Development and the 1998 ILO's Declaration on Fundamental Principles and Rights at Work. The tenth principle, which was later added, concerns anti-corruption.

In line with the previous discussions on the environment, principles seven to nine provide that "Businesses should support a precautionary approach to environmental challenges", should "undertake initiatives to promote greater environmental responsibility", and should "encourage the development and diffusion of environmentally friendly technologies". In the subtitles to these principles, the Global Compact makes clear that there are many links between the environment and the field of human rights. Clearly, the Global Compact's focus is on stimulating business to take *preventive measures*. In addition, it promotes that companies "support and respect the protection of international human rights within their sphere of influence". By 2008, the initiative has grown to more than 5600 participants, including over 4300 businesses in 120 countries around the world.

The guidelines and principles mentioned above do not consider themselves as legally binding.¹⁵ For instance, the Global Compact mentions that it is “a purely voluntary initiative”, which “does not police or enforce the behaviour or actions of companies”, but which is rather “designed to stimulate change and to promote good corporate citizenship”. It is an instrument that builds upon the concept of corporate social responsibility whereby business voluntarily obliges itself to follow global best practices.

A relevant aspect is that business has been pressured to adopt this positive attitude by civil society. Non-governmental and other not-for-profit organisations still play a key role in mobilising citizens and corporations to live up to ethical principles and values. At the same time they put pressure on the administrative and legislative sides of States, in line with the *trias politica*, to strengthen human rights in the administration and the law.

16. The Earth Charter: a framework instrument for complementary governance and environmental justice

The Earth Charter is a “declaration of fundamental principles for building a just, sustainable, and peaceful global society for the 21st century”. The background and the sources of inspiration – such as the UDHR – have been described in Chapter One. The Earth Charter was released in March 2000, thus a few months before the adoption of the *Global Compact* and the *UN Millennium Declaration*. These documents may well have been directly influenced by the Earth Charter. Actually, both of them are entirely consistent with the Earth Charter and can be viewed as steps toward the implementation of the Earth Charter’s universal human values and global ethics.

Like the Global Compact and other corporate codes of conduct, the Earth Charter is not a legal document. Although it was not specifically designed to become a corporate code of conduct, it has developed into a document that can indeed inspire and give direction to the conduct and behaviour of individuals, associations of individuals as well as of corporations. Created by global civil society in the last decade of the 20th century, the Earth Charter is defined as not

15. When certain clauses of a code of conduct coincide with mandatory law, the recommended conduct itself is legally relevant. *E.g.* the recommendation to avoid corruption. Principle 10 of the Global Compact, concerns a matter that has also been regulated worldwide in anti-corruption laws.

only a call to action, but also as a motivating force inspiring change over the world. Some governments and companies have formally endorsed the Earth Charter.¹⁶

The Earth Charter initially grew from a deep concern regarding nature and the environment. Moreover, nine Principles of the Earth Charter refer explicitly to human rights (Principles 2a, 3a, 7, 9a, 11a, 12, 12a, 13a and 13b). Other Principles deal with issues like equality, discrimination and access to justice, which are closely related to human rights. The rights of Indigenous Peoples are recognised in Principles 12, 12b and 8b. The Earth Charter bases itself on the notion that human beings are part of all that lives, of the *community of life*. Therefore, you have to protect nature and the environment. Furthermore, the Earth Charter gives space to spiritual dimensions of life, including awe for nature, individual exercises to restore harmony (the art of living), religions and other 'communal' harmony. It also stresses the need for diversity: from biological diversity to cultural diversity. The importance of diversity is phrased as a positive approach, not limited to the elimination of discrimination in all its forms, but also aiming to preserve and to enhance such diversity.

By considering human rights in the context of humanity's universal social and ecological responsibilities, the Earth Charter also sets certain limits to the exercise of rights and points out related responsibilities. This has been straightforwardly exposed by Steven C. Rockefeller in his memorandum entitled "Some Reflections on the Earth Charter and the Universal Declaration of Human Rights".¹⁷ The following paragraphs have benefited from his thoughts.

16. To give a few examples, the Parliament of the Republic of Tatarstan (Russian Federation) has implemented the Earth Charter principles as a guide for State policy and practice (Resolution No. 722 of the State Council of the Republic of Tatarstan, dated 27 April 2001). In the last few years, its Parliament has prepared 38 laws and over 100 governmental policies in order to implement the principles of the Earth Charter into practice. Other public bodies that made commitments to promote the Earth Charter, are: the Brazilian Ministry of Environment (2007), two Mexican government Ministries, the State of Queensland, Australia, the cities of Oslo (Norway), Munich (Germany) and Calgary (Canada). Around 4600 organisations have also endorsed the Earth Charter, among them: UNESCO, IUCN and the US Conference of Mayors (USCM).

17. Memorandum dated 26 November 2008 addressed to the Earth Charter International Council and the participants in the High Level Earth Charter Meeting (1-4 December 2008), available on the website of the Earth Charter Initiative. Steven C. Rockefeller acts as 'Custodian' of the Earth Charter's text, which implies that he has the custody on its translation and interpretation thereof.

In particular, Earth Charter Principle 2a states: “Accept that with the right to own, manage and use natural resources comes the duty to prevent environmental harm and to protect the rights of people”. Along the same lines, Principle 2b points out: “Affirm that with increased freedom, knowledge and power come increased responsibility to promote the common good”. Again, Principle 4a states: “Recognize that the freedom of action of each generation is qualified by the needs of future generations”. Moreover, Principle 7 refers to the adoption of “patterns of production, consumption, and reproduction that safeguard Earth’s regenerative capacities, human rights, and community well-being”. Addressing private actors, Principle 10 stresses that economic activities and institutions at all levels should promote an equitable and sustainable development. Towards this aim, it adds that trade should support sustainable resource use, environmental protection, and progressive labour standards. It also requires multinational companies and international financial organisations to act transparently and to be accountable for the impact of their activities. In this regard, it is interesting to note that in 2007 the Earth Charter Initiative has entered into a strategic partnership with the Global Reporting Initiative (GRI).¹⁸ Since sustainability reporting (on ‘People Planet Profit’) is a key instrument to practise corporate social responsibility, the Earth Charter reflects a common basis with civil society when acting as such.¹⁹

The Earth Charter rightly underlines the interdependence of human rights and sustainable development. The right to private property and the right to development are qualified, *i.e.* limited, by the need to protect the Earth for future generations.

The Earth Charter also raises the principle of environmental justice and the concept of a right to a safe and healthy environment. Principle 12 of the Earth Charter affirms the right “to a natural and social environment supportive of human dignity, bodily health, and spiritual well-being”. It is a statement of a basic human right that – despite growing recognition – is not found in the UDHR and is only

18. GRI promotes the development of a sustainability reporting framework on economic, environmental, and social performance by all organisations, <http://www.globalreporting.org>.

19. In recognition of the complementarities between the Earth Charter, the GRI, and the Global Compact, a document entitled “The Earth Charter, GRI, and the Global Compact: Guidance to Users on the Synergies in Application and Reporting” (2008) has been developed. This document is available on www.globalreporting.org.

partly articulated in other international law documents, as discussed in Part I of this Chapter.²⁰

Importantly, the Earth Charter affirms certain basic human rights regarding the environmental and economic conditions that must be secured in order to eradicate poverty and to protect the right to a healthy environment mentioned in Principle 12. We refer to Principle 9a that mentions “the right to potable water, clean air, food security, uncontaminated soil, shelter, and safe sanitation...” The UDHR does mention the right to food and shelter, but Earth Charter Principle 9a goes beyond what one finds in the UDHR and more recent international law declarations.²¹ Therefore, the Earth Charter builds on and expands the UDHR’s vision of social justice and human rights with its vision of environmental justice and the right to a safe and healthy environment and related rights.²²

Finally, the Earth Charter’s *The Way Forward* is all about ‘complementary governance’, *i.e.* governance beyond States and their international organisations such as the UN. It also addresses companies and individuals. As observed, the Earth Charter does indeed complement the UDHR by filling some of its gaps, in particular by, more than the UDHR does, addressing non-State actors and by explicitly addressing themes such as nature and environment-related aspects of human security.

17. The Ruggie Report: a Framework for Business and Human Rights

Following the creation of the Global Compact, a working group of the former UN Sub-Commission on Human Rights analysed the pos-

20. The international environmental movement and the human rights movement have been finding common ground over the past two decades in connection with the idea of environmental justice and the concept of a right to a safe and healthy environment. Over 100 national constitutions recognise the right to a healthy and safe natural environment and this right has also been recognised in some regional agreements (see § 6). However, neither the Rio Declaration (1992) nor the Johannesburg Declaration (2002) contains a legally enforceable affirmation of this right.

21. Principle 9a refers to some basic rights that are part of the concept of environmental justice, which did not exist at the time of the drafting of the UDHR and which is only gradually being fully incorporated into international human rights law.

22. It can also be noted that Principles 12 and 9a make clear that implementing the Principles of Section II of the Earth Charter on Ecological Integrity is a matter of human rights and basic justice for people as well as a matter of caring for the greater community of life and protecting the natural environment.

sibilities for developing ‘Universal Human Rights Norms for Companies’. In 2003, they presented a set of Draft Norms to the UN Human Rights Commission and thus to the international community of States. However, it turned out that there was not enough support among States for their adoption. In particular, the business community found the wording on the one hand to be very broad, causing ambiguity regarding their related legal duties, and on the other hand ‘coming to close’. The latter related to the fact that self-regulation should do.

Due to, amongst others, the continuing lack of certainty on the application of human rights to corporations, the then (2005) still existing UN Human Rights Commission decided to request the UN Secretary-General to appoint a Special Representative on the issue of human rights and transnational corporations and other business enterprises. Later on, his mandate has been confirmed by the UN Human Rights Council, while it was renewed and expanded in 2008 by the Council. The post has been fulfilled from the beginning by Professor John Ruggie.²³ In particular, the Special Representative was commissioned to develop a framework for providing more effective protection against corporate-related human rights abuses. This resulted in a report released in April 2008 (hereinafter referred to as the ‘Ruggie Report’ or the ‘Report’).²⁴ As the Report indicates:

The root cause of the business and human rights predicament today lies in the *governance gaps* created by globalization – between the scope and impact of economic forces and actors, and the capacity of societies to manage their adverse consequences. These governance gaps provide the permissive environment for wrongful acts by companies of all kinds without adequate sanctioning or reparation. How to narrow and ultimately bridge the gaps in relation to human rights is our fundamental challenge. [Emphasis added]

The Ruggie Report highlights the fact that the legal rights of transnational companies have been expanded significantly over the past generation. It explains that while encouraging foreign investment and international trade flows, this has also “created instances of imbalances between firms and States that may be detrimental to human

23. John Ruggie is professor at Harvard John F. Kennedy School of Government.

24. UN, General-Assembly, Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie (A/HRC/8/5) (2008).

rights”. To reduce these adverse human rights consequences, the Ruggie Report sketches a *principles-based framework* that rests on the concept of ‘differentiated but complementary responsibilities’ – well known in the field of international environmental law – for the social actors, *i.e.*, States, corporations and civil society. The report mainly focuses on three foundational principles, which are used in general human rights law as well, although in a slightly different form: (1) the State’s duty to *protect* against human rights abuses by third parties, including businesses; (2) the corporate responsibility to *respect* human rights; and (3) the need for more effective *access to remedies*. These three principles – Protect, Respect and Remedy – are said in the Ruggie Report to form a complementary whole in that each actor supports the others in achieving progress.

Duty to protect

On the State’s duty to protect, the Report raises questions about whether governments “have got the balance right” in reconciling different societal needs. Indeed, it indicates that “many governments take a narrow approach to managing the business and human rights agenda”, by not striving for an adequate domestic policy coherence. This line has been replicated at the international level. This duty to protect requires that States “take all necessary steps to protect against such abuse, including to prevent, investigate, and punish the abuse, and to provide access to redress”.

Duty to respect

Although the human rights regime “rests upon the bedrock role of States”, the Report stresses that corporations have the responsibility to respect human rights and this independently of States’ duties. Societal expectations push for this responsibility. Failure to respect human rights can subject a corporation to domestic jurisdiction and, moreover, to the ‘courts of public opinion’. Interestingly, the Report states that corporations do not only have a passive responsibility to do no harm but their responsibility may also entail positive steps. For example, this can imply the adoption of specific recruitment and training programmes to implement anti-discrimination policy in a workplace. The Report also addresses the complex question of the scope of corporate social responsibility. It proposes to focus on the corporate social responsibility to respect human rights based on corporate ‘due diligence’. The concept of due diligence “describes the steps a company must take to become aware of, prevent and address adverse human rights impacts”, which according

to the Report includes considering the international Bill of Human Rights and the core ILO Conventions.

Access to remedies

Effective access to remedies plays an important role in the State's duty to protect as well as in the corporate responsibility to respect. The Report stresses that: "[Human rights] treaty bodies increasingly recommend that States investigate and punish human rights abuse by corporations and provide access to redress for such abuse when it affects persons within their jurisdiction." Alongside the judicial processes, it points out that non-judicial mechanisms play an important role, in particular, in a country where courts are unable to provide adequate and effective access to remedy. Nevertheless, it concludes that "this patchwork of mechanisms remains incomplete and flawed" and needs to be improved.

Differentiated but complementary responsibilities

In sum, the Ruggie Report can be seen as a very valid contribution to the discussion on governance structures in relation to human rights issues arising from business practices. Key organisations from different stakeholder groups have expressed public support for Ruggie's work,²⁵ including his conceptual framework of Protect, Respect and Remedy. For the first time in the business and human rights field, a broad consensus on the way forward is said to exist between the various parties, including NGOs. The fact that the Human Rights Council was unanimous in welcoming the Ruggie Report in June 2008 meant that, for the first time in 60 years, the UN has made a progressive statement on the human rights responsibility of corporations. The concept of 'corporate social responsibility' can strongly profit from the Ruggie Report.

25. Indeed, the mandate of John Ruggie has proceeded through inclusive consultations; 14 multistakeholder consultations on five continents have been organised so far. Moreover, both local and international NGOs have been involved, such as Global Witness and Oxfam USA. Key organisations from stakeholders groups that have expressed public support for Ruggie's framework include: Amnesty International, the Centre for Human Rights and Environment, the International Chamber of Commerce, the International Organization of Employers, and the Business Advisory Committee to the OECD. [Http://www.business-humanrights.org/Documents/RuggieHRC2008](http://www.business-humanrights.org/Documents/RuggieHRC2008) (last visited on 28 July 2008).

18. The Special Representative and the environment

It should be noted that the mandate of the Special Representative on human rights and transnational corporations and other business enterprises does not focus on the environment *per se*. However, in another recent report by John Ruggie on business and human rights of May 2008,²⁶ he states in relation to the cases brought to his attention that:

(...) environmental concerns were raised in relation to all sectors and translated into impacts on a number of rights, including the right to health, right to life, rights to adequate food and housing, minority rights to culture, and the right to benefit from scientific progress.

He also mentions that access to clean water “was raised in 20 per cent of cases, where firms had allegedly impeded access to clean water or polluted a clean water supply.” His reports offer examples of linkages between human rights and the environment and emphasises the need to take concrete action on that issue as well.

19. States, private sector and NGOs – global governance

In the approach of the Global Compact and of the Special Representative, the private sector plays a prominent role in contemporary thinking on the UN and the way in which it can achieve its many different tasks, including in the field of human rights. As Kofi Annan emphasised in his 2005 report entitled *In larger freedom: towards development, security and human rights for all* “(...) States (...) cannot do the job alone. We need an active civil society and a dynamic private sector” and “the [UN] goals (...) will not be achieved without their full engagement”. The authors of this publication strongly believe in this ‘partnership approach’ promoted by the former Secretary-General.

Alongside the business sector, there is a significant role to play for NGOs, in terms of providing ideas and information, lobbying, controlling of power, and sometimes, being organisations which have direct access to international human rights proceedings in which they can seek to achieve their claims. Over the last decade, the role of NGOs within the UN has moved in the opinion of many from ‘clubs that have to be accepted as unavoidable’ to partners without

26. A/HRC/8/5/Add.2, dated 23 May 2008.

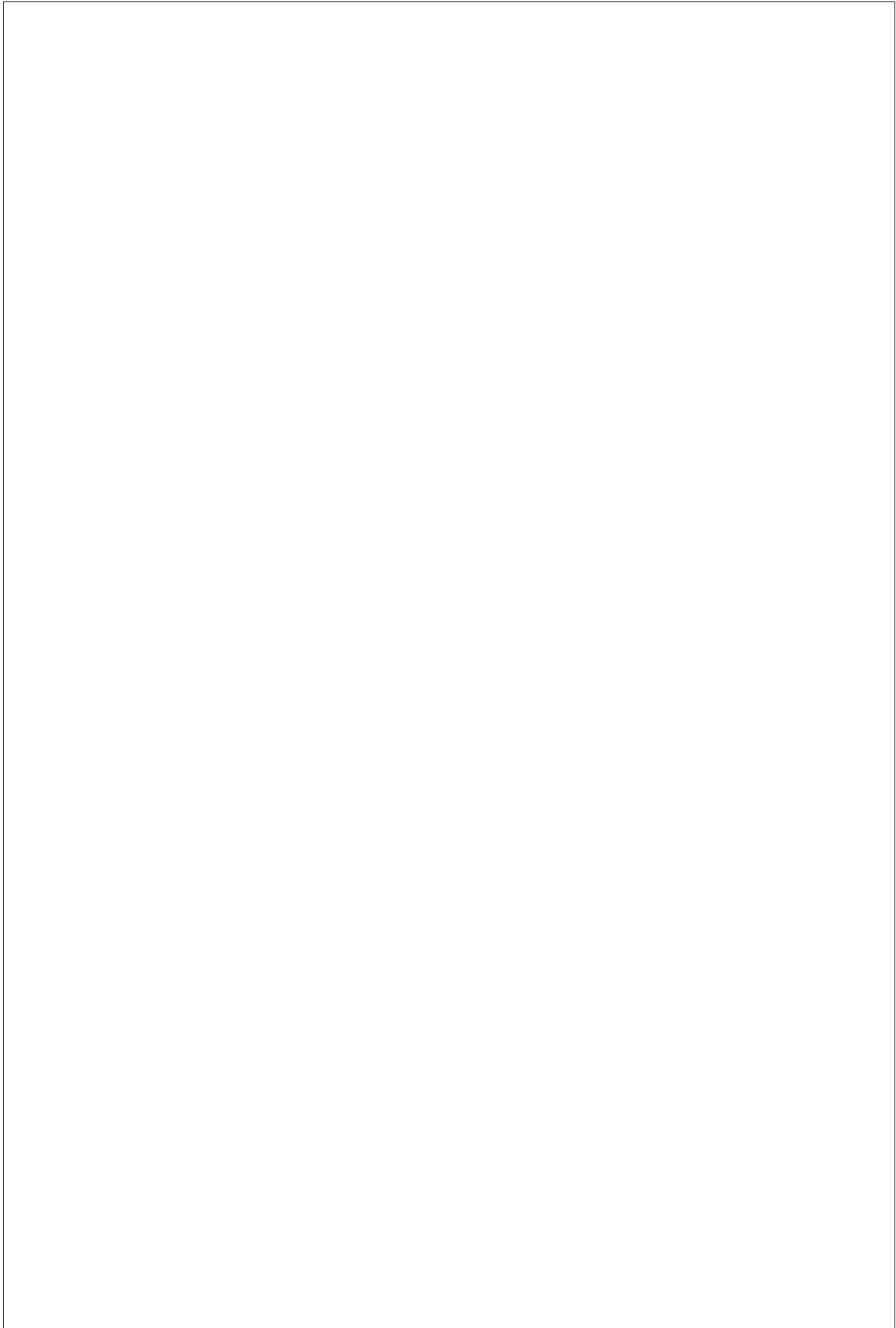
whom the UN cannot function nor realise its objectives. It has even been recognised – for instance in the 2004 UN report *We the peoples: civil society, the United Nations and global governance* – that the constituency of the UN comprises three broad sectors: civil society, the private sector and the States. It is a point which does not need to be further elaborated upon in this context, but which we fully support as well.

20. Concluding remarks

The UDHR is rightly proclaimed as a common standard of achievement. Its Preamble announced it as a project of a normative character which deserves the full attention and energy of “every organ in society” in order to create and shape a world in which human beings can live in human dignity. In this Chapter, we have shown that the UDHR is still an extremely valid and important normative document. In addition, we discussed that since its adoption, the UDHR has acted as a catalyst for the development of additional human rights standards and procedures. The reasons for this varied from the need to further clarify the UDHR standards, to give more protection to particularly vulnerable groups, and to strengthen the supervision of human rights compliance. Apart from that, this Chapter focused on one specific gap: the right to live in a healthy environment. It was not yet an issue in 1948, but it has been put on the international agenda in the last decades, while it is concluded that time is now ripe for further inclusion of the topic into the human rights domain, standards as well as practice. As observed, the Earth Charter builds on and expands the UDHR’s vision of social justice and human rights with its vision of environmental justice and the right to a safe and healthy environment and related rights.

Furthermore, it has been set out in this Chapter that States alone cannot succeed in achieving this. Kofi Annan has reiterated this point of view on various occasions. The Ruggie Report on business and human rights of April 2008 underscored once again that States are no doubt still the primary actors that should be called upon to make human rights standards a reality, either by refraining from violations or by taking positive action in order to create a human rights friendly environment. Nevertheless, it is also clear that business has a tremendous role to play in respecting human rights and to actively incorporate them into their daily practices. The same goes for the civil society that needs to play an important role as part of a ‘partnership of government, civil society and business’.

Finally, the myriad of human rights conventions and other instruments are very important but sometimes not very practical to work with for civil society and business actors – implying thousands of pages and often in a difficult ‘legal language’. The Earth Charter, on the other hand, provides an easy-to-read text that affirms all the core traditional human rights standards. Apart from that, it adds new rights and aspirations, especially related to the environment. These are then two reasons why the Earth Charter represents, alongside the UDHR and other human rights instruments, a valuable additional document: it is accessible and complements them in light of some core challenges of the beginning of the new Millennium that were not yet an issue sixty years ago.





*President and Chair of the Commission on Human Rights, Eleanor Roosevelt, looking at the Universal Declaration of Human Rights.
Credit: United Nations Photo.*

The Universal Declaration of Human Rights

*Adopted and proclaimed by General Assembly resolution
217 A (III) of 10 December 1948*

PREAMBLE

- *Whereas* recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,
- *Whereas* disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,
- *Whereas* it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,
- *Whereas* it is essential to promote the development of friendly relations between nations,
- *Whereas* the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,
- *Whereas* Member States have pledged themselves to achieve, in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,
- *Whereas* a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge,

THE UNIVERSAL DECLARATION OF HUMAN RIGHTS

Now, therefore, the General Assembly

- *Proclaims* this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

Article 1

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 2

- Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
- Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

Article 3

Everyone has the right to life, liberty and security of person.

Article 4

No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

Article 5

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 6

Everyone has the right to recognition everywhere as a person before the law.

Article 7

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Article 8

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

Article 9

No one shall be subjected to arbitrary arrest, detention or exile.

Article 10

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Article 11

1. Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.
2. No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

Article 12

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Article 13

1. Everyone has the right to freedom of movement and residence within the borders of each State.
2. Everyone has the right to leave any country, including his own, and to return to his country.

Article 14

1. Everyone has the right to seek and to enjoy in other countries asylum from persecution.
2. This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

Article 15

1. Everyone has the right to a nationality.
2. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

Article 16

1. Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.
2. Marriage shall be entered into only with the free and full consent of the intending spouses.
3. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

Article 17

1. Everyone has the right to own property alone as well as in association with others.
2. No one shall be arbitrarily deprived of his property.

Article 18

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

Article 19

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 20

1. Everyone has the right to freedom of peaceful assembly and association.
2. No one may be compelled to belong to an association.

Article 21

1. Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.
2. Everyone has the right of equal access to public service in his country.
3. The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

Article 22

Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

Article 23

1. Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.
2. Everyone, without any discrimination, has the right to equal pay for equal work.
3. Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.
4. Everyone has the right to form and to join trade unions for the protection of his interests.

Article 24

Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

Article 25

1. Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.
2. Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

Article 26

1. Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.
2. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.
3. Parents have a prior right to choose the kind of education that shall be given to their children.

Article 27

1. Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.
2. Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

Article 28

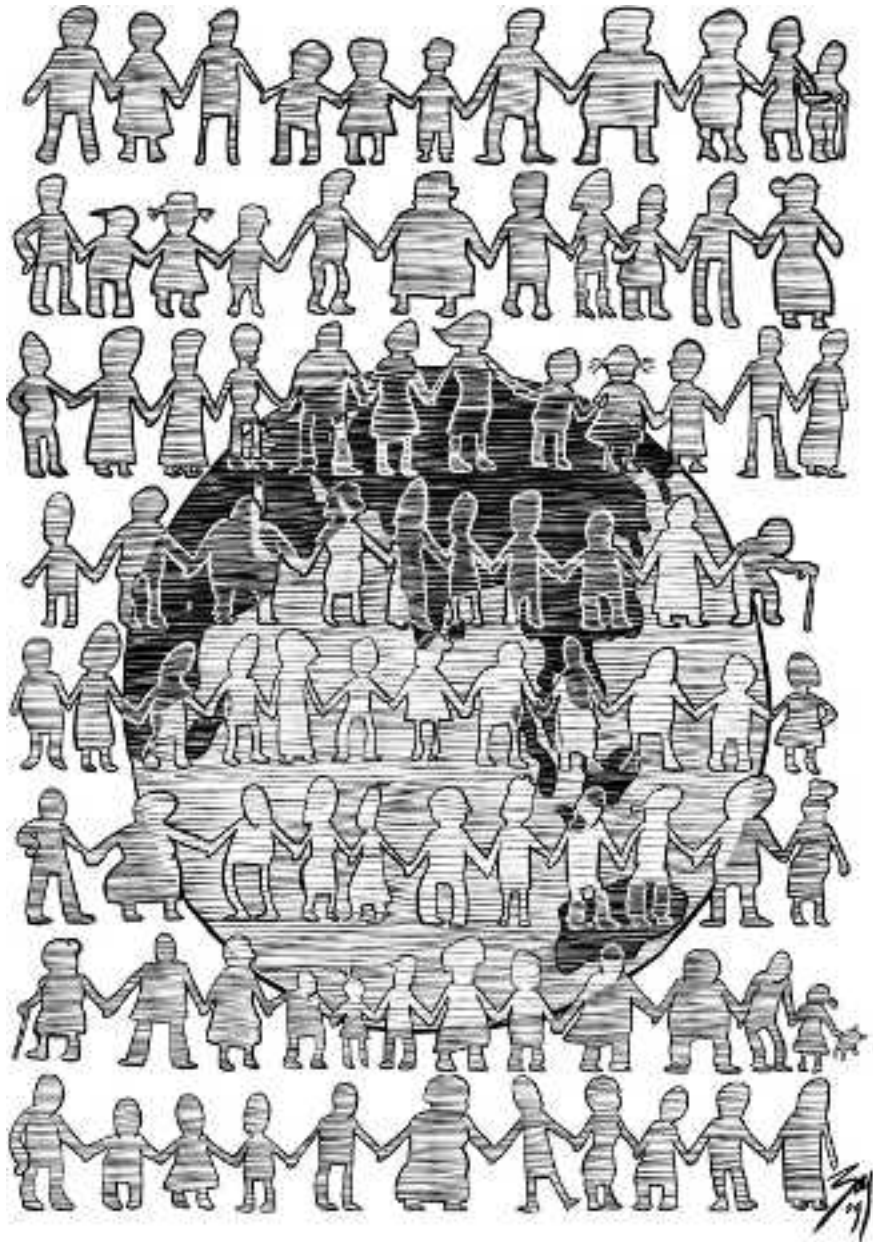
Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

Article 29

1. Everyone has duties to the community in which alone the free and full development of his personality is possible.
2. In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.
3. These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

Article 30

Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.



Universality and diversity



*Jan Pronk, Mikhail Gorbachev, Ruud Lubbers, Maurice F. Strong, Mohamed Sahnoun and other Earth Charter members holding an Earth Charter's consultation in May 1995 at the Peace Palace, The Hague, The Netherlands.
Credit: Earth Charter Initiative Photo.*

The Earth Charter

PREAMBLE

We stand at a critical moment in Earth's history, a time when humanity must choose its future. As the world becomes increasingly interdependent and fragile, the future at once holds great peril and great promise. To move forward we must recognize that in the midst of a magnificent diversity of cultures and life forms we are one human family and one Earth community with a common destiny. We must join together to bring forth a sustainable global society founded on respect for nature, universal human rights, economic justice, and a culture of peace. Towards this end, it is imperative that we, the peoples of Earth, declare our responsibility to one another, to the greater community of life, and to future generations.

Earth, Our Home

Humanity is part of a vast evolving universe. Earth, our home, is alive with a unique community of life. The forces of nature make existence a demanding and uncertain adventure, but Earth has provided the conditions essential to life's evolution. The resilience of the community of life and the well-being of humanity depend upon preserving a healthy biosphere with all its ecological systems, a rich variety of plants and animals, fertile soils, pure waters, and clean air. The global environment with its finite resources is a common concern of all peoples. The protection of Earth's vitality, diversity, and beauty is a sacred trust.

The Global Situation

The dominant patterns of production and consumption are causing environmental devastation, the depletion of resources, and a massive extinction of species. Communities are being undermined. The benefits of development are not shared equitably and the gap between rich and poor is widening. Injustice, poverty, ignorance, and violent conflict are widespread and the cause of great suffering. An unprecedented rise in human population has overburdened ecological and social systems. The foun-

dations of global security are threatened. These trends are perilous-but not inevitable.

The Challenges Ahead

The choice is ours: form a global partnership to care for Earth and one another or risk the destruction of ourselves and the diversity of life. Fundamental changes are needed in our values, institutions, and ways of living. We must realize that when basic needs have been met, human development is primarily about being more, not having more. We have the knowledge and technology to provide for all and to reduce our impacts on the environment. The emergence of a global civil society is creating new opportunities to build a democratic and humane world. Our environmental, economic, political, social, and spiritual challenges are interconnected, and together we can forge inclusive solutions.

Universal Responsibility

To realize these aspirations, we must decide to live with a sense of universal responsibility, identifying ourselves with the whole Earth community as well as our local communities. We are at once citizens of different nations and of one world in which the local and global are linked. Everyone shares responsibility for the present and future well-being of the human family and the larger living world. The spirit of human solidarity and kinship with all life is strengthened when we live with reverence for the mystery of being, gratitude for the gift of life, and humility regarding the human place in nature.

We urgently need a shared vision of basic values to provide an ethical foundation for the emerging world community. Therefore, together in hope we affirm the following interdependent principles for a sustainable way of life as a common standard by which the conduct of all individuals, organizations, businesses, governments, and transnational institutions is to be guided and assessed.

PRINCIPLES

I. RESPECT AND CARE FOR THE COMMUNITY OF LIFE

1. Respect Earth and life in all its diversity.

- a. Recognize that all beings are interdependent and every form of life has value regardless of its worth to human beings.
- b. Affirm faith in the inherent dignity of all human beings and in the intellectual, artistic, ethical, and spiritual potential of humanity.

2. Care for the community of life with understanding, compassion, and love.

- a. Accept that with the right to own, manage, and use natural resources comes the duty to prevent environmental harm and to protect the rights of people.
- b. Affirm that with increased freedom, knowledge, and power comes increased responsibility to promote the common good.

3. Build democratic societies that are just, participatory, sustainable, and peaceful.

- a. Ensure that communities at all levels guarantee human rights and fundamental freedoms and provide everyone an opportunity to realize his or her full potential.
- b. Promote social and economic justice, enabling all to achieve a secure and meaningful livelihood that is ecologically responsible.

4. Secure Earth's bounty and beauty for present and future generations.

- a. Recognize that the freedom of action of each generation is qualified by the needs of future generations.
- b. Transmit to future generations values, traditions, and institutions that support the long-term flourishing of Earth's human and ecological communities.

In order to fulfil these four broad commitments, it is necessary to:

II. ECOLOGICAL INTEGRITY

5. Protect and restore the integrity of Earth's ecological systems, with special concern for biological diversity and the natural processes that sustain life.

- a. Adopt at all levels sustainable development plans and regulations that make environmental conservation and rehabilitation integral to all development initiatives.
- b. Establish and safeguard viable nature and biosphere reserves, including wild lands and marine areas, to protect Earth's life support systems, maintain biodiversity, and preserve our natural heritage.
- c. Promote the recovery of endangered species and ecosystems.
- d. Control and eradicate non-native or genetically modified organisms harmful to native species and the environment, and prevent introduction of such harmful organisms.

- e. Manage the use of renewable resources such as water, soil, forest products, and marine life in ways that do not exceed rates of regeneration and that protect the health of ecosystems.
- f. Manage the extraction and use of non-renewable resources such as minerals and fossil fuels in ways that minimize depletion and cause no serious environmental damage.

6. Prevent harm as the best method of environmental protection and, when knowledge is limited, apply a precautionary approach.

- a. Take action to avoid the possibility of serious or irreversible environmental harm even when scientific knowledge is incomplete or inconclusive.
- b. Place the burden of proof on those who argue that a proposed activity will not cause significant harm, and make the responsible parties liable for environmental harm.
- c. Ensure that decision making addresses the cumulative, long-term, indirect, long distance, and global consequences of human activities.
- d. Prevent pollution of any part of the environment and allow no build-up of radioactive, toxic, or other hazardous substances.
- e. Avoid military activities damaging to the environment.

7. Adopt patterns of production, consumption, and reproduction that safeguard Earth's regenerative capacities, human rights, and community well-being.

- a. Reduce, reuse, and recycle the materials used in production and consumption systems, and ensure that residual waste can be assimilated by ecological systems.
- b. Act with restraint and efficiency when using energy, and rely increasingly on renewable energy sources such as solar and wind.
- c. Promote the development, adoption, and equitable transfer of environmentally sound technologies.
- d. Internalize the full environmental and social costs of goods and services in the selling price, and enable consumers to identify products that meet the highest social and environmental standards.
- e. Ensure universal access to health care that fosters reproductive health and responsible reproduction.
- f. Adopt lifestyles that emphasize the quality of life and material sufficiency in a finite world.

8. Advance the study of ecological sustainability and promote the open exchange and wide application of the knowledge acquired.

- a. Support international scientific and technical cooperation on sustainability, with special attention to the needs of developing nations.
- b. Recognize and preserve the traditional knowledge and spiritual wisdom in all cultures that contribute to environmental protection and human well-being.
- c. Ensure that information of vital importance to human health and environmental protection, including genetic information, remains available in the public domain.

III. SOCIAL AND ECONOMIC JUSTICE

9. Eradicate poverty as an ethical, social, and environmental imperative.

- a. Guarantee the right to potable water, clean air, food security, uncontaminated soil, shelter, and safe sanitation, allocating the national and international resources required.
- b. Empower every human being with the education and resources to secure a sustainable livelihood, and provide social security and safety nets for those who are unable to support themselves.
- c. Recognize the ignored, protect the vulnerable, serve those who suffer, and enable them to develop their capacities and to pursue their aspirations.

10. Ensure that economic activities and institutions at all levels promote human development in an equitable and sustainable manner.

- a. Promote the equitable distribution of wealth within nations and among nations.
- b. Enhance the intellectual, financial, technical, and social resources of developing nations, and relieve them of onerous international debt.
- c. Ensure that all trade supports sustainable resource use, environmental protection, and progressive labour standards.
- d. Require multinational corporations and international financial organizations to act transparently in the public good, and hold them accountable for the consequences of their activities.

11. Affirm gender equality and equity as prerequisites to sustainable development and ensure universal access to education, health care, and economic opportunity.

- a. Secure the human rights of women and girls and end all violence against them.
- b. Promote the active participation of women in all aspects of economic, political, civil, social, and cultural life as full and equal partners, decision makers, leaders, and beneficiaries.
- c. Strengthen families and ensure the safety and loving nurture of all family members.

12. Uphold the right of all, without discrimination, to a natural and social environment supportive of human dignity, bodily health, and spiritual well-being, with special attention to the rights of indigenous peoples and minorities.

- a. Eliminate discrimination in all its forms, such as that based on race, colour, sex, sexual orientation, religion, language, and national, ethnic or social origin.
- b. Affirm the right of indigenous peoples to their spirituality, knowledge, lands and resources and to their related practice of sustainable livelihoods.
- c. Honour and support the young people of our communities, enabling them to fulfil their essential role in creating sustainable societies.
- d. Protect and restore outstanding places of cultural and spiritual significance.

IV. DEMOCRACY, NONVIOLENCE, AND PEACE

13. Strengthen democratic institutions at all levels, and provide transparency and accountability in governance, inclusive participation in decision making, and access to justice.

- a. Uphold the right of everyone to receive clear and timely information on environmental matters and all development plans and activities which are likely to affect them or in which they have an interest.
- b. Support local, regional and global civil society, and promote the meaningful participation of all interested individuals and organizations in decision making.
- c. Protect the rights to freedom of opinion, expression, peaceful assembly, association, and dissent.
- d. Institute effective and efficient access to administrative and independent judicial procedures, including remedies and redress for environmental harm and the threat of such harm.
- e. Eliminate corruption in all public and private institutions.

f. Strengthen local communities, enabling them to care for their environments, and assign environmental responsibilities to the levels of government where they can be carried out most effectively.

14. Integrate into formal education and life-long learning the knowledge, values, and skills needed for a sustainable way of life.

- a. Provide all, especially children and youth, with educational opportunities that empower them to contribute actively to sustainable development.
- b. Promote the contribution of the arts and humanities as well as the sciences in sustainability education.
- c. Enhance the role of the mass media in raising awareness of ecological and social challenges.
- d. Recognize the importance of moral and spiritual education for sustainable living.

15. Treat all living beings with respect and consideration.

- a. Prevent cruelty to animals kept in human societies and protect them from suffering.
- b. Protect wild animals from methods of hunting, trapping, and fishing that cause extreme, prolonged, or avoidable suffering.
- c. Avoid or eliminate to the full extent possible the taking or destruction of non-targeted species.

16. Promote a culture of tolerance, nonviolence, and peace.

- a. Encourage and support mutual understanding, solidarity, and cooperation among all peoples and within and among nations.
- b. Implement comprehensive strategies to prevent violent conflict and use collaborative problem solving to manage and resolve environmental conflicts and other disputes.
- c. Demilitarize national security systems to the level of a non-provocative defence posture, and convert military resources to peaceful purposes, including ecological restoration.
- d. Eliminate nuclear, biological, and toxic weapons and other weapons of mass destruction.
- e. Ensure that the use of orbital and outer space supports environmental protection and peace.
- f. Recognize that peace is the wholeness created by right relationships with oneself, other persons, other cultures, other life, Earth, and the larger whole of which all are a part.

THE WAY FORWARD

As never before in history, common destiny beckons us to seek a new beginning. Such renewal is the promise of these Earth Charter principles. To fulfil this promise, we must commit ourselves to adopt and promote the values and objectives of the Charter.

This requires a change of mind and heart. It requires a new sense of global interdependence and universal responsibility. We must imaginatively develop and apply the vision of a sustainable way of life locally, nationally, regionally, and globally. Our cultural diversity is a precious heritage and different cultures will find their own distinctive ways to realize the vision. We must deepen and expand the global dialogue that generated the Earth Charter, for we have much to learn from the ongoing collaborative search for truth and wisdom.

Life often involves tensions between important values. This can mean difficult choices. However, we must find ways to harmonize diversity with unity, the exercise of freedom with the common good, short-term objectives with long-term goals. Every individual, family, organization, and community has a vital role to play. The arts, sciences, religions, educational institutions, media, businesses, nongovernmental organizations, and governments are all called to offer creative leadership. The partnership of government, civil society, and business is essential for effective governance.

In order to build a sustainable global community, the nations of the world must renew their commitment to the UN, fulfil their obligations under existing international agreements, and support the implementation of Earth Charter principles with an international legally binding instrument on environment and development.

Let ours be a time remembered for the awakening of a new reverence for life, the firm resolve to achieve sustainability, the quickening of the struggle for justice and peace, and the joyful celebration of life.



Earth, our home

*A letter addressed to the Director-General
of Unesco by MAHATMA GANDHI*

*Bhangi Colony
New Delhi
May 25th, 1947*

Dear Dr Julian Huxley,

As I am constantly on the move, I never get my post in time. But for your letter to Pandit Nehru in which you referred to your letter to me, I might have missed your letter. But I see that you have given your addressees ample time to enable them to give their replies. I am writing this in a moving train. It will be typed tomorrow when I reach Delhi.

I am afraid I can't give you anything approaching your minimum. That I have no time for the effort is true enough. But what is truer is that I am a poor reader of literature past or present much as I should like to read some of its gems. Living a stormy life since my early youth, I had no leisure to do the necessary reading.

I learnt from my illiterate but wise mother that all rights to be deserved and preserved came from duty well done. Thus the very right to live accrues to us only when we do the duty of citizenship of the world. From this one fundamental statement, perhaps it is easy enough to define the duties of Man and Woman and correlate every right to some corresponding duty to be first performed. Every other right can be shown to be a usurpation hardly worth fighting for.

Yours sincerely

M. K. GANDHI

Dr Julian S. Huxley
Director-General UNESCO
Paris

*Letter by Mr. Mahatma Gandhi to the first Director-General of
UNESCO regarding the ideas for a universal declaration
of human rights (1947).*

EPILOGUE

From Individual Rights to Common Responsibilities

Ruud Lubbers

The 60th anniversary of the Universal Declaration of Human Rights (UDHR) poses the question of how to go on with this tradition. It also brings forward the great promise of combining the UDHR with the Earth Charter. In Chapter Two, it has been demonstrated that the UDHR commenced as a Declaration. It affirmed the commitment of all Member States of the United Nations (UN) to respect the rights of all individuals. Gradually, the UDHR became part of the international legal order. We saw that the first focal point was on the political and civil rights, the so-called 'first generation' human rights. Subsequently, attention was paid to the efforts that States were expected to undertake with respect to the social and economic needs of their citizens, the 'second generation' human rights. Both categories of human rights have been elaborated on in various subsequent human rights treaties initiated by the UN. They also found their way to regional human rights and regional economic treaties as well as to national constitutions.

Sixty years ago, we lived in the reality of the early Cold War period. Tension existed between market-based economies and state-planned economies (in other words: capitalism and communism). Both systems competed for power in the new post-colonial sovereign States. However, many of the new States preferred not 'to align'. They became the 'Non-Aligned Movement', collectively called the Third World. Meanwhile the ongoing East-West confrontation continued.

In 1975, a fundamental change occurred with respect to the tense relationship between these First and Second World countries. The Helsinki Accords, which attempted to improve the relations, in particular, between the United States of America (USA) and Western-European countries, on the one hand, and the Soviet Union and its

Eastern-European satellites on the other hand, created a common ground for promoting human rights. The Helsinki Accords actually consisted of three main sections, informally known as 'baskets', that included a broad set of measures designed to enhance security and cooperation between those regions. In particular, 'Basket 1' incorporated principles on human rights and fundamental freedoms.

In the People's Republic of China, *de facto* leader Deng Xiaoping developed after the Cultural Revolution in the eighties an alternative approach: China was made ready to participate in the world economy in order to benefit from new technologies from all over the world. Market principles were introduced while, at the same time, the role of the Communist Party was continued with the argument of providing and guaranteeing stability as a key condition for economic growth and development.

After the Helsinki Accords, the nuclear dimension of the Cold War between Moscow and Washington developed into a new challenge. Even though the deterrence by nuclear weapons proved to be effective in keeping the Cold War 'cold', leaders of both sides, Gorbachev and Reagan, became more and more convinced that they had to go for arms limitation. In line with Article 6 of the Treaty on the Non-Proliferation of Nuclear Weapons (NPT), to negotiate with the goal to ultimately ban nuclear weapons – "Each of the Parties to the Treaty undertakes to pursue negotiations in good faith on effective measures relating to cessation of the nuclear arms race at an early date and to nuclear disarmament (...)" – they decided to reduce the number of nuclear weapons. This helped to end the Cold War. However, 10 years after the end of the Cold War, the efforts to ban nuclear weapons came to a stand-still. Moreover, the non-proliferation efforts, for which the International Atomic Energy Agency (IAEA) was intended to be instrumental, were less and less trusted; in particular by the USA. This made this country believe that it could resort to unilateral actions outside the UN, of which the military intervention in Iraq was the most spectacular and worrisome.

All in all, it is urgently required that the permanent members of the UN Security Council – the USA, China, Russia, France and the United Kingdom – will start to work together on the issue of non-proliferation of nuclear weapons with, in particular, Brazil, South Africa, India, Japan and the European Union. Without such an effort, we will be heading to another failed NPT Review Conference in 2010 and, moreover, to a nuclear unsafe world. To practice 'Atoms for Peace' it is essential in addition to this – in line with the Earth Char-

ter – to apply a precautionary approach and to find – as a precondition – a solution for the radioactive waste. If this succeeds, the application of nuclear technology to generate climate change-friendly energy and for certain human security dimensions – like water, food, agriculture and medical care – can be promising. Hence, the need for a ‘reinforced global nuclear order’ is compelling.¹

In the nineties, new technologies, in particular Information and Communications Technology (ICT) and Internet, gave a decisive ‘edge’ to market economies. They were clearly more productive and very effective in connecting the world. At the end of the Cold War, a market-based economic system was adopted by many former communist countries. Also, the non-aligned countries had to make new choices. Protection by, and threats from, Moscow or Washington were becoming history. They now had to make their own choices. As a consequence of these historical developments, we arrived in a world in which market-economies dominate. Due to the universal trade liberalisation, which took place in the same timeframe, we could see the roll-out of the globalisation process.

The end of the Cold War left a political vacuum. Power struggles, civil wars and enormous violations of human rights could be observed in many countries and regions. It seemed as if the world travelled back in history all the way to the ‘warlords’ era. The word ‘IMPUNITY’ became visible *in capitals*. The International Criminal Court was established, as well as a series of specific courts, to overcome this impunity, this non-accountability of perpetrators of human rights violations. This can be considered as an important part of human rights efforts. Furthermore, awareness was raised about the importance of the ‘Rule of Law’. In the meantime the classic role of NGOs, like Amnesty International and Human Rights Watch, has been changed considerably by the fact that we all have become emailing societies; one world on line.

With the end of the Cold War, the privatisation of State companies and public services, and the liberalisation of trade as part of globalisation, had commenced. As we can determine now, a substantial part of the States’ governance power in the last two decades has shifted from States to business and civil society. This was the time the

1. Ruud Lubbers, Moving beyond the stalemate: addressing the nuclear challenge by supranational means, Clingendael International Energy Programme, October 2006, <http://www.clingendael.nl/ciep/publications/briefing-papers/> (last visited on 1 September 2008).

Earth Charter came to the forefront. Only when humanity undergoes a radical change in its attitudes, values and behaviour, it can address the many interrelated social, economic, and ecological problems that the world faces today. The Earth Charter offers an integrated vision of the basic ethical principles and practical guidelines that should govern the conduct of individuals, civil society, business, and nations in their relations with each other and the Earth, which is urgently needed: a new global ethics is taking form, which also finds its expression in international law.

The primary purpose of the Earth Charter was to create a 'soft law' document that sets forth the fundamental principles of the emerging new ethics of respect for human rights, peace, economic equity, environmental protection, and sustainable living. It builds on earlier international declarations, charters and treaties, and on documents that have been drafted by a variety of civil society institutions, NGOs and religious organisations. It has been adopted after consulting thousands of people and organisations and has subsequently been embraced by many people and organisations. It also draws on the discoveries of science, the moral insights of the world's religions, and the extensive world literature on global ethics and the ethics of environment and sustainable development. It is a true 'people's treaty'.

At the end of the last century, the then UN Secretary-General Kofi Annan and his assistant John Ruggie wanted to involve the business community in finding solutions for the global problems. They looked for an instrument to promote the voluntary implementation by business of a selection of ten universal principles and decided to start an initiative that became the Global Compact. This code of corporate behaviour contains three principles derived from the human rights tradition, three from the ILO tradition, three related to the environment and nature, and one concerning anti-corruption. They received the support from large global NGOs and a number of important multinational companies. The Global Compact certainly enhances 'corporate social responsibility'. Corporate social responsibility promotes the balancing of the three P's, People, Planet, Profit. It proves to be a very effective way to increase the commitment of the private sector, business, to sustainable development. More recently, the fourth P was suggested by various sources: the P of Pneuma. It relates to spirituality. Provided that the four Ps are firmly connected, they can achieve Progress, real Progress.

In 2005, John Ruggie was appointed as the Special Representative of the Secretary-General on the issue of human rights and trans-

national corporations and other business enterprises. In an admirable manner, he proved to be able to map out a way forward. Doing so, he took advantage of his insight that governance power has partly shifted to global 'business', pressured by civil society. He considered a 'human rights treaty', that could legally bind multinational corporations. He concluded that there is presently not enough support. Legal instruments tend to have a limited reach out when the addressees do not fully support the instrument. Moreover, the Rule of Law does, unfortunately, not rule everywhere. Ruggie's framework 'Protect Respect Remedy' focuses on the different roles of societal actors. He argues that governments should protect citizens against human rights abuses, also corporate related abuses; companies have the duty to respect human rights standards and to actively implement them in their business models; all actors have the duty to contribute to ways to remedy abuses. Ruggie pays attention to soft law instruments such as international corporate codes of conduct. Implicitly, Ruggie's work recognises the potential power and clear importance of corporate social responsibility as part of the core business of the private sector.

In this respect, the Chinese Premier Mr. Wen Jiabao recently told the leading Chinese business leaders that they should not only understand how to manage their business, but: "Entrepreneurs must also have the high moral ground. I wish they would have morality in their blood". He meant that they should take a larger social responsibility. Globalisation has brought business a lot of new opportunities because of the expansion of markets. Moral conscience and accountability are key-attitudes for a 'globalisation with a human face'.

Precisely these observations are the starting point to argue that time has come to see the UDHR and the Earth Charter as declarations complementing each other and to implement that in practice.

The Earth Charter had a different history: the idea to have a charter was already mentioned in *Our Common Future* (1987), albeit as an 'ecological ambition'. At the Earth Summit in Rio de Janeiro (1992), the proposal to begin negotiation of an *Earth Charter* was raised but not accepted by governments. After the Summit, a group of concerned people undertook to produce a 'people's Earth Charter'. The Earth Charter originated in the early nineties from civil society. It began with nature and the environment. Pursuant to the extensive dialogue with civil society all over the world, the content of the Earth Charter was expanded to a broad set of ethical principles. It is based

on the idea that human beings are part of all that lives, of the community of life. It gives space to spiritual dimensions of life including awe for nature. It recognises the role of religions and other spiritual movements as well as the importance of individual exercises to restore harmony (the art of living) and efforts to promote communal harmony. It stresses the need for diversity; from eco-diversity to cultural diversity. It is written with a 'culture of peace' as embedded in the Earth Charter, and underlining the value of cultural diversity, as now also promoted by the Alliance of Civilizations.² In comparison with the UDHR, it adds the elements of the protection of nature and sustainable development, *i.e.* intergenerational solidarity. Biological and cultural diversity are explicitly mentioned as principles to pursue. In particular cultural diversity is an element that is closely connected with globalisation, because of the tendency of certain politicians in this era to go for electoral gains amongst citizens in their wish to be protected against 'alien cultural elements'. As an '*antidotum*', tolerance, diversity and respect for other cultures have become the key to a peaceful future.

The first addition to the UDHR, the protection of nature and sustainable development, has received an enormous boost by the growing awareness concerning climate change. Although climate change was already recognised as a challenge 20 years ago, only recently it has been taken seriously. We are now on the road from Kyoto and Bali to Copenhagen. Indeed, climate change can become an example of complementary governance: when business would – side-to-side with governments and international organisations – take responsibility.

In summary, the Earth Charter offers us an additional ethical framework promoting:

1. Respect and care for the community of life
2. Intergenerational responsibilities
3. Biological diversity and cultural diversity
4. Spirituality
5. Effective, complementary governance

2. The Alliance of Civilizations was established in 2005 at the initiative of the governments of Spain and Turkey, under the auspices of the UN. The Secretariat of the Alliance of Civilizations works in partnership with States, international and regional organisations, civil society groups and the private sector to mobilise the promotion of cross-cultural relations among diverse nations and communities. See: <http://www.unaoc.org/>.

The Earth Charter's Way Forward addresses complementary governance; governance being effective only when governments, business and civil society work together.

As a guideline practising this complementary governance, the Earth Charter tries to overcome exaggerated individualism and dangerous short-term thinking. Moreover, it promotes diversity and the spiritual dimensions of life. Since 2000, the year in which the Earth Charter was concluded upon as a declaration, many institutions and individuals have endorsed the Earth Charter, and made it part and parcel of their engagement. There is progress in history; from the Freedom from Fear and the Freedom from Want, as formulated more than two generations ago, to today's ecological security and all it implies.

In particular the endorsement of the Earth Charter by the International Union for Conservation of Nature (IUCN) – an important global environmental network composed of numerous governments, NGOs, and volunteer scientists – was a key moment.³

Since the creation of the Earth Charter was a 'bottom-up' initiative supported by many worldwide, it is a logical step that the Earth Charter continues to support decentralised empowerment. Earth Charter International facilitates initiatives from everywhere. Step by step, this type of support contributes to the education of sustainable development with a focus on the very young and as a basis for the UN Decade of Education for Sustainable Development, for which UNESCO is the lead agency. Others practise corporate social responsibility and train executive management on the basis of the values of the Earth Charter.

More recently, the Earth Charter entered into a strategic alliance with the Global Reporting Initiative. Since sustainability reporting is very important for companies to monitor their progress in the transition efforts to a sustainable production and consumption process, and to be transparent in the choices made, this is a logical and very promising step. Reporting encourages the realisation of the Earth Charter values by businesses. With a similar perspective, it might be interesting for businesses and organisations to endorse the Earth Charter, respectively to engage therewith.

In addition, the role of religions and spirituality is strengthened by academic efforts clarifying the link between religions and the awe

3. In 2008, IUCN's membership union included 77 States and more than 800 NGOs.

RUUD LUBBERS

for nature and diversity. It is hoped that the Earth Charter, which is the right starting point for this new millennium, will become a universal code of conduct for States, organisations, businesses and people; that it will accomplish for cultural diversity, environmental conservation and sustainable development what the UDHR has achieved for human rights.

This is the Way Forward: From Individual Rights to Common Responsibilities.

“HIGH LEVEL EARTH CHARTER MEETING”,
1-4 DECEMBER 2008, AMSTERDAM, THE NETHERLANDS

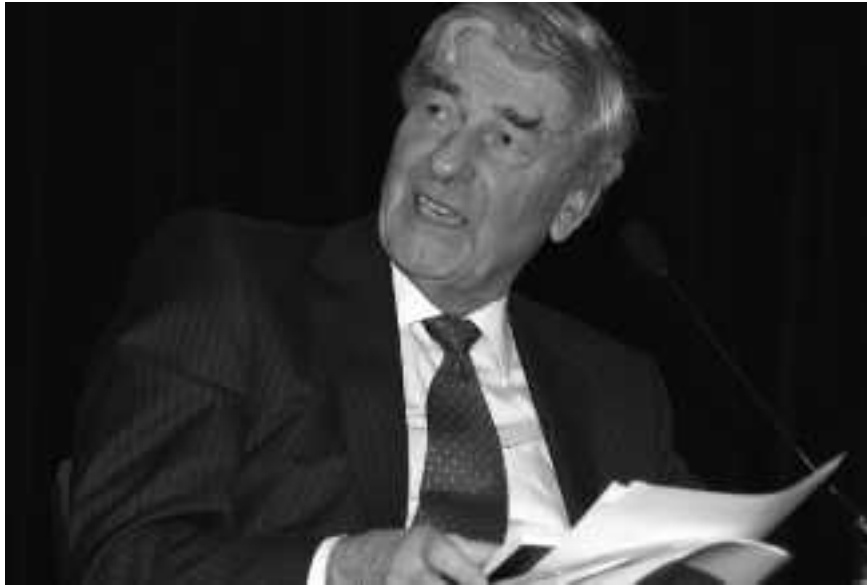


Lively discussion regarding the pre-publication copies of this book.



Panel discussion on the theme “Universal Declaration of Human Rights and the Earth Charter”.

"HIGH LEVEL EARTH CHARTER MEETING",
1-4 DECEMBER 2008, AMSTERDAM, THE NETHERLANDS



Ruud Lubbers, member of the Earth Charter Commission.

"HIGH LEVEL EARTH CHARTER MEETING",
1-4 DECEMBER 2008, AMSTERDAM, THE NETHERLANDS



*Steven C. Rockefeller, Co-Chair of the
Earth Charter International Council.*

BUSINESS MEETING "BUSINESS AND HUMAN RIGHTS",
HOSTED BY THE DUTCH MINISTER OF FOREIGN AFFAIRS,
1ST DECEMBER 2008, WASSENAAR, THE NETHERLANDS



Speech of Alexander Rinnooy Kan, Chairman of the Social and Economic Council of The Netherlands (SER).

Corporate Social Responsibility and Opportunity

A way to sustainable business

An important question is how business can profit from, and commit to, the Earth Charter as complementary to the Universal Declaration of Human Rights.

Increasingly, business leaders recognise a long term business perspective is impossible in a world that is not sustainable. This is why many businesses now actively engage in exploring how the business sector can help respond to the world's many problems.

The Earth Charter is among the essential instruments that address core business issues such as:

- * Risk: what can I do to reduce the risks of change to my business?
- * Opportunity: what new business opportunities am I missing?
- * Partnerships: how can I improve relations with staff, customers, NGOs, governments, etc.?
- * Future trends: what are the underlying drivers of social and political changes?

Can your firm help solve these problems while simultaneously expanding your business? Governments, business enterprises and organisations are currently actively achieving progress in attaining these goals. You could be part of it!

Changing the world does not have to be hard or costly. The best answers to how to promote your business while simultaneously helping the world, can be found within the company.

The value of the Earth Charter for business is that it offers a shared vision and principles for a more just, sustainable and peaceful world. It is a voluntary instrument, and can be used to inspire and

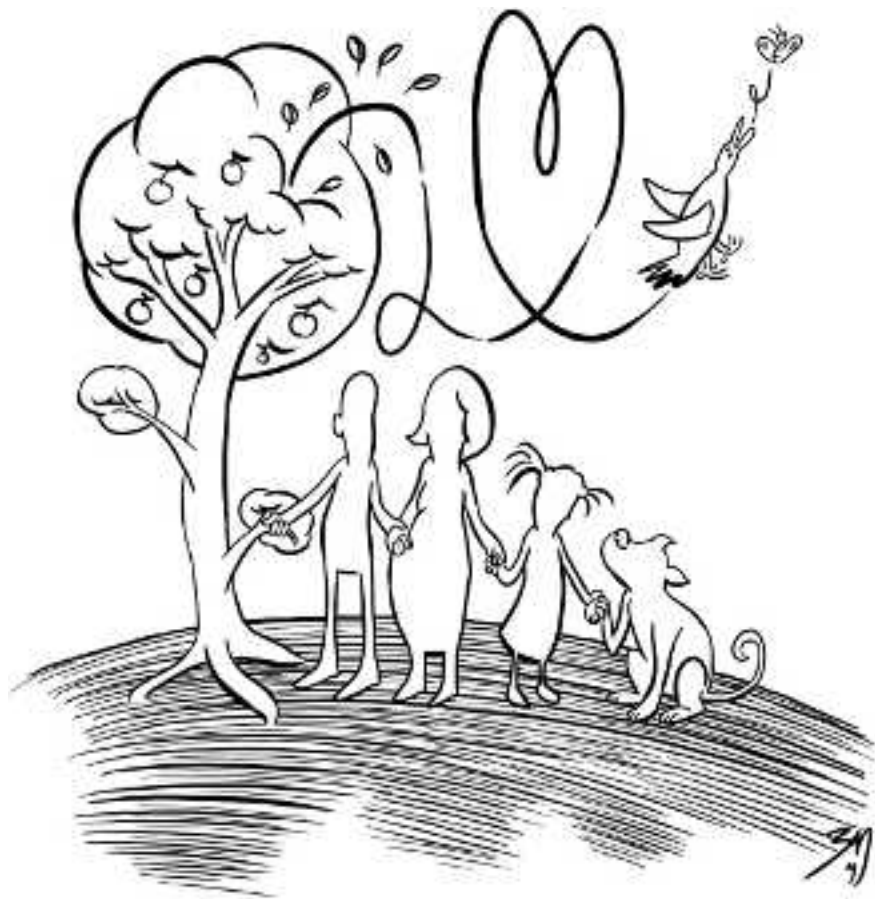
catalyse action. Its vision can be easily integrated into different national and corporate cultures.

The Earth Charter contains several important elements:

- * Vision: it highlights global interdependence and the need for universal responsibility. It notes that 'When basic needs have been met, human development is primarily about being more, not having more'.
- * Principles: it identifies 16 overarching principles for responsible behaviour, such as respect for the community of life, ecological integrity, social and economic justice, and democracy, nonviolence and peace.
- * Road map: it provides a path forward for implementation of its goals and principles.

You can use the Earth Charter in several practical ways:

- * Assess: use it to assess where your business stands in relation to key global issues and human values.
- * Inspire: use it to inspire and motivate staff, customers and suppliers to think of new business opportunities, products and services.
- * Adapt: use it to introduce new business strategies that address the challenges of a changing world.
- * Improve: users of the UN Global Compact and other tools to enhance corporate responsibility can use the Earth Charter to increase their engagement.
- * Endorse: show your commitment to shared values and efforts, *e.g.* with a simple phrase in your mission statement or your CSR report.
- * Report: report on your conduct in line with the Global Reporting Initiative Guidelines (special indicators link with the Earth Charter).
- * Prevent: use it as a term of reference to prevent conflicts, including (cross-border) multi-stakeholder conflicts, and start dialogue in a timely manner using alternative dispute resolution mechanisms.
- * Guide: use it as a guideline for personnel and include it in training courses.



Respect life

