

## **The Earth Charter as An International “Soft-Law”**

Donald A. Brown

Director, Pennsylvania Consortium for Interdisciplinary Environmental Policy

### **I-Introduction**

This paper reviews the process and significance of the Earth Charter becoming a recognized international “soft-law” document. Before the Earth Summit in Rio Janeiro in 1992, an attempt was made to have the world adopt an Earth Charter. However, the time was not right. Instead, the nations assembled in Rio in 1992 adopted the Rio Declaration on Environment and Development (United Nations, 1992, The Rio Declaration).

The basic idea of the Earth Charter is to develop a universal code of conduct to guide people and nations toward sustainable development. Its proponents eventually hope to adopt the Earth Charter in the United Nations and have it become a “soft-law” document. Proponents of the Earth Charter argue that such a document is now needed given the immense global environmental threats and social inequities that have been emerging. It is also believed that the transition to sustainable development requires basic changes in the attitudes, values and behavior of all people in order to achieve social, economic and ecological equity and security in the context of the globe's limited resources.

### **II-What Is A “Soft-Law” Document?**

A “soft-law” document is not legally binding on the nations that adopt it but such documents are recognized to contain set of norms that nations should abide by although they are not legally obligated to do so. Nations who sign “soft-law” documents are expected to make good-faith attempts to implement them. “Soft-law documents have been used in international affairs in the following ways:

A. Soft-law as a first step to binding international commitments.

The agreements reached in “soft-law” often have become the basis for specific provisions in treaties that are legally binding. Because “soft-law” provisions have already been agreed to contain reasonable normative approaches to human problems by those nations that have signed them, negotiations attempting to create legally binding commitments in treaties can begin with the solutions contained in the 'soft-law” documents as a starting point in negotiations. The “soft-law” provisions are strong starting points in negotiations because they represent solutions that the parties have already gone on record as reasonable.

B. Soft-law as a basis for holding nations accountable.

In addition to their use in developing binding legal commitments, “soft-law” norms have often been used as a tool to change behavior of governments even if their incorporation into binding treaties has not been considered. If the Earth Charter was adopted as “soft-law, it could play the same role in guiding nations to adopt sustainable development

programs as has the United Nations Declarations on Human Rights played in making human rights serious national concerns (United Nations, 1948). NGOs have held nations accountable for non-compliance with the United Nations Declaration on Human Rights and thereby have been successful in changing national policy even though the International Declaration on Human Rights had not been memorialized in a binding treaty. Because “soft-law” can be understood as specifying reasonable national behavior, those nations that fail to abide by it can be charged with acting outside acceptable international standards. In such cases the implementation of the “soft-law” has come from publicizing non-conforming behavior in international meetings and publications rather than in enforcement proceedings in legal tribunals.

#### C. Soft-law as a legal basis for resolving disputes in international affairs.

Sometimes “soft-law” principles have also been recognized by legal tribunals as constituting “customary” international law. When resolving disputes for which there is no binding legal authority, international courts will often look to see whether there are international approaches to some problems that have become so “customary” that they are viewed as constituting expected ways of behaving and therefore should be so recognized as a way of resolving specific disputes. In these cases, international tribunals will sometimes apply “soft-law” as a reasonable way to settle contentious issues. For instance, if a “soft-law” document acknowledged that certain principles should be followed to allocate water rights in international river basins, courts may look to the “soft-law” principles to resolve a particular international water dispute.

#### D. Soft-law as a flexible way of developing international standards.

Because “soft-law” documents need not go through the tortuous ratification process required of treaties, it is a much more flexible way of getting a certain level of agreement among nations. This makes “soft-law” approaches more desirable than treaties for some types of issues and are for that reason are sometimes preferred to binding treaties by negotiating parties.

### **III-The Earth Charter's Road to “Soft-law” Status.**

Before a document can achieve status as “soft-law” among nations, it must be agreed to by them. The current approach to the Earth Charter is to present the document to the United Nations in 2002 as a thoroughly vetted “peoples” document. In the meantime, it can be used for a variety of purposes including educational and to stimulate discussions. The current plan does not call for nations to formally consider the Earth Charter before 2002, a step that will eventually be necessary for it to achieve “soft-law” status. For this reason it is not expected that there will be preparatory negotiations on the Earth Charter between now and the ten-year review of Rio. It is likely, however, that such negotiations could take place sometime after the ten-year review of Rio in 2002.